

CASELAW SEARCH

KEY WORD	LAW	CITATION	SUMMARY
Freedom of Movement	Article 15, Constitution	PLD 2005 KHI 252	<ul style="list-style-type: none"> every citizen of this country is safeguarded/guaranteed under Articles 4,9, 14 and 15 of the Constitution Any action without sufficient cause depriving/curtailing the liberty of a citizen is not warranted by law and liable to be struck down
	Article 15 and 4 Constitution	PLD 2004 SC 583	<ul style="list-style-type: none"> Article 184(3): Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article." The issues arising in a case cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large. The adjective 'public' necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance. "Now, what is meant by a question of public importance? The term 'public' is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to the people, relating to a nation, State or community..."
	Article 199	PLD 2003 Pesh. 102	<ul style="list-style-type: none"> No doubt the statute has provide a remedy by way of making representation for review of the order passed under section 2(1) of the Ordinance, but such remedy could only be availed if the person concerned knows about the grounds behind the action taken. If neither an opportunity of hearing is provided before the action taken or disclosure of grounds in the order, the persons concerned would not be able to ask for review If no reasons are assigned to an aggrieved person the remedy of review under section 3 of the Ordinance by making a representation becomes redundant. A citizen would not be in a position to make any effective representation in the absence of any reason or a speaking order."
	Articles 10, 15, 16, 17, 18, 19, 23, 24 and 25	PLD 2000 SC 869	<ul style="list-style-type: none"> That Fundamental Right provided in Part II. Chapter I of the Constitution shall continue to hold the field but the State will be authorized to make any law or take any executive action in deviation of Articles 15, 16, 17, 18, 19 and 24 as contemplated by Article 233(1)

			of the Constitution, keeping in view the language of Articles 10, 23 and 25 thereof.
	Articles 15, 16, 17, 19 & 184(3)	2000 SCMR 770	<ul style="list-style-type: none"> • News item appearing in the national press, about Government imposing country-wide ban on all political meetings at public place, strikes and processions • whether ban on political activities had been validly imposed and if so, under what provision of law and whether the restrictions, so imposed, were ultra vires (beyond the scope of power allowed or granted by law) of the Fundamental Rights guaranteed under Arts. 15, 16, 17 & 19 of the Constitution of Pakistan
General Clause Act	21	Functus officio	<ul style="list-style-type: none"> • Law does not allow 'Volte Face' to the authority. (Reversal of opinion or policy)
Xx		PLD 1969 SC 407	<ul style="list-style-type: none"> • Power of rescinding till a decisive step is taken, is available to the Government or the relevant authorities.
Xx		PLD 1961 Khi 88	Pending for research
Xx		PLD 1973 Quetta 14	Pending for research
Xx		PLD 1980 Pesh. 128	Pending for research
Xx		PLD 1985 AJ&K 17	Pending for research

FREEDOM OF MOVEMENT

Citation Name: 2007 PLD 642 SUPREME-COURT

Side Appellant: PAKISTAN MUSLIM LEAGUE (N) through Khawaja Muhammad Asif, M.N.A. and others

Side Opponent: FEDERATION OF PAKISTAN through Secretary Ministry of Interior

Issue:

The case has been filed by the petitioners against their alleged forced exile to Saudi Arabia.

Rule:

Article 15 of the constitution of Pakistan

Article 184(3) & 199 of the constitution of Pakistan

Application:

Article 15 -- Freedom of movement --- right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.

Article 15 – Freedom of movement – every citizen has undeniable right vested in him as conferred under Article 15 of the constitution to go abroad and return back to Pakistan without any hindrance and restraint.....

Article 184(3) --- Principles --- while interpreting Article 184(3) of the constitution the interpretative approach should not be ceremonial observance of the rules or usages of the interpretation but regard should be had to the object and purpose for which the Article is enacted i.e. the interpretative approach must receive the inspiration from the triad of provisions which saturate and invigorate the entire constitution namely the Objectives Resolution (Article 2-A), the fundamental rights and the directive principles of State policy so as to achieve democracy, tolerance, equity and social justice according to Islam.

Article 184(3) --- Exercise of Jurisdiction by Supreme Court under Article 184(3) not dependent only at the instance of aggrieved party in the context of adversary proceedings --- traditional rule of locus standi can be dispensed with and procedure available in public interest litigation can be de use of, if it is brought to the court by a person acting bona fide.

Article 184(3) --- Principles --- Article 184(3), provide abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction and it would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case.

Article 184(3) --- Interpretation and scope of Article 184(3) --- Article 184(3) is remedial in character and is conditioned by three prerequisites, namely that there is a question of public importance; that such a question involves enforcement of fundamental right, and that fundamental right sought to be enforced is conferred by Chapter 1, Part II of the constitution.

Article 184(3) --- Invocation of Article 184(3) – Element of ‘public importance’ is sine qua non – Adjective ‘public’ necessarily implies a thing belonging, to people at large, the Nation, State or a community as a whole – Issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals—Issues, in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large—if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.

Article 184(3) & 199--- Jurisdiction of Supreme Court under Article 184(3) of the constitution of not bound by procedural trappings and limitations mentioned in Article 199 of the constitution.

Conclusion:

..... while discussing Article 15 of the constitution it was affirmed that it bestowed a right on every citizen of Pakistan to enter or move A freely throughout the country and to reside and settle any part thereof. It A is a settled principle of law that the right to enter in the country cannot be deified but a citizen can be restrained from going out of the country. The petitioners are citizens of Pakistan and have a constitutional right and a sacred prerogative to enter and remain in Pakistan

..... it is, however, to be noted that where a fundamental right is sought to be restricted by any law, care should be taken that they provide sufficient safeguards against casual, capricious or even malicious exercise of the powers conferred by them..... be as it may in the case of citizens of Pakistan, there is a fundamental right to enter Pakistan from outside and, therefore, any restriction of such right will be an invasion of this Article. The imposition of restrictions by requirement of permits, etc., is justified as a reasonable restriction in the public interest.....

..... the upshot of the above mentioned discussion is that no restriction can be imposed on the right of the petitioners to enter into Pakistan and they can come to Pakistan whenever they so desire.....

Citation Name: 2001 PLD 33 SUPREME-COURT-AZAD-KASHMIR

Side Appellant: ALI ASGHAR ABBASI

Side Opponent: AZAD JAMMU AND KASHMIR COUNCIL THROUGH SECRETARY,
AZAD JAMMU AND KASHMIR COUNCIL AT ISLAMABAD

Issue:

Petitioners are State subjects having migrated from Indian Occupied Kashmir, are residing at different places in District Muzaffarabad, Azad Kashmir. All the petitioners have been registered by the Rehabilitation Department Azad Kashmir and have been issued Identity Cards/Ration Cards by the department. Some of the petitioners are undergoing studies in different institutions of Azad Kashmir while others are otherwise living in the Camps. They applied for the State Subject Certificate which is a pre-requisite for obtaining Domicile Certificate and Identity Card which forms the basis for securing admission in different education institutions and Government departments against reserved seats for refugees and for obtaining passport, but the District Magistrate Muzaffarabad refused to issue the State Subject Certificate and in some cases it did not even entertain the applications of the petitioners on the ground that unless Azad Jammu and Kashmir Council Secretariat issues NoC in favour of the petitioners. The petitioners have called in question the action of District Magistrate in not issuing the certificate in favour of the petitioners and also seek direction to the District Magistrate and Registration Officer Muzaffarabad to issue State Subject Certificate, Domicile Certificates and Identity Cards in their favour.

