CASE NO.:
Appeal (civil) 6350-6374 of 1997

PETITIONER:
Distt. Registrar & Collector, Hyderabad & Anr.

RESPONDENT:
Canara Bank Etc.

DATE OF JUDGMENT: 01/11/2004

BENCH:
CJI R.C. Lahoti & Ashok Bhan

JUDGMENT:
J U D G M E N T

WITH

C.A\005\005\005\005/2004 (Arising out of SLP (C) No. 11607/2001)

R.C. Lahoti, CJI.

Leave granted in SLP (C) No. 11607/2001.

Section 73 of the Indian Stamp Act, 1899 as incorporated by Andhra Pradesh Act No. 17 of 1986, by amending the Central Act in its application to the State, has been struck down by the High Court of Andhra Pradesh as ultra vires the provisions of the Indian Stamp Act as also of Article 14 of the Constitution. The District Registrar and Collector, Registration and Stamps Department, Hyderabad and the Assistant Registrar have come up in appeal by special leave.
Relevant Statutory Provisions under the Central Act :

Section 73 of the Indian Stamp Act (before the insertion of the text under the impugned State Legislation in its applicability to the State of Andhra Pradesh) reads as under:-

"73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge."

The term 'public officer' is not defined in Section 73 nor in the interpretation clause. However, the term 'public office' is found to have been used in Section 33. Sub-Section(3) of Section 33 provides as under:-

"33. (3) For the purposes of this section, in cases of doubt ___

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine

who shall be deemed to be persons in charge of public offices."

The term 'public officer having in his custody any registers etc.' as occurring in Section 73 can be defined by having regard to the expression 'public office' as occurring in Section 33. The central legislation including Section 73 took care to see that the power to inspect was confined only to documents in the custody of public officer which documents would necessarily be either public documents or public record of private documents. The purpose of inspection is clearly defined. It is permissible to have inspection carried out only in these circumstances:- (i) when it may tend to secure any duty, or (ii) when it may tend to prove any fraud or omission in relation to any duty, and (iii) when it may tend to lead to the discovery of any fraud or omission in relation any duty.

The State Amendments (1986)

The A.P. Act No.17 of 1986 has amended the Indian Stamp Act, 1899 in its application to the State of Andhra Pradesh. The Act was reserved by the Government of A.P. on 24th April, 1986 for the consideration and assent of the President and received such assent on 17th July, 1986 which was published in the Andhra Pradesh gazette for general information on 22nd July, 1986. Out of the several amendments made by the A.P. Act 17 of 1986, the relevant one for our purpose is Section 73 as substituted in place of the original Section 73 of the Indian Stamp Act by Section 6 of A.P. Act No.17 of 1986. The same is reproduced hereunder:-

6. For section 73, of the principal Act, the following section shall be substituted, namely:-

73 (1) Every public officer or any person having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may attend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to enter upon any premises and to inspect for such purposes the registers, books, records, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge and if necessary to seize them and impound the same under proper acknowledgement:

Provided that such seizure of any registers, books, records, papers, documents or other proceedings, in the custody of any Bank be made only after a notice of thirty days to make good the deficit stamp duty is given.

Explanation : - For the purposes of this proviso 'bank' means a banking company as defined in section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India, constituted by the State Bank of India Act, 1955 a subsidiary bank as defined in the State Bank of India

(Subsidiary Banks) Act, 1959, a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, a Regional Rural Bank established under the Regional Rural Banks Act, 1976, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964, National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981, the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, The Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948, and such other financial or banking institution owned, controlled or managed by a State Government or the Central Government, as may be notified in this behalf by the Government.

(2) Every person having in his custody or maintaining such registers, books, records, papers, documents or proceedings shall, when so required by the officer authorized under sub-section (1), produce them before such officer and at all reasonable times permit such officer to inspect them and take such notes and extracts as he may deem necessary.

(3) If, upon such inspection, the person so authorized is of opinion that any instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same from the person liable to pay the stamp duty; and in case of default the amount of the duty shall be recovered as an arrear of land revenue.

