convenient interchangeability of such labels as "misconstruction" 'want of authority of law' and 'Jurisdiction'.

Perhaps more than any constitutional compulsion what weighed with the majority was the inappropriateness of allowing all erroneous decisions of quasi-judicial authorities to be challenged before the Court under Art. 32. They significantly refer to the existence of alternative remedies under the Act. But to require the aggrieved party to exhaust the statutary remedies, then invoke the jurisdiction of the High Court under Art. 226 and if still aggrieved seek special leave of the Supreme Court under Art. 136 will result in the exhaustion of the litigant. A curious result of the case is that violation of fundamental right is no ground for review against quasi-judicial authorities even in cases where *certiorari*, one of the Writs mentioned in Art. 32, will lie against such authorities. For *Ujjam Bai* tells us that mere error of law, even if apparent on the face of the record, committed by a quasi-judicial authority acting within its competence does not violate fundamental rights. The anomaly presented is that it will be safer to invoke the discretionary jurisdiction of the High Court under Art. 226 than the guaranteed right under Art. 32.

K. B. Nambyar.

Mannalal Jain v. State of Assam [1]—Administrative Discrimination and Art. 14:

Article 14 of the Indian Constitution stipulates 'equality before the law' and the 'equal protection of the laws' to every person in the Indian Union. The principles which the courts have developed to adjudge the validity of any legislation with reference to Art. 14 is that of reasonable classification which means that classification made by the impugned law should not be arbitrary; it should be based on an intelligible, real and substantial differentia, and further the differentiation adopted should have a rational or reasonable relationship to the object sought to be achieved by the statute in question. While this test has remained constant throughout the vicissitudes of the large amount of case-law arising under Art. 14, its application to concrete factual situations has raised difficulties many a time. It is not necessary to recapitulate the case-law on the point here.[2]

One of the purposes for which Art. 14 has been invoked at times has been to impugn administrative discrimination. What happens is

1. A.I.R. 1962 S.C. 386.
2. See, M. P. Jain, *Indian Constitutional Law*, pp. 359-377 (1962).

that the statute is valid under Art. 14, but the application thereof is challenged as 'Discriminatory'. The classic case on the point is an American case, *Yick Wo* v. *Hopkins*.[3] The principle enunciated in the case has been referred to by the Indian courts several times and they have asserted that Art. 14 secures all persons in India 'not only against aribitrary laws but also against arbitrary application of laws'.[4] Though the principle is established that discriminatory administrative action can be challenged under Art. 14, yet it is not easy in practice to successfully challenge the action on that basis. The odds are very heavily against the person who challenges the action. The general attitude of the courts is to lean heavily towards sustaining the validity of the action; the initial presumption is that the administration has not acted with an "evil eye and an unequal hand"; abuse of power cannot be assumed where the discretion is vested in high government officials and, lastly, the onus is on the complainant to prove that an abuse of power has taken place.[5] It is only rarely, under these circumstances, that an administrative action has been quashed as being discriminatory. It is, therefore, of some significance when the Supreme Court is found quashing an administrative action as discriminatory under Art. 14 and it deserves to be highlighted. This happened recently in *Mannalal Jain* v. *State of Assam*. The Deputy Commissioner of Gauhati rejected Mannalal's application for grant of a licence for the year 1960 for dealing in rice and paddy under the provisions of the Assam Foodgrains (Licensing and Control) Order, 1960. In 1961, a similar application made by him was rejected again under the amended Assam Order. The Assam Order had been promulgated by the State of Assam under s. 3, read with s. 5, of the Essential Commodities Act. The petitioner was refused the license because of the policy, communicated to the licensing authority by the Director of Civil Supplies, Assam, through a letter, to give a monopoly prodrement rice to a specified co-operative society. Clause 5 of the Assam Order, 1961, laid down five factors which the licensing authority, among other matters, was to consider in granting a licence. One of the matters specified by sub-cl. (e) was—'Whether the applicant is a co-operative society'. The order rejecting the licence was challenged by Mannalal before the Supreme Court on the following two grounds: (1) cl. 5 (e) of the Assam Order was ultra vires s. 3 of the Essential

3. 118 U.S. 356.

