PETITIONER:
EBRAHIM VAZIR MAVAT

Vs.

RESPONDENT:
THE STATE OF BOMBAY AND OTHERS.(With Connected Appeals)

DATE OF JUDGMENT:
15/02/1954

BENCH:
HASAN, GHULAM
BENCH:
HASAN, GHULAM
MAHAJAN, MEHAR CHAND (CJ)
MUKHERJEA, B.K.
DAS, SUDHI RANJAN
BOSE, VIVIAN

CITATION:
1954 AIR 229 1954 SCR 933
CITATOR INFO :
R 1956 SC 559 (4)
F 1958 SC 731 (21)
R 1959 SC 725 (11)
F 1959 SC1315 (4,6)
RF 1962 SC1371 (41)

ACT:
Constitution of India, arts. 13(1), 19(1) (e)-Influx from Pakistan (Control) Act, 1949 (Act XXIII of 1949) s. 7 Whether ultra vires the Constitution.

HEADNOTE:
Held, (Per MEHR CHAND MAHAJAN 0. J., MUKEMRJFA, ViviAN BosE and GHULAM HASAN JJ. ; S. R. DAs J. dissenting) that s. 7 of the Influx from Pakistan (Control) Act, 1949 is void under art. 13(1) in so far as it conflicts with the fundamental eight of a citizen of India under art.19(1) (a) of the Constitution and the order of physical removal of the citizen from in Is therefore liable to beset aside.
Per DAB J.-In view of the circumstances the provisions of s. 7 of the Act were reasonable restrictions within the meaning of el. 5 of art. 19 of the constitution imposed in the interests of the general public upon the exercise by Indian citizen coming from Pakistan without a permit of, the rights conferred by art. 19(1)(d) and (e) of the Constitution.

JUDGMENT:
CRIMINAL APPELLATE, JURISDICTION: Criminal Appeals Nos. 65 and 66 of 1952, 5 and 19 of 1953 and Petitions Nos. 170 of 1952, 19 and 57 of 1953.
Appeals from Orders, dated the 9th April, 1952, of the High Court of Judicature at Bombay in Criminal Applications Nos. 707 and 708 of 1951, from the Judgment and Order, dated the 15th December, 1952, of the High Court of Judicature at Bombay in Criminal Application No. 1310 of 1952; from the Judgment and Order, dated the 29th November, 1952, of the Judicial Commissioners Court Vindhya Pradesh, Rewa, in

Criminal Miscellaneous No. 49 of 1952; and Petitions under article 32 of the Constitution of India.
J.B. Dadachanji and Z. F. Bootwala for the appellants in Criminal Appeals Nos. 65 and 66 of 1952 and 5 of 1953.
C.K. Daphtary Solicitor-General for India(G. N. Joshi, with him) for respondents Nos. I and 2 in
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Criminal Appeals Nos. 65 and 66 of 1952 and respondent No. 1 in Criminal Appeal No. 5 of 1953.
K.B.Asthana, for the appellant in Criminal Appeal No. 19 of 1953.
C.K. Daphtary, Solicitor-General for India, (Porus A. Mehta and G. N. J08hi, with him) for the respondent in Criminal Appeal No. 19 of 1953.
S. P. Sinha (Sri Narain Andley, with him) for the petitioners in petition No. 170 of 1952.
Gopalji Mehrotra for respondent No. I in petition No. 170 of 1952.
C. K. Daphtary, Solicitor-General for India (Porus A. Mehta, with him) for respondent No. 3 in petition No. 170 of 1952.
S. P. Sinha (S. N. Mukherji, with him) for petitioner in petition No. 19 of 1953.
Gopalji Mehrotra for respondent No. I in petition No. 19 of 1953.
G. N. Joshi for respondent No. 3 in petition No. 19 of 1953.
H.J. Umrigar, amicus curiae, for the petitioner in petition No. 57 of 1953.
C. K. Daphtary, Solicitor-General for India (G. N. J08hi, with him) for the respondents in petition No. 57 of 1953.
1954. February 15. The Judgment of Mahajan C.J., Mukherjea, Vivian Bose and Ghulam Hassan JJ. was delivered by Ghulam Hasan J. Das J delivered a seperate judgment.
Criminal Appeals Nos. 65 and 66 of 1952.
GHULAM HASAN J.-This batch of appeals raises a common question of the constitutional validity of section 7 of the Influx from Pakistan (Control) Act (XXIII of 1949). Section 3 of the same Act is also assailed on behalf of some of the appellants but for the purpose of deciding these appeals it will not be necessary to deal with the latter question.
Criminal Appeals Nos. 65 and 66 of 1952, which are directed against the judgment and order of the High Court of Judicature at, Bombay in two petitions under article 226 of the Constitution praying for the issue of
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a writ of mandamus requiring the respondent not to remove them from India on the ground that the impugned section 7 is void may be treated as the leading case which will govern the other appeals.
The facts of each of these appeals are slightly different but they proceed upon the common assertion that the appellants are citizens of the Indian Republic. This fact was assumed in the leading case but it is not, disputed that the status of the appellants as Indian citizens in all the cases has not been investigated and determined by any of the courts below against whose decision the appeals have been brought. Having heard the learned counsel appearing in support of the appeals and the learned Solicitor-General we have reached the conclusion that section 7 is void in so far as it infringes the right of a citizen of India under article 19(1) (e) of the Constitution.
The Act in question received the assent of the Governor-General on April 22, 1949, and was published in the Gazette of India Extraordinary on April 23. It is a short Act