The Statement of Objects and Reasons states that the Government have been considering for quite some time the question of plugging the loopholes in the Indian Stamp Act, 1899 in its application to this State so as to arrest the leakage of stamp revenue and also to augment the stamp revenue in the State. The State of Andhra Pradesh in doing so was inspired by the amendments made in the State of Karnataka. As to Section 73 the SOR states "As per Section 73 of the said Act, the Collector or any person authorized by him shall inspect any public office and the public officer having in his custody any registers, books, records etc., shall permit him to take copies of extracts of those records. However, the inspecting officer cannot seize the deficitly stamped documents and impound the same during inspection. On account of this loophole, the inspecting officers are not able to seize and impound the deficitly stamped documents and collect the deficit stamp revenue. It has therefore been decided to empower the Inspecting Officers to enter any premises and seize the documents and impound them."
[For a detailed Statement of Objects and Reasons see The Andhra Pradesh Gazette Extraordinary Part IV-A dated March 20, 1986 pp. 9 \026

11.]

The A.P. State Rules (1986)
In exercise of the powers conferred by Section 75 of the Indian Stamp Act, 1899 and of all other powers hereunto enabling and in supersession of the earlier rules the Governor of Andhra Pradesh framed rules for the collection of duties secured in the course of inspection under Section 73 of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986 which rules came into force on the 16th day of August, 1986. The relevant part of the rules is extracted and reproduced hereunder:

1. In these rules unless the context otherwise requires:-

(a) 'Act' means, the Indian Stamp (A.P. Amendment) Act, 1986.

(b) "Inspector-General of Registration and Stamps" includes the person authorized in writing by him as the Collector appointed under section 73 of the Act to exercise the powers under that Section.

(c) 'Head of Office' means, the head of the Office inspected by the Inspector General of Registration and Stamps under section 73.

(d) 'Section' means a section of the Act.

(e) 'Any premises' includes any public office or any place where registers, books, documents etc., are kept under the custody of a person the inspection whereof may tend to secure any duty.

2. (1) The notes of inspection under section 73 shall be sent to the Head of office with a copy to the Head of the District office, if the office inspected is subordinate to him, or with a copy to the Head of the Department concerned, if the office inspected is the District or Regional Office.

(2) The first reports of compliance shall be sent to the Inspector General of Registration and Stamps, immediately on receipt of the notes of inspection by the Head of Office, with a copy to the Head of the District Office concerned, if the office inspected is subordinate to him or with a copy to the Head of the Department, if the office inspected is a District or Regional Office.

3. When deficitly stamped documents are detected during the course of inspection the following procedure shall be followed:-

(i) The Inspector General of Registration and Stamps or the person authorized by him shall seize and impound such documents and after giving an opportunity to the parties levy deficit duties if any, without penalty and collect the same from the persons liable to pay under sub-section (3) of the section 73 and add the following certificate on the original document:-

xxx xxx xxx

(ii) If the parties fail to pay the deficit duty

under sub-rule (i), it shall be collected by the head of office. The amounts so collected shall be remitted to the Treasury under the following head of account by means of a challan.

xxx xxx xxx

(iii) If the parties failed to pay such deficit duties, the Inspector General of Registration and Stamps shall forward the original document to the Collector exercising powers under section 48 of the Indian Stamp Act, 1899 over the area for effecting recovery by coercive process. After the amounts are so collected, the procedure laid down in sub-rule (i) shall be followed.

(iv) In the absence of original documents, and on the basis of copies of such documents, if they are found to be not duly stamped, the procedure for collection of the duty as laid down in rule (iii) shall be followed :

4. If the parties are aggrieved by the levy of duties they may apply to the Inspector General of Registration and Stamps for revision before the certificate prescribed under rule 3 is added.

5. xxx xxx xxx

6. xxx xxx xxx

[For full text of Rules see Andhra Pradesh Gazette, Rules supplement to Part-II Extraordinary dated August 14, 1986 pp. 4-77.]

The Challenge

There were 25 writ petitions filed in the High Court. Out of these, 11 were by different banks. A few writ petitions were filed by institutions, corporate or incorporate bodies and a few were filed by sugar companies. The grievances arose because the documents executed between private parties and received and retained in the custody of the bank in ordinary course of their loan advancing transactions were inspected and then the banks were served with a request to remit the amount of deficit duty on the documents inspected and to recover the same from the parties concerned. The grievance of the sugar companies is that in the course of their business they were entering into agreements with the sugarcane growers selling sugarcane to the sugar companies in compliance with the provisions of A.P. Sugarcane Control Order, 1965 in the proforma prescribed by Control Order. Several agreements entered into in the prescribed proforma were treated as unstamped (though they were not liable to be stamped, in the submission of sugar companies) and therefore were sought to be impounded. The grievance of private persons is that the documents in their possession are sought to be inspected, impounded and levied with duty though they were not tendered in evidence nor produced before any public office.