Rule:

Azad Jammu and Kashmir State Subject Act, 1980 ----- section 3 and 4

Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974) --- Section 2, 4(5) and 44

Application:

Writ petition --- Issuance of “State Subject Certificate” --- petitioners not only were duly registered in Azad Kashmir after obtaining clearance from all security agencies deployed in Azad Kashmir, but Identity Cards for the purpose of Ration Cards were also issued to them----- petitioners being State Subjects, could not be refused..... authority could only cancel said certificate if it was satisfied that same were obtained by means of fraud, false representation or concealing any material fact.....

Freedom of movement----- State Subject needed no permission from any Authority, for settlement in Azad Kashmir, person who was a State Subject was entitled to settle anywhere in Azad Kashmir without permission of any Authority.....

Freedom of movement---- once a person proved that he was a bona fide State Subject he was entitled to “State Subject Certificate”.....

Conclusion:

..... in the case reported as Ghulam Hussain and 2 others v. Federal Government of Pakistan (PLD 1993 AzadJ&K 153), it is held in para 10, as follows:

10. The authority to make laws relating to acquisition or loss of State Subject is vested in Azad Kashmir Council under Item 1 of 3rd Schedule of the Constitution. However, the law defining the various categories of the State Subject remains the same as referred above, and all the laws made or to be made by the Council shall have to correspond to the above definition and Notification referred therein. Any action of the Council, the GOAJ&K or the GOP derogatory to the above provisions is a nullity.

..... paras 16 and 18 are also of equal importance which are reproduced below:

16. What is made out from the above discussion is that a State Subject cannot be deprived of his status of being a State Subject by his obtaining the Passport of India or Pakistan, unless he loses that status by any of the eventualities mentioned in the Notification relating to State Subject as issued from time to time; and thus, a State Subject cannot be deprived of his right to reside and settle in any part of the State as guaranteed by section 4(4)(5) of the Constitution, of course subject to reasonable restrictions. The part of the State under the Indian yoke is a part of the State of Jammu and Kashmir, hence a resident of that part of the State is as good a State Subject as one residing in Azad Kashmir, as none of the two parts of the State is a foreign territory for the other.....

..... the result of the above discussion is that both the petitions are accepted in above stated manner.

EQUALITY OF CITIZENS

Citation Name: 2007 PLD 139 KARACHI-HIGH-COURT-SINDH

Side Appellant: SALEEM RAZA and 31 others

Side Opponent: State

Issue:

The petitioners convicted by Accountability Courts and serving out their sentences in the Central Prison Karachi, have assailed validity and vires of several provisions containing in the National Accountability Ordinance, 1999 (“NAB”), on the ground that they are violative of the fundamental rights enshrined in the Constitution, more particularly in Articles 12 and 25.

Rule:

Article 25 of the constitution of Pakistan

National Accountability Ordinance – sections 12, 23, 25, 25(A), 31-D & Preamble

Pakistan Prison Rules of 1978 – section 401

Prevention of Corruption Act of 1947 --- sections 14, 9(a)

Application:

.....where legislature lays down law and indicates the persons or things to whom its provisions are intended to apply and leaves the application of law to an administrative authority while indicating policy and purpose of law and laying down standards or norms for guidance of designated authority in exercise of its powers, no question of violation of Art. 25 of the Constitution arises---In case, however, the designated authority abuses its powers or transgresses the limit when exercising the power, the actual order of such authority and not the State would be condemned as unconstitutional.

.....all person subjected to law should be treated alike under all circumstances and conditions both in privileges conferred and in liabilities imposed

..... presumption is always there in favour of constitutionality of an enactment.....

Conclusion:

..... having heard the petitioner and the learned counsel we are of the view that section 10(d) of the NAB Ordinance is **ultra vires the Constitution and liable to be struck down** and all prisoners convicted under the NAB Ordinance would be entitled to such remission as persons convicted under the ordinary law. At the same time we also find great force in the petitioner’s contention that he was discriminated against inasmuch as another prisoner Qurban Jatoi convict

of NAB offence was given the benefit of remission..... I am, therefore, entirely unable to subscribe to the view of the learned Deputy Attorney-General that a reasonable classification could be effected through conferment of unbridled power under section 18 and find great merit in the contention of the learned Deputy Prosecutor General that the dominant object of the statute is to recover ill-gotten wealth rather than make people rot in jails.....

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Citation Name: 1992 MLD 2135 LAHORE-HIGH-COURT-LAHORE
Side Appellant: MIAN ANWAR-UL-HAQ RAMAY
Side Opponent: FEDERATION OF PAKISTAN

Issue:

The questions of vires of section 7 of the Sales Tax Act, 1951 as amended through Finance Act of 1990 and validity of notifications, dated 27-6-91 and 26-6-88 alongwith notification dated 7-7-91 have been raised.

Rule:

Article 73(2) of the Constitution
Article 189 of the Constitution
Article 75 and 199 of the Constitution
Section 19 of the Customs Act 1969
Section 7 of the Sales Tax Act 1951
Article 25 of the Constitution
Article 203-D of the Constitution

Application:

Article 73(2) of the Constitution ----simply defines Money Bill.....

Article 189 of the Constitution ---question of law as to interpretation of Constitution having been decided by Supreme Court would be binding on all Courts in Pakistan.....

Article 75 and 199 of the Constitution ---Courts were not to question wisdom of legislature in enacting provisions of any law in any manner; their judicial function was primarily confined to interpretation of law.....

Section 19 of the Customs Act 1969 --- delegation of power did not constitute abdication of legislative function by a legislature but was a valid delegation of discretion vested under law.....

Section 7 of the Sales Tax Act 1951 ---- No guidelines laid down for exercise of such powers by delegates by legislature.....

Article 25 of the Constitution ---- Citizens placed in similar situation are to be treated alike --- treating a class of citizens differently from another class which was not similarly situated would not offend against fundamental right of equal protection of law.....

Article 203-D of the Constitution ----- Where any law was repugnant to injunctions of Islam, same could be declared to be so by Federal Shariat Court and such law would cease to be law on the date fixed by Federal Shariat Court..

Conclusion:

..... Citizens placed in similar situation are to be treated alike---Treating of a class of citizens differently from another class which was not similarly situated would not offend against fundamental right of equal protection of law---Merely because certain manufacturer of goods situated in specific areas had been given different treatment from those who were not situated in that area, such treatment would not offend against fundamental rights as enunciated in Article 25 of the Constitution.....