containing nine sections. It is intituled an Act to " control the admission into, and regulate the movements in, India of persons from Pakistan ". The preamble opens with the words "Whereas it is expedient to control the admission into, and regulate the movements in, India of persons from Pakistan. "

Section 2 (b) defines " officer of Government " as any officer of the Central Government and 2 (c) defines "permit" as a "Permit issued or renewed or the period whereof has been extended in accordance with the rules made under this Act. " Section 3 says II No person shall enter India from any place in Pakistan, whether directly or indirectly, unless

(a) he is in possession of a permit or

(b) being a person not domiciled in India or Pakistan, he is in possession of a valid passport as required by the Indian Passport Act, 1920 (XXXIV of 1920), or

(c) he is exempted from the requirement of bein in possession of a permit by or in accordance with the rules made under this Act."

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Section 4 empowers the Central Government, by notification in the Official Gazette, to make rules:

(a) prescribing the authorities by which and the conditions subject to which permits may be issued or renewed or the period thereof extended, the condition to be satisfied by the applicants for such permits and the forms and classes of such permits;

(b) regulating the movements in India of any person who is in possession of a permit;

(c) providing for the exemption, either absolutely or on conditions, of any person or class of persons from the requirement of being in possession of a permit or from the operation of any rule made under the section ; and

(d).....

section 5 is the penal section which says

" (a) Whoever enters India in contravention ' of the provisions of section 3, or having entered India contravenes the provisions of any rule made under section 4, or commits a breach of any of the conditions of his permit, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. "

Section 6 confers power of arrest upon an,officer of Government. Section 7 is as follows:-

" Without prejudice to the provisions contained in section 5, the Central Government may, by general or special order, direct the removal from India of any person who has committed, or against whom a reason-, able SUSPICION exists that he has committed, an offence under this Act, and thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction. "

Section 8 provides for protection to persons acting in good faith and section 9 repeals the Influx from, Pakistan (Control) Ordinance, XXXXIV of 1948.

The use of the word 'person' in section 7, read with the title and preamble of the Act leaves no doubt that. the Act applies to citizens and non-citizens alike. So

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far as a non-citizen is concerned, it is not contended before us3 that the executive Government has no authority to direct his removal from India and the only contention raised before us is whether the Central Government has any power to direct the removal of an Indian citizen on either of the grounds mentioned in section 7. Section 7, it is contended,

confers upon the Central Government unfettered power to direct the removal from India not only of a person who has committed an offence punishable under section 5 of the Act but also one against whom a reasonable suspicion exists that he has committed such an offence. That an Indian citizen visiting Pakistan for any purpose whatsoever and returning to India may be required to produce D, permit or passport as the case may be before he can be allowed to enter the country, may well be. regarded as a proper restriction upon entry but to say that if he enters the country without a permit or on an invalid permit, or commits a breach of any of the conditions of the permit he may, on conviction for such offence, be ordered to be removed from the country is tantamount to taking away his fundamental right guaranteed under article 19(1) (e), " to reside and settle in any part of the territory of India. " The order is sought to be supported by the learned- Solicitor-General on the ground that it falls within exception (5) of article 19. The proposition that the order imposes in the interest of the general public a reasonable restriction on the exercise of the. right conferred upon an Indian citizen to reside and settle in any part of the territory of India is hardly statable. It is possible to conceive of an Indian citizen being guilty of serious prejudicial Acts such as espionage and disloyalty to his country in which case he may render himself liable to the gravest penalty which the Government may think fit by law to impose upon him but it would be repugnant to all notions of democracy and opposed to the fundamental rights guaranteed in Part III of the Constitution to order his expulsion from the country, for to hold otherwise would be tantamount to destroying the right of citizenship conferred by Part II of the, Constitution. This
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result is permissible only by recourse to article 11 of the Constitution. Again it will be noticed that section 7 imposes the penalty of removal not only upon a conviction under section 5 but goes further and brings about the same result even where there is a reasonable suspicion entertained by the Central Government that such an offence has been committed. The question whether an offence has been committed is left entirely to the subjective determination of the Government. The inference of a reasonable suspicion rests upon the arbitrary and unrestrained discretion of the Government, and before a citizen is condemned, all that the Government has to do is to issue an order that a reasonable suspicion exists in their mind that an offence under section 5 has been committed. The section does not provide for the issue of a notice to the person concerned to show cause against the order nor is he afforded any opportunity to clear his conduct of the suspicion entertained against him. This is nothing short of a travesty of the right of citizenship.
The learned Solicitor-General argued that the provision must be viewed in the back-ground of the events which took place at the time of the partition and the unsatisfactory relations existing between India and Pakistan. up to the present day. Even so the penalty imposed upon a citizen by his own Government merely upon a breach of the permit Regulations, however serious it may be and, more, upon a reasonable suspicion only by the executive authority of his having violated the conditions of the permit is utterly disproportionate th the gravity of the offence and is in our opinion indefensible. A law which subjects a citizen to the extreme penalty of a virtual forfeiture of his citizenship