4. *State of West Bengal* v. *Anwar Ali Sarkar*, A.I.R. 1952 S.C. 79; *Kathi Raning* v. *State of Saurashtra*, A.I.R. 1952 S.C. 128; *Kedar Nath* v. *State of West Bengal*, A.I.R. 1953 S.C, 404; *Lumsden Club* v. *State of Punjab*, A.I.R. 1957 Punj. 20: *Rama Krishan Dalmia* v. *Justice Tendolkar*, A.I.R. 1958 S.C. 538.

5. See, M.P. Jain, Op. Cit., 374.

Commodities Act, and (2) even if the sub-cl. was intra vires, the action of the licensing authority in granting a monoply to the co-operative society was discriminatory against him and so bad under Art. 14.

On the first point, the Supreme Court's answer was in the negative. Clause 5 (e) of the Assam Order, in the Court's opinion did not provide for the creation of monopoly in favour of a co-operative society; it only enabled the licensing authority to prefer a co-operative society in certain circumstances in the matter of granting a licence, and this matter was not completely unrelated to the objects underlying s. 3 of the Essential Commodities Act, *viz.*, (1) maintaining or increasing supplies of an essential commodity; (2) securing their equitable distribution and availability at fair prices. There might be places or areas where co-operative societies were in a better position to fulfil these objectives.

On the second ground of objection, the Supreme Court pointed out that in the instant case, licences had been granted only to co-operative societies; the petitioner was denied a licence because the licensing authority proceeded on the footing that a monopoly must be created in favour of co-operative societies. A discrimination was thus made against the petitioner which was not justified by cl. 5 of the Assam Order. It was open to the licensing authority to give preference to co-operative societies in the matter of granting a license in a particular locality if it was of the view that that would fulfil the objectives of s. 3 of the Essential Commodities Act. That is not what the licensing authority did in the instant case. He repeatedly refused a licence to the petitioner, for the only reason and purpose of granting a monoploy to co-operative societies. In other words, the discrimination that has been made by the licensing authority is really in the administration of the law. It has been administered in a discriminatory manner and for the purpose of achieving an ulterior object, namely, the creation of a monopoly in favour of co-operatives an object which, clearly enough, is not within cl. 5 (e) of the Assam Order.

The Supreme Court took opportunity to express its 'deep concern' over the manner in which the state government or its officers issued instructions in the matter of granting of licences,[6] instructions which clearly enough were not in consonance with the provisions of the law governing granting of licences. The Court doubted the wisdom of issuing such instructions in matters governed by law; even if it be considered necessary to issue instructions in such cases, the instructions should not be so framed as to override the

6. Reference is to the communication issued by the Director of Civil Supplies mentioned above.

provisions of law as this would destroy the 'very basis of the rule of law and strike at the very root of orderly administration of law.'

This was the majority view comprising Sinha, C. J., S. K. Das and Ayyangar, JJ. The minority consisting of Sarkar and Mudholkar, JJ., differed from the majority. The minority held that under the Assam Order the licensing authority was entitled to prefer a co-operative society and this was what was done in the case. The minority did not refer at all to the basic question which the majority took into consideration, *viz.*, the licensing authority using the law for an ulterior motive, that of creating a monopoly in favour of co-operative societies, which is different from giving them preference, and that this was not warranted by the legal provision.

The pronouncement of the majority in the *Mannalal* case is important and far-reaching more so in the present context when policy decisions are sought to be enforced by the Government not overtly through law, but covertly under the guise of law. This definitely is not administration according to law.

*M. P. Jain.**

The Hindu Adoptions and Maintenance (Amendment) Bill, 1962 [1]

The Bill is welcome in that it marks a departure from the tardy tradition of Indian legislation in rectifying lacunae in the enactments. The object of the Bill is to cure a certain lacuna in the Hindu Adoptions and Maintenance Act, 1956, which hinders the adoption of orphans, illegitimates and abandoned children who are being brought up by orphanages and institutions. It may be recalled that under section 9(4) of the Hindu Adoptions and Maintenance Act, 1956, a guardian (*i.e.*, a testamentary guardian or a guardian appointed by the court) can give a child in adoption with the previous permission of the court. The Bill seeks to enlarge the meaning of the term guardian so as to include a person having the custody of the child, to enable the managers of institutions having the custody of children to give them in adoption. To facilitate the adoption of abandoned and illegitimate children the Bill seeks to widen the definition of the term "Hindu" in section 2 of the Act, to include "any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh". Thus the Bill proceeds from laudable humanitarian motives.

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1. Bill No. 58 of 1962.