..... For what has been discussed hereinbefore it is declared that section 19 of the Customs Act 1969 and section 7 of the Sales Tax Act 1951 and the impugned notifications issued in pursuance thereof are intra vires to the Constitution

Citation Name: 1997 PLD 594 LAHORE-HIGH-COURT-LAHORE

Side Appellant: UMAR ASIF JANJUA

Side Opponent: UNIVERSITY OF ENGG & TECH

Issue:

The petitioner applied for admission in the University of Engineering and Technology, Lahore, on open merit basis as resident of Punjab Province. The petitioner passed his F.Sc. Pre-Engineering from Karachi securing 856 out of 1100 marks. In addition thereto he was entitled to get 20 marks for NCC. In all, he had 876 marks to his credit for the purpose of calculating his merit for selection but his name was not included in the merit list, though the last student who was admitted in Mechanical Engineering had only 869 marks. Admission to the petitioner was refused by the Engineering University on the ground that he did not produce domicile certificate of his father to show that he was domicile of Punjab.

Rule:

Article 22(3)(b) of the Constitution

Application:

Article 22(3)(b) of the Constitution --- right to acknowledge to receive education, subject to eligibility and availability or accommodation in educational institutions is basic right of every citizen.....

Conclusion:

Constitution of Pakistan 1973 Para. 43.3--Constitution of Pakistan (1973), Arts.8 & 25---equality of citizen ---Interpretation or construction of word "father" in restricted sense by not including "mother" therein would make the same violative of Article 25 of the Constitution---Child would be entitled to utilize benefit of status of either of his/her parents---No discrimination could be permitted in exercise of those rights on basis of sex alone---Recognition of father's domicile status to the exclusion of mother would be case of clear discrimination based on sex which was not permitted by Article 25 of the Constitution---Efforts should be made to interpret provisions of law including rules and instructions in such a way that they harmonize with fundamental rights guaranteed by the Constitution---Word "father" as occurring in para. 43.3(b) of the Prospectus would include mother--In such view of interpretation there was no need to declare that said provisions of prospectus were void---Mother could thus, get her child admitted in educational institution on her own independent domicile even if she was living with her husband, if on account of independent factors she had distinct and separate place of domicile---Where spouses were differently domiciled, their child would be entitled to seek admission in any of such places.

Citation Name: 2007 PLD 568 LAHORE-HIGH-COURT-LAHORE

Side Appellant: ANOOSHA SHAIGAN

Side Opponent: LAHORE UNIVERSITY OF MANAGEMENT SCIENCE THROUGH CHANCELLOR AND OTHERS

Issue:

The petitioner after having passed O Level's exam., appeared in A Level's exam., but awaiting the result, she applied for admission with the Lahore University of Management Science (the LUMS) for BSC. (Honours)/BA-LLB Programme, which has been declined to her with the advice that she must improve her A Level's result, whereas according to the petitioner at that time, A Level's result was not yet announced, which was subsequently declared and the petitioner had obtained 3 A's therein. It is this refusal which has been challenged by the petitioner through the present writ petition on the ground of being illegal, arbitrary, whimsical, unlawful, unreasonable etc., and violative to the provisions of Article 8, 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

Rule:

Constitution of Pakistan (1973) Articles 199, 8, 4 & 25

Application:

..... the absolute control over the management of a body/an organization by the federation etc., is a condition most important for declaring it to be a "person" performing its functions in connection with the affairs of the Federation etc; the Federation etc. should have a complete domination to do and undo whatever it decides in running the affairs of such a body and should have the exclusive, complete and final authority to take the vital policy decisions. Such control must be absolute, unfettered, unbridled and exclusive, besides, the State must also have the financial control of the Organization; the power of hiring and firing the employees thereof appointing and removing the management body meant for running the routine affairs of the Organization. But from the Presidential Order of 1985, though the President is the Chancellor of the LUMS, but this is notional and more with the status of a Patron-in-Chief; in practical terms except for the nomination of the persons on the Board or the Council, he does not have the administrative or policy-making control, which is the authority of the Board of Trustees and the Council of LUMS, which manages its affairs. It has been rightly pointed out by the respondents' counsel that the funds to LUMS are not being provided by the Government on regular basis, those are generated by the LUMS itself either from the fees or the donations and may be occasionally in the nature of donation, the government also contributes, but this contribution cannot be held to be within the concept of "financial control" of the Organization. The judgments cited by the learned counsel for the petitioner, in the light of the catena of judgments from the respondents' side which have been discussed above, not only are distinguishable, rather do not apply to the facts and circumstances of the present case.

Conclusion:

Therefore, when both the "administrative" and the "financial" control of the Federation over respondent No. 1 is lacking, I am constrained to hold that LUMS is not a "person" within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which could be held to be performing its duties in connection with the affairs of the Federation or the Province. Resultantly, this writ petition against the respondents is incompetent, which is hereby dismissed.

EQUAL PROTECTION

Citation Name: 2005 SCMR 499 SUPREME-COURT

Side Appellant: TARA CHAND and others

Side Opponent: KARACHI WATER AND SEWERAGE BOARD, KARACHI

Laws Involved:

Articles 185, 188 & 25---Supreme Court Rules 1980, O.XXXIII, R.5--Civil Procedure Code (V of 1908), O.XLI, R.33

Headnote:

Review petition--Civil service---Contentions of the petitioner were that neither notice about grant of leave to appeal by the Supreme Court nor that of ex parte order by the Supreme Court was served upon him; that he was one of the petitioners who impugned the departmental orders of retrenchment and termination before the High Court, which were set aside to appeal by the Supreme Court; that the moment he came to know about the decision of the Supreme Court, he had approached the Court and filed Civil Review Petition well within time and that though he was a non-appealing party in the appeals, yet he was entitled to the same relief on the basis of principle of equality---Validity---

Held, since the services of all such persons were dispensed with by, single order, as such, there was no distinction between their case and that of the appellants and was identical on all fours--- When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum--Article 25 of the Constitution was also explicit on the point that all citizens were equal before law and were entitled to equal protection of law.

Citation Name: 2004 PLD 583 SUPREME-COURT

Side Appellant: Mian MUHAMMAD SHAHBAZ SHARIF

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Articles 184(3), 15 & 4 --- Constitutional petition under Article 184(3) of the Constitution before Supreme Court

Headnote:

Maintainability---Contentions of the petitioner were that he, being a citizen of Pakistan, had a natural and inherent right to enter and return to the country, which was guaranteed under Article 15 of the Constitution; that under Article 4 of the Constitution he had a right to be dealt with in accordance with law and was entitled to enjoy the equal protection of law; that said fundamental rights were being violated by the Authorities; that the Authorities, through the press statements (cited in the Constitutional petition) had made it clear that as soon as the petitioner landed at any airport in Pakistan he will be immediately deported; that in the recent past the family of the petitioner was not allowed to stay in Pakistan and was deported; Article 15 of the constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and reside and settle in any part thereof. The right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.

Citation Name: 2004 CLC 1353 KARACHI-HIGH-COURT-SINDH

Side Appellant: ARDESHIR COWASJEE and 11 others

Side Opponent: SINDH PROVINCE and others

Laws Involved:

Articles 8 & 25---equal protection of law and equality of citizens---

Headnote:

Article 25 of the Constitution of Pakistan, did not require all laws to apply uniformly upon all persons---Classification was always permissible provided it was reasonable and bore a direct nexus with the objects of the Legislation---No law repugnant to Article 25 of the Constitution could be made by Legislature in view of Art.8 of the Constitution.