upon conviction for a mere breach of the permit Regulations or upon a reasonable suspicion of having committed such a breach can hardly be justified upon the ground that it imposes a reasonable restriction upon the fundamental right to reside and settle in the country in the interest of the public. The Act purports to control admission into and regulate the movements in India of persons entering from Pakistan but section 7 oversteps the limits of control
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and regulation when it provides for removal of a citizen from his own country. To use the language of this court in Chintaman Rao v. The State of Madhya Pradesh and Ram Krishna v. The State of Madhya Pradesh(1), " The effect of the provisions of the Act, however, has no reasonable relation to the subject in view but is so drastic in scope that it goes much in excess of that object.

It may be said that the sentry on guard at any of the check-posts on the frontier between the two countries can prevent not only unauthorised entry of a citizen by force but can also throw him out if the person has managed to enter surreptitiously. Exactly what the sentrys' duties are was not argued before us. They would naturally vary according to the circumstances and the orders which be receives but ordinarily we apprehend that the duty of a sentry at the border would be to prevent as far as lay in his power un-authorised entry into India. If any person claims to have the right to enter, the sentry's duty would be to hand him over to the Commander of the Guard and normally it would be the duty of that Commander to hand him over to the proper authority empowered to determine the right which he claims. In the case of an unauthorised entry, ordinarily the duty of the sentry is to arrest a man and hand him over to the proper authority for punishment and in extreme cases he may have the right to shoot the person who does not halt on his command and explain his presence at the outpost. In normal circumstances we doubt if the sentry would have the right to forcibly expel a man who crosses the border.

The learned Chief Justice (Chagla C. J.) took the view that section 7 is consequential to section 3 and held that if section 3 controlling admission by means of a permit is valid, section 7 must be held to be equally valid. This argument is fallacious. In the first place, section 7 is by no means wholly consequential to section 3. The first part no doubt renders the person concerned liable to removal upon conviction under section 5 but further empowers. the Central Government

(1) [1950] S.C.R. 759.

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to pass the same order independently of these provisions even where there is no conviction and a reasonable suspicion exists that an offence has been committed. Assuming, however, that section 7 is consequential to section 3 it gives no opportunity to the aggrieved person to show cause against his removal. There is no forum provided to which the aggrieved party could have recourse in order to vindi-cate his character or meet the grounds upon which it is based. Neither the Act nor the rules framed thereunder. indicate what procedure is to be followed by Government in arriving at the conclusion that a breach of section 3 or of the rules under section 4 has taken place,

In Shabbir Hussain v. The State of Uttar Pradesh and Another(1) the Allahabad High Court held that a law allowing the removal from a territory of India of any citizen is in contravention of article 19 (1) (d) and(e) of the Constitution and is void in view of article 13(1). The order

which was challenged before them was one passed under section 7 and was set aside.

In Criminal Writ No. 147 of 1951 decided on December 11, 1951, a Bench of the Punjab High Court (Weston C. J. and Harnam Singh J.) while setting aside the order under section 7 against a citizen of India who had entered India without a permit and was first convicted and then ordered to be externed observed:

"The powers of removal or banishment given by section 7 of the Influx from Pakistan (Control) Act, 1949, connot be invoked against citizens of India. No doubt, she committed an offence under section 3 of that Act which applied to all persons, but that cannot justify her removal even though her entry may have been contrary to the provisions of the Act."

