

Chapter IV

THE POWER OF EXTERNMENT

The Police or other Acts of different states with a view to maintain public peace or to prevent anti-social activities by a person provide for his externment. For instance, the Bombay Police Act, 1951 empowers the commissioner or the district magistrate, or any other magistrate empowered by the state government in this behalf, to take action for externment of certain classes of persons.¹ The persons who could be externed fall under these categories—(i) gangs and body of persons if their presence is causing danger or alarm, or they have unlawful designs about which reasonable suspicion exists, (ii) persons about to commit an offence; and (iii) persons convicted of certain offences. Under the second category, a person could be externed if (a) his movements or acts are causing or are calculated to cause alarm, danger or harm to person or property; (b) if there is a reasonable ground to believe that he is engaged or about to be engaged in certain specified offences; or an outbreak of epidemic disease is likely to result from the continued residence of an immigrant.

As regards the third category the statute specifies certain categories of offences of which a person, to be externed, has been convicted (in some cases more than once).² Such a convicted person could be externed if the authority has reason to believe that such person is likely again

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1. Section 55 to 63 A, Bombay Police Act, 1951.
 2. (a) of an offence under Indian Penal Code relating to coins and government stamps (ch. 16) or offences against property (ch. 17);
(b) of any offence under section 65, 66A or 68 of the Bombay Prohibition Act, 1949;
(c) of offences under sections 3, 6 or 9 of the Suppression of Immoral Traffic in Women and Girls Act, 1956;
(d) of an offence under section 135 of the Customs Act, 1962;
(e) of an offence for accepting bets in any public street, thoroughfare, or race-course in contravention of section 12 or 13A of the Bombay Prevention of Gambling Act;
(f) twice or more of an offence under the Bombay Prohibition Act, 1956, being an offence not covered by clause (b) above;
(g) twice or more for being found under suspicious circumstances between sunset and sunrise;
(h) twice or more for possession of property of which they are unable to give satisfactory account.

to engage himself in the commission of an offence similar to that for which he was convicted.

The statute makes provision for certain procedural safeguards, such as observance of natural justice and an appeal to the state government.

The provisions of the Karntak Police Act, 1964 are on the lines of the Bombay Act. In 1976 Gujrat state modified the Bombay Police Act which was later followed in the Delhi Police Act 1978.

The Delhi Police Act, 1978 is modelled on the above law in the matter of externment of persons. On the lines of that Act it divides the person who could be externed into three categories: (a) gangs and bodies of persons causing or are calculated to cause danger to person or property or reasonable suspicion of their unlawful designs, (b) persons who are about to commit certain specified offence though there is no record of past conviction in their case, (c) persons convicted of certain offences (in some cases more than once) if they are likely to commit the same offence of which they were convicted earlier. There are some differences as regards the offences to be committed by these persons which may justify their externment between the Delhi Act and the modified Bombay Act. In case of all the three categories, there are provisions for reasonable opportunity of being heard and an appeal lies to the administrator.

The provisions for externment are also to be found in various other state statutes like the Madhya Pradesh Security Act, 1959, the C. P. Goonda Act, 1949, the Punjab Security of State Act, 1953, etc.

Externment under other laws.

The states which have not enacted any special law relating to habitual offenders or do not provide for externment powers in their laws, if enacted, resort to the practice of externing the habitual offenders. The Karnataka Police Act provides for such power though the state Habitual Offenders Act is silent about it.

There are also the states who make use of externment provided in other different laws. Chiefly, the border states of Meghalaya and Manipur can illustratively be cited as examples in this regard.

In Meghalaya, the following laws which have been adopted from the state of Assam, are now in force in the state of Meghalaya.

According to Section 2 (1)(a) of the Assam Maintenance of Public Order Act 1947, the movement of a particular person in any area of the state may be restricted by the government in order to prevent him



from acting in any manner prejudicial to public safety and maintenance of public order.

Under Section 1 of Regulation No. V of 1896 (the Chin Hills Regulation 1896), where the Superintendent of Police or the Deputy Commissioner of a District in Meghalya, is satisfied that the presence of any person not being a native of the place is injurious to the peace or good administration of the area, may in writing, order such person to leave the area within a given time. The violation of the above order is punishable under section 2 of the said Regulations.