Citation Name: 2002 PLD 521 LAHORE-HIGH-COURT-LAHORE

Side Appellant: UMAR AHMAD GHUMMAN

Side Opponent: GOVERNMENT OF PAKISTAN

Laws Involved:

Pakistan Citizenship Act 1951 ----Ss. 14(3), 14-A & 16---Pakistan Citizenship Rules, 1952, R.19-13--Constitution of Pakistan (1973), Articles 4, 25 & 199---

Headnote:

Citizenship is the most valuable right that an individual may have in a State---Due process and equality before law---Classification--- Judicial review- --Scope---Dual nationality---Declaration of intention to resume citizenship of Pakistan--Permissible dual nationality confining to the countries mentioned in S.14(3) of the Pakistan Citizenship Act, 1951 or which the Federal Government may notify---Validity--Power given in S.14(3) of Pakistan Citizenship Act, 1951 is not uniform; it has been left out to the entire discretion of the Federal Government rather to its wisdom and caprice to decide whether to issue a notification specifying a country with whom dual nationality arrangement is permissible---Neither Pakistan Citizenship Act, 1951 nor the Rules thereunder provide any guideline and the provisions are not only arbitrary on the face of it but have been proved to be so on glance of the countries with whom nationality has been made permissible and those which have been left out---Effect of provisions of Ss. 14 & 14-A, - Pakistan Citizenship Act, 1951 is that the citizens of Pakistan can retain their citizenship provided the Municipal Law of the other country, nationality of which is sought, does not prohibit dual nationality---If, however, a Pakistani citizen voluntarily renounces his citizenship of origin to acquire a foreign nationality that is his choice but no one, who is a citizen of Pakistan under Pakistan Citizenship Act, 1951 can be made to loose his citizenship unless the acquisition of foreign citizenship makes it a condition precedent and he does so or his conduct falls within the mischief of S.16, Pakistan Citizenship Act, 1951--Intention of the Legislature is to facilitate the Pakistan citizens living abroad to retain their contact with Pakistan but the language of the said provisions reflects discrimination, arbitrariness and is not in accord with the intent of the law-makers---Act of the Federal Government in not notifying a country (U.S.A.) in terms of S.14(3) of the Pakistan Citizenship Act, 1951 and thereby depriving the Pakistani expatriates of equal protection of law is discriminatory, violative of Fundamental Rights and therefore, cannot be sustained---Section 14(3) of the Pakistan Citizenship Act, 1951, insofar as same vests in the Federal Government, in absence of any guideline, the power to notify the country where citizens of Pakistan could retain their citizenship of origin notwithstanding the acquisition of foreign citizenship amounts to excessive delegation and its exercise has led to discrimination between citizens of Pakistan living in one country and the other---High Court declared S.14(3) to be violative of Arts.4 & 25 of the Constitution of Pakistan and directed that orders passed and notification issued so far shall, however, be deemed to have been issued validly and shall remain intact--High Court observed that Federal Government may have power but the law must lay down guidelines i.e. parameter within which Government may exercise its discretionary power to satisfy the considerations of due process and equality before law---Absence of such element tends to uncertainty and vagueness which are antithesis of the concept of Rule of law and citizens do not have to pay the price for such a dispensation---Pakistanis who have not renounced Pakistani citizenship shall continue to be the citizens of Pakistan and entitled to rights and liabilities accordingly---As regards Pakistani citizens who have renounced their citizenship of origin and would like to have the same resumed, law is not explicit---Facility of dual nationality is being extended to the Pakistani expatriates in U.S.A. for the first time, those Pakistanis who have renounced their original nationality under the impression that they had no option but to do that also deserve the benefit of the new deal by facilitation of resumption of the original citizenship---High Court, therefore, further directed that till such time the law and rules are suitably amended, R.19-B, Pakistani Citizenship Rules, 1952 shall be applicable mutatis

mutandis and a declaration in Form Y prescribed under the said rule shall be sufficient proof of the intent of resumption of citizenship and the declarant shall be treated as a citizen of Pakistan--Principles.

Citation Name: 2001 SCMR 1161 SUPREME-COURT

Side Appellant: ATTIYYA BIBI KHAN

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Constitution of Pakistan 1973 ----Article 25---

Headnote:

Equal protection of law and equal treatment before law--Principles stated. The following are the principles with regard to the equality of citizens:

- i. That equal protection of law does not envisage that every citizen to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- ii. That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- iii. That different laws can validly be enacted for different sexes, persons in different age groups, person having different financial standings, and person accused of heinous crimes;
- iv. That no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- v. That a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrarily and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- vi. That equal protection of law means that all person equally placed and treated alike both in privileges conferred and liabilities imposed; and

vii. That in order to make the classification reasonable, it should be.....

a. On the intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; and

b. That a differentia must be rational nexus to the object sought to be achieved by such classification

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Laws Involved:

Articles 185, 188 & 25---Supreme Court Rules 1980, O.XXXIII, R.5--Civil Procedure Code (V of 1908), O.XLI, R.33

Headnote:

Review petition--Civil service---Contentions of the petitioner were that neither notice about grant of leave to appeal by the Supreme Court nor that of ex parte order by the Supreme Court was served upon him; that he was one of the petitioners who impugned the departmental orders of retrenchment and termination before the High Court, which were set aside to appeal by the Supreme Court; that the moment he came to know about the decision of the Supreme Court, he had approached the Court and filed Civil Review Petition well within time and that though he was a non-appealing party in the appeals, yet he was entitled to the same relief on the basis of principle of equality---Validity---

Held, since the services of all such persons were dispensed with by, single order, as such, there was no distinction between their case and that of the appellants and was identical on all fours--- When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum--Article 25 of the Constitution was also explicit on the point that all citizens were equal before law and were entitled to equal protection of law.

Citation Name: 2004 PLD 583 SUPREME-COURT

Side Appellant: Mian MUHAMMAD SHAHBAZ SHARIF

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Articles 184(3), 15 & 4 --- Constitutional petition under Article 184(3) of the Constitution before Supreme Court

Headnote:

Maintainability---Contentions of the petitioner were that he, being a citizen of Pakistan, had a natural and inherent right to enter and return to the country, which was guaranteed under Article 15 of the Constitution; that under Article 4 of the Constitution he had a right to be dealt with in accordance with law and was entitled to enjoy the equal protection of law; that said fundamental rights were being violated by the Authorities; that the Authorities, through the press statements (cited in the Constitutional petition) had made it clear that as soon as the petitioner landed at any airport in Pakistan he will be immediately deported; that in the recent past the family of the petitioner was not allowed to stay in Pakistan and was deported; Article 15 of the constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and reside and settle in any part thereof. The right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.

Citation Name: 2004 CLC 1353 KARACHI-HIGH-COURT-SINDH

Side Appellant: ARDESHIR COWASJEE and 11 others

Side Opponent: SINDH PROVINCE and others

Laws Involved:

Articles 8 & 25---equal protection of law and equality of citizens---

Headnote:

Article 25 of the Constitution of Pakistan, did not require all laws to apply uniformly upon all persons---Classification was always permissible provided it was reasonable and bore a direct nexus with the objects of the Legislation---No law repugnant to Article 25 of the Constitution could be made by Legislature in view of Art.8 of the Constitution.