We are not prepared to accede to the contention urged by the Solicitor-General that a citizen of India who returns to the country without a permit or without a valid permit commits such a grave offence as to justify his expulsion from the country. The object of the Act is, not to deport Indian nationals

(1) A.I.R. 1952 All. 257.

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committing a breach of the permit or passport Regulations but merely to control admission into and regulate movements in India of persons from Pakistan and therefore there is no substance in the argument that section 7 was intended to achieve the objective of expelling Indian citizens, by and large, if they brought themselves within the mischief of section 3.

It was faintly contended that the order of physical, removal from India, in addition to the punishment imposed under section 5 of the Act, amounted to what may be called " double jeopardy " and is in conflict with article 20 (2) of the Constitution. The short answer to this contention is that there is no second prosecution for the same offence and therefore no question of double jeopardy arises. See Maqbool Hussain v. The State of Bombay etc.(1).

As a result of the foregoing discussion we declare section 7 to be void under article 13(1) in so far as it conflicts with the fundamental right of a citizen of India under article 19(1) (e) of the Constitution and set it aside. The order will, however, operate only upon proof of the fact that the appellants are citizens of India. The case will, therefore, go back to the High Court for a finding upon this question. It will be open to the High Court to determine this question itself or refer it to the court of District Judge for a finding. Parties will be given full opportunity to file affidavits or give other evidence which they may wish to produce.

Criminal Appeal No. 5 of 1953.

GHULAM HASAN J.-The appellant in this case is a resident of Godhra, District Panchmahals, in the State of Bombay. He went to Pakistan in Marc 1948, and returned to India on May 30, 1949, after obtaining a permit for permanent return to India from the-High Commissioner for India. In January, 1950, he was prosecuted under section 5 of Act XXIII of 1949 for having obtained a permit which was not in accordance with the provisions of the Act. The prosecution was withdrawn after 21 years. Subsequently on December 5, 1952, he was served with a notice

(1) [1953] S.C.R. 730.

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ordering him to leave India for Pakistan within 10 days else he would be bodily removed to the Indo-Pakistan border.

Thereupon the appellant filed a petition under article 226 contending that section 7 was contrary to his fundamental rights under articles 14 and 19 of the Constitution and that the same provided no opportunity to the appellant to put his case before the Government officers, nor was any such opportunity afforded to him. He asserted that he was a citizen of India.The application was summarily dismissed on December 15, 1952, whereupon leave to appeal to this court was granted under article 132(1) of the constitutional. As this appeal also raises the question of the constitutional validity of section 7, it will be governed by the decision which we have arrived at in appeals Nos. 65 and 66 of 1952.

Criminal Appeal No. 19 of 1953.

GHULAM HASAN J.-The appellant, Haji Faqir Ahmad, is a resident of Rewa in Vindhya Pradesh and alleges that he is a citizen of India. He was prosecuted under section 5 of Act XXIII of 1949 on the ground that he entered India from Pakistan without a permit and convicted and sentenced. Thereafter he was by an order passed under section 7 bodily removed out of India. His father applied under article 226 of the Constitution and section 491 of the Code of Criminal Procedure for setting aside the order. The learned Judicial Commissioner dismissed the application summarily holding that section 7 was not ultra Vires the Constitution.

Mr. Asthana, who appeared on behalf of the appellant, raised a further question that the order was void under article 14 inasmuch as it discriminated against members of a particular community coming from Pakistan. There is no warrant for this contention. The Act applies to citizens as well as non-citizens. It applies to all communities irrespective of caste or creed. It is contended that the Act must be held to be discriminatory not only by virtue of its provisions but because of the discriminatory manner in which those provisions have been applied. This argument is

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to be mentioned only to be rejected, for there is no material whatsoever placed before us to justify the statement. The case in Yick W o v. Peter Hopkins (1) is wholly inapplicable to the facts of the present case. We accordingly reject the contention. This case will also be governed by the decision in Appeals Nos. 65 and 66 of 1952.

Petition No. 170 of 1952.

AND

Petition No. 19 of 1953.

GHULAM HASAN J.-These petitions under article 32 of the Constitution raise the constitutional validity of section 7 of the Influx from Pakistan (Control) Act, XXIII of 1949. Mr. S. P. Sinha, who appears for the petitioners, withdraws these petitions and undertakes to file two petitions under article 226 of the Constitution within a fortnight from this day before the High Court. When these have been filed, they will automatically be governed by the decision given in Appeals Nos. 65 and 66 of 1652. No other order is called for. The petitions are allowed to be withdrawn.

Petition No. 57 of 1953.