A perusal of the judgment of the High Court shows that in holding the impugned Section 73 of the Act ultra vires of the Constitution and other provisions of the Indian Stamp Act, the High Court has arrived at four findings: firstly, that the amended Section 73 is inconsistent with the other provisions of the Act; secondly, that the provision is violative of the principles of natural justice; thirdly, the provision is arbitrary and unreasonable and hence violative of Article 14 of the Constitution; and fourthly, there are no guidelines provided for the exercise of power by the authorized persons under the

amended Section 73 which is either arbitrary and unreasonable or vitiated on account of excessive delegation of statutory powers.

During the course of hearing Mrs. K. Amareswari, the learned senior counsel for the appellants has vehemently attacked the correctness of the impugned judgment submitting that the A.P. Amendments are directed towards safeguarding the revenue of the State and striking at the evil of stamp duty evasion, and therefore the validity of such reasonable legislation was not liable to be questioned as unconstitutional. On the other hand, the learned counsel appearing for the respondents have defended the judgment of the High Court by reiterating the same grounds of attack on the constitutional validity of the impugned amendment as were urged in the High Court; of course enlarging the reach of submissions by developing the dimensions thereof. We will deal with the submissions so made before us.

Nature of stamp legislation

Stamp Act is a piece of fiscal legislation. Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation. However, fiscal statutes cannot be classed as such, operating as they do to impose burdens upon the public and are, therefore, construed strictly. A few principles are well settled while interpreting a fiscal law. There is no scope for equity or judiciousness if the letter of law is clear and unambiguous. The benefit of any ambiguity or conflict in different provisions of statute shall go for the subject. In Dowlatram Harji & Anr. Vs. Vitho Radhoti & Anr., (1881) 5 ILR (Bom) 188, the Full Bench indicated the need for balancing the harshness which would be inflicted on the subjects by implementation of the Stamp Law as against the advantage which would result in the form of revenue to the State; the latter may not be able to compensate the discontent which would be occasioned amongst the subjects.

The legislative competence of the State of Andhra Pradesh to amend and modify the Indian Stamp Act, a Central legislation, in its applicability to the State of Andhra Pradesh, has not been questioned and rightly so in view of the State enactment having been reserved for the consideration of the President and having received his assent under Article 254(2) of the Constitution. The attack is on the ground of unreasonableness, inconsistency and excessive delegation of powers and also on account of drastic powers having been conferred on executive authorities without laying down guidelines.

The provisions of Section 29 providing for the persons by whom duties are payable have been left untouched. So is with Section 31 dealing with 'adjudication as to proper stamp' which confers power on the Collector to adjudicate upon the duty with which a document shall be chargeable, though such document may or may not have been executed. The scheme of Section 31 involves an element of voluntariness. The person seeking adjudication must have brought the document to Collector and also applied for such adjudication. The document cannot be compelled to be brought before him by the Collector. Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person incharge of a public office. It is necessary that the document must have been produced or come before such authority or person incharge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound, vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted. None of these provisions have been amended by the State of Andhra Pradesh.

In Surajmull Nagoremull Vs Triton Insurance Co. Ltd., AIR

1925 PC 83, their Lordships of the Privy Council made it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials.

Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law. This has been the consistent view of the Courts. Illustratively, three decisions may be referred. In Mussammat Jai Devi Vs. Gokal Chand, 1906 (7) PLR 428, a document not duly stamped was produced in the Court by the plaintiff alongwith the plaint but the suit came to be dismissed for non-prosecution. It was held by the Full Bench that the document annexed with the plaint cannot be said to have been produced in the Court in evidence and the court had no jurisdiction to call for the same and impound it. In Munshi Ram Vs. Harnam Singh, AIR 1934 Lahore 637(1), the suit was compromised on the date of first hearing and decree was passed based on the compromise. The original entry in a bahi was not put in evidence and, therefore, the Special Bench held it was not liable to be impounded. In L. Puran Chand, Proprietor, Dalhousie Dairy Farm Vs. Emperor, AIR 1942 Lahore 257, the power to impound was sought to be exercised after the decision in the suit and when the document alleged to be not duly stamped had already been directed to be returned as not proved though it was not physically returned. The Special Bench held that the document was not available for being impounded.