Citation Name: 2002 PLD 521 LAHORE-HIGH-COURT-LAHORE

Side Appellant: UMAR AHMAD GHUMMAN

Side Opponent: GOVERNMENT OF PAKISTAN

Laws Involved:

Pakistan Citizenship Act 1951 ----Ss. 14(3), 14-A & 16---Pakistan Citizenship Rules, 1952, R.19-13--Constitution of Pakistan (1973), Articles 4, 25 & 199---

Headnote:

Citizenship is the most valuable right that an individual may have in a State---Due process and equality before law---Classification--- Judicial review- --Scope---Dual nationality---Declaration of intention to resume citizenship of Pakistan--Permissible dual nationality confining to the countries mentioned in S.14(3) of the Pakistan Citizenship Act, 1951 or which the Federal Government may notify---Validity--Power given in S.14(3) of Pakistan Citizenship Act, 1951 is not uniform; it has been left out to the entire discretion of the Federal Government rather to its wisdom and caprice to decide whether to issue a notification specifying a country with whom dual nationality arrangement is permissible---Neither Pakistan Citizenship Act, 1951 nor the Rules thereunder provide any guideline and the provisions are not only arbitrary on the face of it but have been proved to be so on glance of the countries with whom nationality has been made permissible and those which have been left out---Effect of provisions of Ss. 14 & 14-A, - Pakistan Citizenship Act, 1951 is that the citizens of Pakistan can retain their citizenship provided the Municipal Law of the other country, nationality of which is sought, does not prohibit dual nationality---If, however, a Pakistani citizen voluntarily renounces his citizenship of origin to acquire a foreign nationality that is his choice but no one, who is a citizen of Pakistan under Pakistan Citizenship Act, 1951 can be made to loose his citizenship unless the acquisition of foreign citizenship makes it a condition precedent and he does so or his conduct falls within the mischief of S.16, Pakistan Citizenship Act, 1951--Intention of the Legislature is to facilitate the Pakistan citizens living abroad to retain their contact with Pakistan but the language of the said provisions reflects discrimination, arbitrariness and is not in accord with the intent of the law-makers---Act of the Federal Government in not notifying a country (U.S.A.) in terms of S.14(3) of the Pakistan Citizenship Act, 1951 and thereby depriving the Pakistani expatriates of equal protection of law is discriminatory, violative of Fundamental Rights and therefore, cannot be sustained---Section 14(3) of the Pakistan Citizenship Act, 1951, insofar as same vests in the Federal Government, in absence of any guideline, the power to notify the country where citizens of Pakistan could retain their citizenship of origin notwithstanding the acquisition of foreign citizenship amounts to excessive delegation and its exercise has led to discrimination between citizens of Pakistan living in one country and the other---High Court declared S.14(3) to be violative of Arts.4 & 25 of the Constitution of Pakistan and directed that orders passed and notification issued so far shall, however, be deemed to have been issued validly and shall remain intact--High Court observed that Federal Government may have power but the law must lay down guidelines i.e. parameter within which Government may exercise its discretionary power to satisfy the considerations of due process and equality before law---Absence of such element tends to uncertainty and vagueness which are antithesis of the concept of Rule of law and citizens do not have to pay the price for such a dispensation---Pakistanis who have not renounced Pakistani citizenship shall continue to be the citizens of Pakistan and entitled to rights and liabilities accordingly---As regards Pakistani citizens who have renounced their citizenship of origin and would like to have the same resumed, law is not explicit---Facility of dual nationality is being extended to the Pakistani expatriates in U.S.A. for the first time, those Pakistanis who have renounced their original nationality under the impression that they had no option but to do that also deserve the benefit of the new deal by facilitation of resumption of the original citizenship---High Court, therefore, further directed that till such time the law and rules are suitably amended, R.19-B, Pakistani Citizenship Rules, 1952 shall be applicable mutatis

mutandis and a declaration in Form Y prescribed under the said rule shall be sufficient proof of the intent of resumption of citizenship and the declarant shall be treated as a citizen of Pakistan--Principles.

Citation Name: 2001 SCMR 1161 SUPREME-COURT

Side Appellant: ATTIYYA BIBI KHAN

Side Opponent: FEDERATION OF PAKISTAN

Laws Involved:

Constitution of Pakistan 1973 ----Article 25---

Headnote:

Equal protection of law and equal treatment before law--Principles stated. The following are the principles with regard to the equality of citizens:

- i. That equal protection of law does not envisage that every citizen to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- ii. That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- iii. That different laws can validly be enacted for different sexes, persons in different age groups, person having different financial standings, and person accused of heinous crimes;
- iv. That no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- v. That a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrarily and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- vi. That equal protection of law means that all person equally placed and treated alike both in privileges conferred and liabilities imposed; and

vii. That in order to make the classification reasonable, it should be.....

a. On the intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; and

b. That a differentia must be rational nexus to the object sought to be achieved by such classification

DUE PROCESS OF LAW

Citation Name: 2007 PLD 39 PESHAWAR-HIGH-COURT-NWFP

Side Appellant: Messrs GUL COOKING OIL AND VEGETABLE GHEE (PVT.) LTD.
through Chief Executive

Side Opponent: PAKISTAN through Chairman Revenue Division, Central Board of Revenue,
Islamabad

Laws Involved:

Articles 247, 89 & 128 of the constitution

Headnote:

Powers of the President and Governor to make applicable the law enacted by the Parliament--- President or Governor of the Province had been empowered to make applicable the law enacted by Parliament for the settled areas of the country and for extending an Act of Parliament or Ordinance promulgated under Article 89 or 128 of the Constitution to the Tribal Areas--- Constitution had imposed certain duties upon the President and the Governor; he would satisfy himself about the interest of the people and necessity of extension of the Act to the Tribal Areas and he would also consider as to whether the Act of Parliament or Provincial Assembly or Ordinance, which was to be extended to Federally Administered Tribal Areas or Provincially Administered Tribal Areas would be in the same form or with modifications therein or exceptions thereto---Powers of the President under S.247 of the Constitution was not to be exercised as prerogative powers which was not supported by the Constitution---Said powers were co-relative duties and obligations conferred upon the President---Being special status of Tribal Areas, Parliament or Provincial Assembly could not directly legislate for the Tribal Areas and Legislation enacted by the Parliament or Provincial Assembly, would be extended to those areas after examining the same by President or Governor---If an Act of Parliament or Provincial Assembly could not legislate directly for the Tribal Areas then it could not be done even indirectly---When a law was amended, it would be presumed to be altered---If principal Act was amended by amending Act of the Parliament, it would be presumed that the former had been changed/alterd---Amendment made by the Parliament or Provincial Assembly, in circumstances, would not apply to the Tribal Area automatically, but with due process as envisaged in Article 247 of the Constitution---Act of Parliament amending or repealing the principal statute could not be extended to Tribal Areas without approval of the President and in accordance with the prescribed procedure under Cl. (3) of Article 247 of the Constitution.