GHULAM HASAN J.-This a petition under article 32 of the Constitution by Inamullah Khan alias Qamar Jamali for the issue of a writ in the nature of habeas corpus directing that the petitioner, who is illegally arrested and detained be brought before the court and set at liberty and for the issue of a writ of certiorari calling for the said order for arrest and detention and the relevant papers and for setting them aside as being void and in-operative. It is further prayed that the State of Bhopal and the Superintendent of

Central Jail,, Bhopal, where he was being detained be restrained from putting into effect the said order. The petition was made on March 11, 1953. It is stated that the petitioner is a citizen of India having been born in Bhopal in 1922. He was employed in Bhopal for 5 years immediately preceding

(1) 118 U.S. 356; 30 Law. Ed. 220.

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the commencement of the Constitution of India. He also edited a weekly paper "Tarjuman" from Bhopal. His name appears as. a voter in the voters" list of the Bhopal Legislative Assembly (1951-52), as-well as in the electoral roll of the Municipal Board, Bhopal. The was arrested on November 24, 1952 by the Sub-Inspector of Police at lbrahimpura, Bhopal, under section 7 of the Influx from Pakistan (Control) Act XXIII of Pakistan. At the time of the arrest the petitioner was being tried under section 448, Indian Penal Code, in the court of 1st Class Magistrate, Bhopal, and was on bail. The petitioner alleges that he never went to Pakistan, nor entered India without a permit and was never tried and convicted under the Influx from Pakistan (Control) Act of 1949. He challenges the order under section 7 as being void under article 19(d) and (e) and articles 21 and 22.

The fact that the petitioner is a resident of Bhopal and was employed in the State is not denied on behalf of the State. The affidavit on behalf of the State mentions that the petitioner had gone to Pakistan in may, 1952, and returned in August, 1952, without a permit. He was arrested on November 24, 1952, without any prior notice but was told at the time of the arrest that he was to be removed out of India. The petitioner filed an application through his uncle before the Judicial Commissioner, Bhopal, under article 226 on November 25, 1952, challenging. the order. The Judicial Commissioner granted an interim stay order on the same day. The petition was dismissed on February 23, 1953, and the interim order was vacated on March 10, 1953. It is admitted that an oral request was made to the Judicial Commissioner for leave to appeal to this court and it was prayed that pending the grant of leave the order of stay should continue. Leave was refused on the same day and the stay order was vacated.

There is an affidavit by the Chief Secretary of the State admitting that the petitioner on, the same day banded an application to the Superintendent of Jail

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addressed to this court. The Superintendent of Jail sent it to the Chief Secretary on March 13, 1953. It was put up before him on the 14th when he forwarded it to the Law Department for opinion on March 16. The petition was returned to him on the 19th with the remark that it should be forwarded to the Supreme Court. It was sent to this' court on ;March 22. On the same day a telephonic communication was sent, by the Registrar of this court through the States Ministry directing that the petitioner should be detained if he was still in India, but it appears that the petitioner had been handed over to the Rajas than Police at Kotah on March 12, 1953, and a reply was received by the Inspector-General of Police, Jaipur, that the petitioner had crossed the border on March 18, 1953. The Superintendent of Jail has also filed an affidavit supporting the Chief Secretarpand has admitted that it was wrong on his part not to have sent the, petition submitted by the prisoner immediately to this court and that he in good faith believed that as the order for stay had been

vacated by the Judicial Commissioner, he should first send it to the Registrar of that court. It is obvious that the Superintendent was grossly in error and his action in not submitting the petition resulted in the unlawful removal of the petitioner out of the country. He, has made amends by tendering an unqualified apology and nothing further need be said about it. In Ebrahim Wazir Mavat v. The State of Bombay and Others and Noor Mohammad Ali Mohammad v. The State of Bombay and Others (Criminal Appeals Nos. 65 and 66 of 1952) in which we have just delivered judgment we have held that section 7 of the Act is void as against a citizen of India being., an encroachment on his fundamental right under article 19 (1) (e) of the Constitution. Following that decision we hold that the order of removal of the petitioner is liable to be set aside.

Mr. Umrigar, who appeared for the petitioner, pointed out that the Judicial Commissioner has already held that the petitioner is a citizen of India and that it will serve no useful purpose by remanding

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the case to him for an inquiry into the question. The Solicitor-General on behalf of the Union of India has read to us the order of the Judicial Commissioner and admits that this is so. It is, therefore, not necessary to adopt the course that we have taken in the aforesaid a peals involving the validity of section 7. We accordingly hold that the order passed against the petitioner is void and set it aside.

Mr. Umrigar requests that the order should be communicated to the petitioner through the High Commissioner for India in Karachi to whom the petitioner sent a representation praying that he should be allowed to return to India. This request is granted.