The movement of suspected persons can be checked either under the provisions of the Assam Maintenance of Public Order Act, 1947 or under the provisions of the Punjab Security of the State Act, 1953. ^{2a}

Under Section 2 of the Assam Maintenance of Public Order Act 1947 either the government or the district magistrate can make an order directing that a particular person shall not be in any area of place inside the state of Manipur as may be specified in the order or requiring that a particular person shall reside in any place within such area in the state of Manipur as may be specified in the order or requiring him to notify his movements in such manner as may be specified in the order or imposing upon his such restrictions as may be specified in the order in respect of his employment of business etc.

If an order for restriction of movement is issued by the government, it may remain in force for a period of one year unless otherwise revoked; and, if issued by the district magistrate, it may remain in force for a period of two months.

As in the case of National Security Act, orders for restriction of movements under the Assam Maintenance of Public Order Act, 1947 have to be referred to an Advisory Council for confirmation. In such cases, the authority issuing the order must furnish to the aggrieved person the grounds on which such orders were issued.

Under section 7 of the Punjab Security of the State Act, 1953, the movement of persons can also be restricted. The government may the order removal of any person from one place to another within the State; whereas the district magistrate may make such order of removal of any person from one place to another within the limits of his own district only. The restriction order, if issued by the government, may remain in force for a period of one year unless revoked; whereas an order made by a District Magistrate can remain in force for only one month.

^{2a} The Assam Maintenance of Public Order Act, 1947 has been made applicable to the state of Manipur with effect from 4.5.48; whereas the Punjab Security of the State Act, 1953 has been made applicable to Manipur from 18.1.71.

Under the provisions of the Punjab Security of State Act, 1953 orders of restriction of movement have to be referred to an Advisory Council for confirmation, as in the case of the Assam Maintenance of Public Order Act, 1947.

Procedural safeguards

The power of externment is subject to certain procedural restrictions to ensure a fair deal to an individual against whom the action of externment is proposed to be taken. The procedural safeguards are not uniform in all the statutes, but the common thread running through all these statutes is that reasonable opportunity of being heard is to be given to the individual. The other procedural variations are depicted by the case law analysed below.

Externment of a person from his place of abode to another area is a stringent measure affecting the individual, depriving him of his livelihood, company of his relations and friends, access to his home and so on. The Supreme Court has described the harshness of an externment order passed against a person living (say) in Delhi that such a person "if transported traumatically outside the Union Territory would surely suffer not merely financial mayhem but also social domestic and physical deprivation virtually amounting to "economic harakiri and psychic distress."³

Art. 19 clauses (d) and (e) guarantee to the individual the right to move throughout India and to reside in any part of the country. These two rights can only be restricted by imposing reasonable restrictions in the public interest. The externment of a person does affect his fundamental rights under Article 19 (1) (d) and (e). The laws relating to externment have to be reasonable both in their substantive as well as procedural aspects. As the purpose of externment is the prevention of crime and to ensure public peace, it passes the test of substantive reasonableness. An externment of a person is a harsh punishment on him and calls for procedural safeguards against the abuse of power by the authorities. The question of procedural safeguards has arisen in several Supreme Court decisions.

Judicial decisions

Initially, the approach of the Supreme Court was somewhat narrow in the matter of procedural safeguards to an individual to be

3. *Prem Chand v. Union of India*, A.I.R. 1981 S.C. 613, 614.

externed but in later cases the court has widened the scope of these safeguards.

In the first case decided by the Supreme Court⁴ on the subject of externment, the validity of the East Punjab Safety Act, 1949 (a temporary law) was questioned. Under that Act, a district magistrate could order the externment of a person from any area, on being satisfied that such an order was necessary to prevent him from acting in any way prejudicial to public safety or maintenance of public order. The district magistrate's satisfaction was final and was not open to judicial review. This was certainly a stringent measure. The Supreme Court, however, held the law to be valid, since it was of a temporary duration as its life was limited to two years, and there were a few safeguards, such as, the person had a right to receive the grounds of his externment, and if the externment was for more than three months, he could make a representation to an advisory board.