Citation Name: 2007 PLD 544 KARACHI-HIGH-COURT-SINDH

Side Appellant: FAISAL

Side Opponent: State

Laws Involved:

Article 9 of the constitution

Headnote:

Right of access to justice to all---Such right is equally found in the doctrine of 'due process of law'---Right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial court of tribunal---Term 'due process of law' summarized as follow:

- 1) Accused shall have due notice of proceedings which effects his rights;
- 2) He shall be given reasonable opportunity to defend;
- 3) The Tribunal or Courts before which his rights are to be adjudicated shall be so constituted as to give reasonable assurance of its honesty and credibility; and
- 4) It shall be a court of competent jurisdiction.

Citation Name: 2007 PTD 1065 FEDERAL-TAX-OMBUDSMAN-PAKISTAN

Side Appellant: Messrs WEAVING AND WEAVING, KARACHI

Side Opponent: SECRETARY, REVENUE DIVISION, ISLAMABAD

Laws Involved:

S.21--- Sales Tax Act,1990

Headnote:

Complaint was filed by proprietor of firm that his unit had been blacklisted by Sales Tax Department without intimating and without issuing any show-cause notice to him---Since no illegalities had been committed by complainant and no charges were framed by Sales Tax Department against complainant, there was no justification to blacklist his unit---Besides unjust blacklisting, Department had raised several objections to prolong its illegality instead of providing relief to complainant who was put to hardship and his business had suffered because of alleged illegal blacklisting of his unit---Officer empowered under S.21(4) of Sales Tax Act, 1990, was supposed to observe due process of issuing a notice and giving opportunity of hearing before blacklisting a registered person or suspending his registration---Action taken by Sales Tax

authorities, was arbitrary, perverse unjust, oppressive and based on irrelevant grounds--Present case was a one of maladministration as defined under sub-section (3) of S.21 of Sales Tax Act, 1990, it was recommended that C.B.R. should direct Collector of Sales Tax to cancel blacklisting of complainant within fifteen days and compliance report be sent within thirty days.

Citation Name: 2006 YLR 1556 LAHORE-HIGH-COURT-LAHORE

Side Appellant: PAKISTAN RAILWAYS through General Manager

Side Opponent: Mst. KISHWAR BIBI

Laws Involved:

Ss.42 & 53 of the Civil Procedure Code (V of 1908), O.XXXIX, Rr. 1 & 2---Punjab Kachi Abadis Act (VII of 1992), S.6 (2)---Central Government Lands and Buildings (Recovery of Possession) Ordinance (LIV of 1965), S.3

Headnote:

Suit for declaration of title along with permanent injunction---Plaintiff, in her suit asserted that land in dispute (owned by Railways) was allotted to her by Directorate General of Kachi Abadis under Punjab Kachi Abadis Act, 1992---Contention of Railways/defendant was that land was owned by it and Development Authority or Provincial Government had no power to allot the same to plaintiff---Suit was decreed and decree was upheld in appeal---Validity---Provisions of S.6 of Punjab Kachi Abadis Act, 1992, authorized the Director-General, Kachi Abadi to declare any area or part thereof to be Kachi Abadi except area belonging to Federal Government---Railways, undeniably, was a Federal authority therefore, Director-General Kachi Abadis had no power to declare the land in question as Kachi Abadi, nor he could allot the same---Findings of Courts below that land was validly allotted to plaintiff by Director-General, was without lawful basis---However, even if disputed land was owned by Railways but plaintiff could not be dispossessed without issuing the notice and following procedure laid down in Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965--Since no such notice had been issued, Railways was restrained from dispossessing the plaintiff without due process of law.

Citation Name: 1969 PLD 14 SUPREME-COURT
Side Appellant: GOVERNMENT OF WEST PAKISTAN AND ANOTHER
Side Opponent: BEGUM AGHA: ABDULKARIM SHORISH KASHMIRI

Laws Involved:

Constitution of Pakistan 1962 Articles 2 & 98(2) (b)

Headnote:

Word "law" in Article 2 and words "in an unlawful manner" in Article 98(2) (b)-Connotation-Determination whether detention "in an unlawful manner"-Court to see whether action has been in accordance with "law"-Word "law" Not confined to statute law alone but used in generic sense and includes even judicial principles laid down by superior Courts from time to time-"Law" here as comprehensive as the American "due process" clause.

Citation Name: 1964 PLD 729 LAHORE-HIGH-COURT-LAHORE
Side Appellant: ABDUR REHMAN
Side Opponent: EVACUEE PROPERTY TRUST BOARD GOVERNMENT OF PAKISTAN

Laws Involved:

Displaced Persons (Compensation and Rehabilitation) Act 1958 S. 16-A read with para. 18 of Scheme framed by Chief Settlement Commissioner

Headnote:

Power of "maintenance, control and administration" vesting in Evacuee Property Trust Board- Does not include power to summarily eject tenant or person in possession without having recourse to due process of law.

Citation Name: 1989 PCRLJ 2459 KARACHI-HIGH-COURT-SINDH
Side Appellant: SAFDAR ALI
Side Opponent: ALI MARDAN

Laws Involved:

Criminal Procedure Code (Cr.P.C) ---S. 491--Penal Code (XLV of 1860), Ss. 343 & 347--
Habeas corpus

Headnote:

Detenus, comprising men, women and children, vocally alleged in open Court that they were subjected to forced labour by respondent at a brick kiln--Respondent stated that alleged detenus owed money to him aggregating to Rupees two lacs (two hundred thousands rupees) and by their work they had been discharging their liabilities--Respondent further stated that he had no objection if detenus were set at liberty if respondent was permitted to claim his dues from each of them as might be liable to him, in accordance with law, and on pursuing due process of law--No justification, reason or cause existed for detenus to be compelled to work with respondent--Detenus were thus set free--Respondent was advised to pursue such lawful remedy as permissible under law for claim of his money--No one could be forced to work for another even though there be a lawful contract of service applicable to him or her and in any case contract of minor was void ab-initio--Small children of tender age could not be made to partake in brick-making activities against their will and all cherished human values--Matter required to be dealt with in all seriousness and could not be trifled with.

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Equivalent Citation: AIR1951Bom30, (1951)53BOMLR65, ILR1951Bom190

**IN THE HIGH COURT OF BOMBAY
FULL BENCH**

Criminal Appln. No. 482 of 1950

Decided On: 04.10.1950

Appellants: **In Re: Pandurang Kashinath More**
Vs.
Respondent:

Hon'ble

Chagla, C.J., Gajendragadkar and Dixit, JJ.

Judges:

Counsels:

For Appellant/Petitioner/Plaintiff: K.T. Sule and A.S.R. Chari, Advts.