Criminal Appeals Nos. 65 and 66 of 1952, No, 5 of 1953 and No. 19 of 1953 and Petitions No. 170 of 1952, No. 19 of 1953 and No. 57 of 1953.

DAs J.-I regret I am unable to agree with the judgment just delivered.

Four Criminal Appeals namely, Criminal Appeals Nos. 65 and 66 of 1952, No. 5 of 1953 and No. 19 of 1953 and three Criminal Miscellaneous Petitions, namely Petition No. 170 of 1952, No. 19 of 1953 and No. 57 of 1953, were posted for hearing and were heard by us one after another. In each one of those appeals and petitions the appellants or the petitioners, as the case may be, challenged the constitutional validity of the Influx from Pakistan (Control) Act,1949 (Act XXIII of 1949).

Learned advocate appearing in support of petitions No. 170 of 1952 and No. 19 of 1953 asked for leave to withdraw them with liberty to file fresh' petitions in the High Court. Such leave having been given nothing further need be said about those two petitions.

The facts of each of the remaining appeals and the remaining petition have been set out in the judgment just delivered,, and need not be repeated. Suffice it to say that the appellants in Appeals Nos. 65 and 66 of 1952 first came to India from Pakistan on temporary permits issued by the High Commissioner for India in Pakistan but stayed on after the expiry of the

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period and were convicted under section 5 of the Act. Later on they returned' to Pakistan on a temporary permit issued by the High Commissioner for Pakistan in India and eventually came back to India on a permanent permit issued by the High Commissioner for India in Pakistan. That

permanent permit was cancelled on the. allegation that it had been obtained on the strength of a "no objection" certificate which had been obtained by them by the suppression of material facts, namely, that they had previously come. to India on a temporary permit. The appellant in Appeal No. 5 of 1953 came to India from Pakistan on a permanent permit which was subsequently cancelled on the allegation that it had been obtained by fraud. The appellant in Appeal No. 19 of 1953 came to India from Pakistan without any permit and was prosecuted and convicted under section 5 of the Act and later on arrested and sent back to Pakistan. The petitioner in Petition No. 57 came to India without any permit at all. On this petitioner as well as on the appellants orders had been made under section 7 of the impugned Act to the effect that unless they left India within the time specified in the respective orders they would be bodily removed from India. These orders were made on the ground that they had entered India in violation of section 3 of the Act and/ or the rules and order made thereunder. Each of these persons claimed that they were citizens of India and complained that the orders made against them violated their fundamental rights under Chapter III of the Constitution of India.

It will be recalled that on the 15th August, 1947, there was a partition of India and two Dominions were formed under the Indian, Independence Act, 1947. A grave emergency arose on the partition of India resulting in mass-migration of population from one Dominion to the other accompanied by riots, arson, murder, rape and loot. Intense bitterness and hatred were generated in the minds of the people of one Dominion against those of the other Dominion. Even in one Dominion there was suspicion in the

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minds of the members of one community against those of the other. In those circumstances the uncontrolled and indiscriminate entry of persons, Hindu or Muslim, from Pakistan into India was naturally regarded as fraught with the possibility of espionage and sabotage the prevention of which was essential for the security of the Dominion of India. Further an uncontrolled entry of large numbers of people was calculated to place and in fact placed a tremendous strain on the economy of India and on the law and order situation in the country. It was in order to prevent such result that it was necessary to exercise some control over such influx of persons from Pakistan into India. Accordingly, the Influx from West Pakistan (Control) Ordinance (XVII of 1949) was promulgated on the 19th July 1948, by the Governor-General in exercise of the powers conferred on him by section 42 of the Government of India Act, 1935. The preamble to that Ordinance recited that an emergency had arisen which made it necessary to control the admission into and regulate the movements in India of persons from Pakistan. Thereafter the Influx from Pakistan (Control) Ordinance (XXXIV of 1948) was issued on the 10th November, 1948, replacing the earlier Ordinance. This Ordinance applied to persons entering into India from both West Pakistan and East Pakistan. It substantially reproduced all the sections of the previous Ordinance-. Finally, on the 22nd April, 1949, the Influx from Pakistan (Control) Act (XXIII of 1949) replaced the second Ordinance. Sections 3 and 7 of this Act substantially reproduced the provisions of sections 3 and 7 of the Ordinance. The Permit System Rules of 1948 were replaced on the 20th May, 1949, by the Permit System Rules of 1949. This Act, however, was repealed on the 15th October, 1952, by Act LXVI of 1952.

Section 3 of this repealing Act, however, expressly preserved the application of section 6 of the General Clauses Act, 1897. Although the Influx from Pakistan (Control) Act, 1949 has been repealed and the number of persons who, like the appellants and the petitioners before us. are affected by that Act is small, nevertheless the matter has to

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be scrutinised closely, for our decision may conceivably affect the passport regulations which have replaced the permit system.