Two years later⁵, the Supreme Court held as valid a provision contained in the city of Bombay Police Act, 1902, bestowing upon the Commissioner of Police, Greater Bombay, power to serve an externment order for a period up to two years on a person, if, in the opinion of the Commissioner, the movement or acts of the person in Greater Bombay were calculated to cause danger or harm to person or property. Under the provision in question, the person could either be externed *from the State* of Bombay itself or externed to such place *within the State* as might be specified (in this case, the person was asked to go to a specified place within the State of Bombay). As regards the procedure for passing an order of externment, it was provided that before making an order of externment against a person, the Commissioner of Police must inform him in writing about the general nature of the material allegation against him a reasonable opportunity of showing cause. The person against whom the order was to be passed could appear through an advocate, file a written statement and examine witnesses for the purpose of clearing his character. The Supreme Court held the procedure to be reasonable even though the person suspected had no right to cross-examine the witnesses deposing against him. The provision, it was pointed out, was made to protect the public against dangerous and bad characters. The witnesses might not like to depose against bad characters for fear of violence and therefore the giving of a right

4. *N.B. Khare v. The State of Delhi*, A.I.R. 1950 S.C. 211, (1950) S.C.R. 519.

5. *Gurbachan Singh v. State of Bombay*, A.I.R. 1952 S.C. 221; (1952) S.C.R. 737.

to cross-examine witnesses might frustrate the purpose of the Act.

Four years later, after the above judgment, the Supreme Court upheld⁶ the validity of Section 57 of the Bombay Police Act, authorising any of the officers specified in the Act to extern a *convicted person* from the area within his jurisdiction, if the specified officer has reason to believe that such person was likely to commit any offence similar to that of which he had been convicted. There was no advisory board to scrutinise the material on which the specified officer had authority to take action against the person concerned, but the Supreme Court held that there was no universal rule that the absence of an advisory board would necessarily make such legislation unconstitutional. It was also argued that the restriction was unreasonable because the case was initiated by the police and it was the police who was to judge the case. The court rejected the argument, because, while the case could be initiated by an inspector of police, the order of externment could be made only by the Commissioner of Police. Other safeguards available in the law were that an appeal lay to the state government against the order and on some points a reference could be made to the court.

Another case⁷ decided in the same year by the Supreme Court relates to Section 56 of the same Act, i.e. the Bombay Police Act. Under Section 56, any person whose activities were causing, or likely to cause, danger or harm to property or person etc., could be externed. Past conviction was not necessary. Safeguards were the same as in Section 57. The Supreme Court upheld the provision for externment. However, Jagannadhadas, J., expressed the view that the vesting of a power to extern a person out of his home for so long a period (two years) without the obligation to review the order at some stated intervals (say, once in three months or six months) was *prime facie* unreasonable, because though, on the face, externment might not appear to be as serious an interference with the personal liberty of an individual as his detention, yet, in the actual practice, it might produce a more serious injury to the person concerned. Nevertheless, he felt bound to follow the previous decisions of the court.

A decision under the Goondas Act may also be mentioned in the context of article 19 (1) (e). In the C. P. Goondas Act, 1949, the central concept was "goonda". The control of goondas and their

6. *Hari v. Dy. Commissioner of Police*, A.I.R. 1956 S.C. 559, 568; (1956) S.C.R. 506

7. *Bhagubhai Dullabhbai v. District Magistrate*, A.I.R. 1956 S.C. 585; (1956) S.C.R. 533.

removal from one place to another in the interest of public peace or tranquillity were provided for. A "goonda" was defined as (i) meaning a hooligan, rough or vagabond and as (ii) including a person who was dangerous to public peace or tranquillity. The state government could proclaim any area as "disturbed" area for a period of three months at a time. The district magistrate was authorised to direct a goonda that he should not remain within a specified part of such area within his jurisdiction, if there were reasonable ground for believing that his presence or movement was prejudicial to the interests of general public or public peace, etc. A few safeguards were provided, such as, giving to the person concerned grounds on which the order was sought to be made and providing him with an opportunity of being heard. Previous approval of the government was necessary if an order was to be made directing the exclusion of any goonda from a place in which he ordinarily resided or from the district in which the proclaimed area existed, or requiring him to remain in an any place or area outside such district.