For Respondents/Defendant: C.K. Daphtary, Adv. General and H.M. Choksi,
Government Pleader

Subject: Criminal

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:

Preventive Detention Act, 1950 - Sections 3(3) and 7; Constitution of India - Articles 21 and 22(5)

Cases

Murat Patwa v. Province of Bihar, A.I.R. (85) 1948 Pat. 135, 49 Cr. L. J. 132; S.G. Sardesai v. Provincial Govt., A.I.R. (86) 1949 ALL. 395, 50 Cr. L. J. 687; M.R.S. Mani v. District Magistrate, A I.R. (87) 1960 Mad. 162, 51 Cr. L.J. 525; Greene v. Secretary of State for Home Affairs, (1942) A.C. 284, 1941-3 ALL. E.R. 888; Rex v. Secretary of

Referred:

State for Home Affairs; Greene, Ex parte, (1942) 1 K. B. 87; The Queen v Price, (1858) 8 Moore P. C. 203

Case

Note:

Preventive Detention Act (IV of 1950), Sections 3(3), 7 - Constitution of India, Article 21--Detention order--Grounds for detention served upon detenué twenty days after service of order--Whether such delay renders order invalid--Report by subordinate authority to State Government when to be furnished--Meaning of expression "forthwith"--Report to State Government made after grounds furnished to detenué--Whether non-compliance with mandatory provisions of statute--Construction.

Section 7 of the Preventive Detention Act, 1950, lays down no limit of time for furnishing grounds of detention to the detenué. The time taken for the furnishing of the grounds must, however, be a reasonable time, reasonable in the circumstances of each case. Non-compliance with this provision renders the order of detention invalid. When the Court has to consider on any particular application as to whether the time taken by the authority in furnishing the grounds was reasonable or not, the Court must look to the particular circumstances of the case before it.

Article 21 of the Constitution of India does not merely deal with the initial deprivation of personal liberty, but it also deals with the continuance of the deprivation of personal liberty. Therefore, both the deprivation of liberty and its continuance must be according to procedure established by law. Where, therefore, after a person has been detained grounds are not furnished within a reasonable time, his detention becomes invalid under Article 21, as he is being deprived of his liberty contrary to the procedure established by law.

Murat Patwa v. Province of Bihar [1948] A.I.R. Pat. 135, F. B., S.G. Sardesai v. Provincial Government [1949] A.I.R. All. 395 and M.R.S. Mani v. District Magistrate [1950] A.I.R. Mad. 162, referred to.

Greene v. Secretary of State for Home Affairs [1942] A.C. 284, discussed.

The expression "forthwith" used in Section 3(3) of the Preventive Detention Act, 1950, does not in the context mean "instantly", but it has practically the same significance as the expression "as soon as may be" used in Section 7 of the Act. It is, therefore, essential that the report to be furnished by the subordinate authority under Section 3(3) of the Act should be furnished as soon as possible. It is a question of fact as to whether in a particular case the subordinate authority has complied with this mandatory provision of the Act and a non-compliance with this provision would result in the detention being invalid.

The Queen v. Price (1853-4) 8 Moore P. C. 203, 213, referred to.

The furnishing of the grounds and particulars by the subordinate authority to the State Government under Section 3(3) of the Preventive Detention Act, 1950, after the grounds have been furnished to the detenu, is a departure from the scheme laid down under the Act, but this departure is purely procedural and cannot be characterised as a substantial non-compliance with a mandatory provision of the statute.

JUDGMENT

Chagla, C.J.

1. This is an application under Section 491, Criminal P. C. The detenu was detained on 9-7-1949, under Section 2(1)(a), Bombay Public Security Measures Act, 1947. An order under Section 3, Preventive Detention Act, 1950, was served upon him on 26-2-1950, and the grounds for his detention were served upon him on 18-8-1960,:

2. Mr. Sule's contention on behalf of the applicant is that in furnishing the grounds twenty days after the service of the order there was a substantial non-compliance with Section 7 of the Act and also with Article 22(5) of the Constitution. The section and the article provide that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Therefore the grounds have to be communicated to the detenu as soon as may be and it is the furnishing of the grounds as soon as may be that gives to the detenu the earliest opportunity of making a representation. It is undoubtedly true that this section and the provision in the Constitution affords a very valuable and important safeguard to the detenu. The reason for including this provision in the Act and in the Constitution will be immediately apparent. It is necessary, when a citizen is detained without a trial and without being heard on the charge that is levelled against him, that he should be given the earliest opportunity of making a representation which can be considered by Government. If through some mis-adventure he was wrongly detained, the Government can immediately set him free and, therefore, the Constitution thought it fit to provide that this safeguard should be included in every law which was enacted for the detention of persons without a trial. There is no limit of time laid down in Section 7 of the Act. In a certain measure and degree it is left to the executive, but the time taken for the furnishing of the grounds must be a reasonable time, reasonable in the circumstances of each case, and, therefore, when the Court has to consider on any particular application as to whether the time taken by the authority in furnishing the grounds was reasonable or not, the Court must look to the particular circumstances of the case before it. It is impossible to lay down a definite and unchangeable yardstick by which the Court must judge as to whether the time taken in a particular case was reasonable or not.

3. On the other hand, it has been contended by the Advocate General that if the order of detention is valid, a non-compliance with the provision of the Act which deals with what the authority has to do after the person has been detained does not render the order of

detention invalid. With respect to the Advocate General, there is an obvious fallacy underlying this argument. What is being challenged in this application is not the validity of the order, but the validity of the detention, and in order that the detention should be valid and should be upheld by the Court, not only must the order of detention be valid, but there must be a substantial compliance with all the provisions of the statute. Three High Courts in India have taken the same view of Section 7 or the corresponding provisions in the Provincial statutes, and these Courts are the High Court of Patna (see *Murat Patwa v. Province of Bihar* A. I. R. (85) 1948 Pat. 135 : (49 Cr. L. J. 132 F.B.), the High Court of Allahabad (see *S. G. Sardesai v. Provincial Govt.*, [MANU/UP/0196/1948](#)) and the High Court of Madras (see *M. R. S. Mani v. District Magistrate* A I.R. (87) 1960 Mad. 162: (51 Cr.L.J. 525).

4. As against this array of authorities, the Advocate-General has strenuously relied on the well known case of *Greene v. Secretary of State for Home Affairs*, (1942) A. C. 284 : (1941-3 ALL. E.R. 888). In that case the grounds were furnished as they had to be furnished by the Home Secretary and the particulars were furnished by the Advisory Committee and there was some discrepancy between the grounds furnished by the Home Secretary and the particulars furnished by the Advisory Committee, and the detention of Greene was challenged, among other grounds, on the ground that in furnishing incorrect particulars there was a non-compliance with para. 5 of Regn. 18B, Defence (General) Regulations. Lord Macmillan, dealing with this point in his speech, states (p. 298):

"The mistake, the occurrence of which your Lordships deplore, does not in any way affect the validity of the detention order which is the answer to the appellant's application. It affects the due observance of the procedure prescribed for the further consideration of the case of a person who is ex hypothesi under lawful detention. Consequently the mistake affords no ground for invalidating the detention order and does not help the appellant in his present application."

Basing his argument on these observations the Advocate-General contends that the detention of the detenu was lawful and any mistake in or departure from a mandatory provision of the statute would not render the detention invalid. It is true that the observations of Lord Macmillan are weighty and they deserve the greatest respect. But even the observations of so eminent a jurist as Lord Macmillan must be understood and appreciated in the context of the facts which the learned Law Lord had to consider.