The contention advanced in these appeals and the petition is that sections 3 and 7 of the Act have, since the commencement of the Constitution, become void in that they violate the fundamental rights guaranteed by articles 14 and 19(1) (d) and (e) of the Constitution. The provisions of these two sections, which have been sufficiently set out in the judgment just delivered, will at once show that they applied to all persons coming from Pakistan,, whether they were citizens or noncitizens and irrespective of the community to which they belonged or the religion which they professed. It will also appear that, as regards citizens, they did not touch all citizens but affected only such of them as came from Pakistan, whether they were Hindus, Muslims or Christians. It is, therefore, quite clear that the Act applied to a small well defined class of persons who were grouped together on an obviously reasonable basis of classification as explained in the previous decisions of this court. In this view of the matter no question of unconstitutional discrimination can arise at all and, indeed, the plea based on the equal protection clause of the Constitution has not been seriously pressed. The main contest has centred round the question whether these two sections offend against the provisions of article 19(1)(d) and (e) of the Constitution.

The learned Solicitor-General appearing for the respondents contends that those sections are protected by article 19(5) as being reasonable restrictions on the exercise of the rights guaranteed by sub-clauses (d) and (e) of clause (1) of that article. In State of Madras v. V. G. Row (1) Patanjali Sastri C.J. observed:-

" It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as, applicable to all cases.

(1) [1952] 3 S.C.R. 597 at p. 607.

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The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the,judicial verdict. In evaluating such elusive factors and forming-their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment I in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives, of the people have,' in authorising the

imposition of the restrictions, considered them to be reasonable."
The impugned sections have, therefore, to be examined in the light of the above observations.
I find nothing unconstitutional about section 3 of the impugned Act It does not debar the entry of any person absolutely. It only requires that a person entering India from any place in Pakistan must be in possession of a permit or a valid passport or be exempted from such requirements. Passport regulations obtain in every civilized country including even those the constitutions whereof confer similar fundamental rights on their citizens, e.g., Switzerland (articles 43-45), Wiener Germany (article III), Czechoslovakia (article 108), Jugoslavia (article 10), Danzig (article 75) and Albania (section 202). Such regulations serve to check up the persons who enter the territories of the State and are necessary for the safety of the State. Seeing that such regulations obtain everywhere and have a definite utility for the protection of the general public by securing the safety of the State, I have no manner of doubt in my mind that such restrictions as are. contemplated by section 3 must be regarded as reasonable restrictions permissible under
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clause (5) of article 19 of the Constitution. Indeed, the objection of section 3 has not been seriously pressed before us.
The main objection urged by learned counsel appearing in support of these appeals and petitions was directed to the question of the validity of section 7. In the' first place, it is clear that no objection can be taken to section 7 in so far as it affected persons who were 'not citizens of India, for article 19 guarantees certain fundamental rights to the citizens of India only. In the next place, this section did not affect all citizens but touched only a well defined small class of citizens, namely, those who went to Pakistan and intended to return to India. The question is whether qua these citizens section 7 can also be regarded as a reasonable restriction within the meaning of clause (5) of article 19. The High Court of Bombay has held, and in my opinion quite correctly, that the provisions of section 7 cannot but be regarded as consequential to the provisions of section 3. Suppose at the check-post a person from Pakistan, whether a, citizen or not, tried to cross the border without a permit. Surely, the officer at the check-post would have been well within the law to prevent a violation of section 3 of the Act and with that end in view to prevent that person, who had no permit, from crossing the border and entering India. I have no doubt that the officer might also have prevented a person from Pakistan from crossing the border if he suspected that the permit produced by the person was forged or otherwise irregular and left him to take up the matter with the higher authorities from Pakistan. Suppose the man who sought to enter India without a permit or with a permit which was suspected to spurious forcibly crossed the border and took a step or two on our side of the line, the Indian officer would certainty have been entitled to throw him back to the other side of the line. Surely, such a person could not be permitted to take advantage of his own wrong and could not be heard to say that, in such circumstances, he had, by his wrong doing, acquired a better right than the person
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who had not the temerity to violate the provisions of section 3. If this is so then, logically, I can see no