According to the court two serious flaws invalidated the provision: (i) there was no requirement that the magistrate should, before taking action, *come to formal decision* as to whether the person concerned was a goonda or not, and no opportunity was intended to be given to the person to show that he was not a "goonda". (ii) The definition of a "goonda" afforded no assistance in deciding as to which citizen could be kept in that category. It was an inclusive definition and it did not indicate what tests had to be applied in deciding whether a person fell in the first part of the definition. The Act did not indicate clearly who was a "goonda."⁸ Thus, imprecision in the nature of persons to be proceeded against under the Act is fatal to its validity.

In another case⁹ relating to public security legislation, the Supreme Court held that provision of the M.P. Public Security Act, 1956 which gave power to an executive authority to specify the area where an externed person was to stay, was invalid in the absence of a procedural safeguard of hearing. Under the Act, a district magistrate or the state government could extern a person from a place in Madhya Pradesh and require him to remain in a place in the state as specified in the order of externment, if the authority concerned was satisfied that his activities were likely to be prejudicial to the security of state or the maintenance of public order. The safeguard provided was that the person was to be supplied with the grounds of the order for con-

8. *State of M.P. v. Baldeo Prasad*, A.I.R. 1961 S.C. 293.

9. *State of M.P. v. Bharat Singh*, A.I.R. 1967 S.C. 1172.

sideration by an advisory council. The state government was required to act in accordance with the opinion of the advisory council. However, no *hearing was provided* for selecting the place where he was to reside. In the opinion of the court, the person might not be able to get means of livelihood in the place to be inhabited, and there was no provision in the statute that the person to be externed would be provided with any residence or means of livelihood. This was fatal to the statute.

Recently in *Prem Chand v. Union of India*,¹⁰ the Supreme Court emphasized that an order of externment should not be passed without observing natural justice and stated further that vague allegations and secret hearings were violative of articles 14 (the equality clause), 19 and 21 (the personal liberty clause). The court also emphasised : "There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied".¹¹ This statement is impregnated with a significant idea that though externment may be matter of subjective satisfaction of the executive, yet a person cannot be externed without sufficient reason, and that the court would scrutinise the material carefully and find out where there was a justification for externment or not.

The above analysis of the case law reveals that to begin with the court was merely satisfied if the authority passing an order of externment observed natural justice on the question of the individual justifying externment. Later two important developments took place. Firstly, that an opportunity of hearing is also to be given on the question of the place to which the person is to be externed, and the law would be invalid if no hearing was provided as regards that. This was necessary because the person might not be able to get means of livelihood in the place specified by the executive, the statute having no provision that the person would be provided with any residence or means of livelihood. Secondly, in some of the statutes analysed above, *any person* could be externed if his activities were of a nature specified in the statute. If the person in the opinion of the executive was indulging in those

10. A.I.R. 1981 S.C. 613.

11. *Ibid* at 616.

activities, he could be externed and there was no qualification in relation to the previous activities or record of the individual, such as, past conviction. However, the *Beldoo Pd* case makes it clear that such a law will not satisfy the constitutional test. It follows that only such a person who has either suffered past conviction or who has indulged in such past activities which bring him in the category of a "goonda" or a bad character could be externed. Such an approach limits the categories of persons who could be externed even though their present activities may be dangerous or harmful.

By and large in the statutes involved in the above cases, there was some kind of review provided against the order of the original authority either by way of appeal or representation to an advisory board. It seems that in the absence of such a provision for review, the statute will be unconstitutional. A review by a superior executive authority or an independent body like the advisory board provides an additional safeguards against the abuse of power.

Finally, in the *Prem Chand* case, the court gave an indication that it would scrutinise an order of externment with care to find whether there was sufficient material for the externment.