5. Now these facts more clearly appear in the judgment of the Court of appeal, which judgment on this point was entirely approved of by the House of Lords. The judgment of the Court of appeal is reported in *Bex v. Secretary of State for Home Affairs; Greene, Ex parte*, (1942) 1 K. B. 87. Scott L. J. at p. 106 points out that Greene appeared before the Advisory Committee and he never complained of the discrepancy between the particulars furnished to him and the grounds stated by the Secretary of State. It was further found that he possessed a document which is described as "B. G. I." which was originally served on him and from which he knew the grounds on which the detention was made. It was also found that most of the particulars furnished to him by the Advisory Committee fell within the grounds furnished by the Secretary of State, and in the trial Court

Humphreys J. held on affidavit that when Greene appeared before the Committee he was in fact not prejudiced by the mistake made in the particulars furnished to him. Scott L. J. looked upon this particular mistake as an error of procedure and even with regard to errors of procedure Scott L. J. points out that there may be serious errors of procedure which may vitiate the detention, and he refers to Budd's case which was reported in London Times, 28-5-1941, where a particular error of procedure induced the Court to release the applicant. Therefore, with very great respect to Lord Macmillan, it would not be true to say as a general proposition that no non-compliance with the mandatory provision of the statute would result in the detention being invalid provided the order of detention was valid. It would be entirely erroneous to suggest that the particular provision in the Apt with which we are dealing is a mere matter of procedure. As we started by saying, in our opinion, it is a most important and valuable right that the subject has been afforded in order to vindicate his innocence if he has been wrongly detained and the Courts must be vigilant to see that the mandatory provisions of this section are carried out in the spirit in which they were intended, both by the Legislature and by the Constituent Assembly. There is a further answer to the Advocate-General's argument and that answer is furnished by the Constitution itself. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. This article, in our opinion, does not merely deal with the initial deprivation of personal liberty, but it also deals with the continuance of the deprivation of personal liberty. Therefore, both the deprivation of liberty and its continuance must be according to procedure established by law. Therefore, even though when the detenu was deprived of his personal liberty that deprivation was according to procedure established by law, if we find that that deprivation was continued contrary to the procedure established by law, we must hold that Article 21 has been contravened, and, in our opinion, if after a person has been detained grounds are not furnished within a reasonable time, his detention becomes invalid as he is being deprived of his liberty contrary to the procedure established by law.

6. Turning to the facts of this case, we have the affidavit of Mr. Chudasama, the Police Commissioner, and he gives the reasons why there was a delay in this case of twenty days in furnishing the grounds. He points out in his affidavit that detention orders of a large number of detenus were reconsidered at about the same time and with heavy pressure of work which the Commissioner of Police and his office had to do particularly in view of a great increase in crimes and serious and intense underground and other activities of dangerous nature carried on against the Government in Greater Bombay, the grounds could not be furnished earlier than 18-8-1950. There is nothing on the face of this affidavit which would induce us to hold that the statements made in it by the Commissioner of Police are not correct. If those statements are correct, then it seems to us that the time taken by the detaining authority in furnishing grounds under the circumstances of this case was not unreasonable. But we should like to warn Government and the detaining authority that there is nothing more important in the administration of the State than the safeguarding of the liberty of the individual, and the Commissioner of Police and the State should realise that there can rarely be more important work than the work of furnishing grounds to the detenus who have been deprived of their liberty and who are entitled to know on what grounds they have been deprived of their liberty. Therefore, although in this particular case we are upholding the detention and coming to

the conclusion that the delay of twenty days was not unreasonable we should not be understood to have laid down that in every case a delay of twenty days will be condoned. We see no reason why the detaining authority should not furnish the grounds within a week or ten days of the detention of the detenu.

7. There is another ground on which this detention has also been challenged, and the other ground is that there is a non-compliance with Section 8(8) of the Act. That subsection lays down that when an order is made by a subordinate authority he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity for the order. This again, we agree with Mr. Sule, is a very important and valuable safeguard afforded to the citizen. It must be remembered that in England during the worst days of war when England was fighting with her back to the wall, no order of detention was ever made except by the Home Secretary. It was the Home Secretary alone who had to apply his mind to each case and to arrive at a satisfaction that the person whom he intended to detain was guilty of a prejudicial act. Under our law it is left to subordinate officers to deprive citizens of their liberty. But the Legislature in its wisdom has provided a safeguard and that safeguard is that a subordinate authority should immediately report to the State Government the grounds on which he has made the order and the particulars on which the order was based. This provision finds a place in the statute in order to enable the Government itself and presumably the Minister in charge of the portfolio to apply his mind to the action taken by a subordinate authority. Therefore it is essential that this report should be furnished by the subordinate authority as soon as possible. The Legislature has used the expression "forthwith," but we agree with the Advocate General that "forthwith" cannot in the context mean "instanter." It would rather have the meaning which has been given to this expression by the Privy Council in *The Queen v Price*, (1858) 8 Moore P. C. 203 at p. 218 referred to in *Murat Patwa v. Province of Bihar* A. I. R. (35) 1948 Pat. 185 at p. 188 : (49 cr. L. J. 132 F. B.).

'The word 'forthwith', when used in an Act of Parliament, has been construed to mean 'in a reasonable time'; as soon as the party who is to perform the act 'can reasonably perform it'.'

Therefore "forthwith" has practically the same significance as the other expression used in Section 7, "as soon as may be," and again it is a question of fact as to whether in a particular case the subordinate authority has complied with this mandatory provision of the statute. In our opinion, a non-compliance with this provision would result in the detention being invalid.

8. Now in this particular case, the affidavit of Mr. Chudasama shows that the grounds and particulars were furnished by the Commissioner of Police on 20-8-50. Mr. Sule has argued that the scheme of the Act makes it clear that the grounds and particulars by the subordinate authority should be furnished to the State Government before the grounds are furnished to the detenu. Mr. Sule seems to be right because it may be that in a particular case, on the grounds and particulars being furnished to the State Government; the State

Government may take a different view from the view taken by the subordinate authority and may release the detenu, in which case no question of furnishing grounds to him would arise. Further, it is also clear that although the furnishing of the grounds to the detenu may take some time, no time need be taken as far as the furnishing of the grounds and particulars under Section 3 (8) is concerned, because whereas in the case of the former the grounds would have to be formulated and the detaining authority would have to consider what materials should be held back in public interest, no such question would arise in the case of the latter. As far as the time taken is concerned, we do not see any reason to disbelieve what has been stated by Mr. Chudasama in the affidavit that the peculiar circumstances prevailing at that time and the pressure of work made it impossible for him to comply with the provisions of Section 3 (8) earlier than he did. With regard to the other point raised by Mr. Sule that in furnishing these grounds and particulars after the grounds had been furnished to the detenu, there was substantial non-compliance with the Act, we regret that we cannot uphold that contention. It is true that there is a departure from the scheme laid down under the Act, but in our opinion, this departure is purely procedural and cannot be characterised as a substantial non-compliance with the mandatory provision of the statute.

9. The result, therefore, is that although we uphold Mr. Sule on the interpretation he has put upon the two provisions of the Act, we are of the opinion that on the facts of this case we cannot come to the conclusion that the detention of the applicant is bad and that he is entitled to be released. Having dealt with these two points, certain points on the merits of the application still survive which it is unnecessary for this Full Bench to consider. Therefore the application will go back to the Division Bench dealing with habeas corpus application for its disposal.