difference if the man ran into the Indian territory for some distance and the Indian officer ran after him, overtook him and took him back to the check-post and pushed him out of our side of the line. It is, futile,, in such a situation, to expect or to say that the officer should have held a judicial enquiry and come to a judicial decision after hearing an argument as to the validity of the permit or as to the status of the permit holder or the fundamental rights of a, citizen Of India to move freely in India and to settle anywhere he liked in India. The truth and substance of the matter are that in acting in the way indicated above the officer simply performed an executive act and prevented a person who held no permit or held a permit which appeared to the officer to be spurious from entering India from Pakistan in violation of section 3 of the Act. To throw out such a person was not. to inflict any punishment on him or to do him any greater injury than what was imposed on or done to a person who, not having a permit, was stopped at the check-post and not allowed to enter India at all. The man thus thrown out was placed under no greater disability than the man who had initially been prevented from entering India at the check-post barrier. In both cases such a person might, while staying in Pakistan, have taken steps to obtain a permanent permit upon proof of his status as an Indian citizen and if such permit was illegally withheld from him he might have through some agent in India taken proceedings in Indian courts' for appropriate reliefs. To my mind the position of the person who,entered India on a temporary permit but who, in violation of the rules or order made under the Act stayed on after the period of the permit expired, was, as from that date, logically the same as that of the person who entered India without a permit. To arrest such a person, after the expiry of the period of the temporary permit, with a view to sending him back back to where he came from and to actually send him back there did not involve or

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constitute a judicial act at all but Was a rough and ready executive act for enforcing and giving effect to the provisions of section 3 of the Act. To arrest and send such a person back to Pakistan was not to inflict a punishment but was only to restore the status quo and to put him back to the position he would have been in but for his illegal act. In my opinion the act, authorized by section 7 was in essence.a purely executive act for implementing the provisions of section 3. Without such a provision it would have been impossible for the State to control the admission into India of persons from Pakistan and to prevent the concomitant dangers referred to above. The act authorised by the section being an executive act, discretion had perforce to bib left to the executive Government which, by reason of the information available to it" was in a much better position than the courts to know and judge the antecedents of such a person and his ultimate purpose.' Suppose an Indian, citizen, no matter whether he was a Hindu or a Muslim, had entered India from Pakistan without a permit and suppose he was, upon confidential reports which: could not be safely disclosed, suspected to be engaged in espionage in the interests of Pakistan, would it have been safe enough in those hectic days to have only prosecuted him under section 5 and inflicted on him a fine of rupees one thousand or a term of imprisonment not exceeding a year and then to have left him free, after the term of imprisonment was over, to surreptitiously carry on his nefarious activities of espionage and sabotage against our State while

embarking upon a protracted judicial enquiry to ascertain the truth or* otherwise of his claim to Indian citizenship ? It cannot ,be overlooked that there are. long common borders between Pakistan and India both on the west and on the east. The Kashmir situation had also -aggravated the emergency brought about by the partition of India. Having regard to all, the circumstances, the tension, bitterness and hatred between the two countries that were generated at,the time of the partition and all which must enter into the judicial verdict, the provisions of section 7 appear to me to have been eminently reasonable restrictions imposed in the interests of the

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general public upon the exercise by Indian' citizen coming from Pakistan without a permit of the rights conferred by article 19(1)(d) and (e) of the Constitution. The Indian citizen who was thrown out for not having the proper permit or who was suspected to have violated the provisions of the Act was placed in no worse position than an Indian citizen who, not having a permit, had not been permitted to enter into India at all. They were by no means without remedy. They could from the other side of the border take steps under the rules to obtain valid permanent permits upon proof of their citizenship of India and if such permits were. illegally withheld from them they could move the appropriate High Court under article 226 or even this court under article 32 while they were outside India and might, on proof of their citizenship, have got appropriate writs or orders directing the State or its -officers to issue suitable permits and to desist from otherwise preventing them from entering India or interfering with their movement while in India. It is said that if such a person would have been entitled to a permit on proof of his status as an Indian citizen then why should he have Been thrown out at all unless and until he failed to establish his claim to Indian citizenship ? There occur to my mind several answers to this question. In the first place, it would have been putting a premium on wrong doing. In the second place, the person would have been left free to carry on his secret activities, if any, while judicial proceedings would have been going on for ascertaining his status. In the third place, if the person could not be thrown out before his status had been judicially determined there would have been no incentive on his part to take proceedings in court to establish his status and it would have thrown upon the State the duty of initiating proceedings and of discharging the onus of proving the negative fact, of his not being a citizen of India. In view of all the circumstances prevailing at the time the law was enacted and remained in force and in view of the considerations herein before alluded to I have no' doubt in ray mind --except What

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arises out of my respect for the opinions of my Lord and other learned brothers-that the provisions of section 7 were necessary and reasonable and fell within clause (5) of article 19. In my judgment the four appeals as well as Petition No. 57 of 1952 should be dismissed.

Appeals allowed, cases remanded.

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Agents for the respondents: G. H. Rajadhyaksha and C. P.Lal.