Though an instrument not duly stamped may attract criminal prosecution under Section 62 of the Act but the Parliament and the Legislature have both treated it to be a minor offence punishable with fine only and not cognizable. Here again it is well settled that such offence is liable to be condoned by payment of duty and penalty on the document and no prosecution can be launched except in the case of a criminal intention to evade the Stamp Law or in case of a fraud and that too after giving the person liable to be proceeded against, an opportunity of being heard.

A bare reading of Section 73 as substituted by A.P. Act No.17 of 1986 indicates the infirmities with which the provision suffers. The provision empowers any person authorized in writing by the Collector to have access to documents in private custody or custody of a public officer without regard to the fact whether the documents are sought to be used before any authority competent to receive evidence and without regard to the fact whether such document would ever be voluntarily produced or brought before a public officer during the performance of any of his specified functions in his capacity as such. The power is capable of being exercised by such persons at all reasonable times and it is not preceded by any requirement of the reasons being recorded by the Collector or the person authorized for his belief necessitating search. The person authorized has been vested with authority to impound the document. It is only in case of documents in custody of any bank that an exception has been carved out for giving a 30 days previous notice to the bank to make good the deficit stamp duty before seizing and impounding the document. Not only there is no valid reason ? none pointed out either in the pleadings nor at the hearing ___ for drawing the distinction between a bank and other public office or any person having custody of document. Even in the case of a bank, the power to adjudicate upon the need for impounding the document has been vested in the person authorized. The provision does not lay down any guidelines for determining the person who can be authorized by the Collector to exercise the powers conferred by Section 73.

It is submitted on behalf of the respondents (writ petitioners in

the High Court) that impugned Section 73 (as applicable in Andhra Pradesh) interferes with the personal liberty of citizens inasmuch as it allows an intrusion into the privacy and property of the citizens. The instruments may have been kept in the residential accommodation of a person or may have been kept at a place belonging to the person and meant for the custody of the documents and both such places can be entered into by any person authorized in writing by the Collector. It was submitted that the provision is unreasonable and cannot be sustained on the constitutional anvil.

Right of privacy qua search and seizure - debate in other countries.

The right to privacy and the power of the State to 'search and seize' have been the subject of debate in almost every democratic country where fundamental freedoms are guaranteed. History takes us back to Semayne's case decided in 1603 (5 Coke's Rep. 91a) (77 Eng. Rep. 194) (KB) where it was laid down that 'Every man's house is his castle'. One of the most forceful expressions of the above maxim was that of William Pitt in the British Parliament in 1763. He said: "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter, the rain may enter - but the King of England cannot enter - all his force dare not cross the threshold of the ruined tenement".

When John Wilkes attacked not only governmental policies but the King himself pursuant to general warrants, State officers raided many homes and other places connected with John Wilkes to locate his controversial pamphlets. Entick, an associate of Wilkes, sued the State officers because agents had forcibly broken into his house, broke locked desks and boxes, and seized many printed charts, pamphlets and the like. In a landmark judgment in Entick v. Carrington: (1765) (19 Howells' State Trials 1029) (95 Eng Rep 807), Lord Camden declared the warrant and the behaviour as subversive 'of all the comforts of society' and the issuance of a warrant for the seizure of all of a person's papers and not those only alleged to be criminal in nature was 'contrary to the genius of the law of England'. Besides its general character, the warrant was, according to the Court, bad inasmuch as it was not issued on a showing of probable cause and no record was required to be made of what had been seized. In USA, in Boyd v. United States (1886) 116 US 616 (626), the US Supreme Court said that the great Entick judgment was 'one of the landmarks of English liberty\005.. one of the permanent monuments of the British Constitution'.

The Fourth Amendment in the US Constitution was drafted after a long debate on the English experience and secured freedom from unreasonable searches and seizures. It said:

"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Art. 12 of the Universal Declaration of Human Rights (1948) refers to privacy and it states:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks."

Art. 17 of the International Covenant of Civil and Political Rights (to which India is a party), refers to privacy and states that:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation."

The European Convention on Human Rights, which came into effect on Sept. 3, 1953, also states in Art. 8:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others."

The Canadian Charter of Rights and Freedoms declares: 'Everyone has the right to be secure against unreasonable search and seizure.'

The New Zealand Bill of Rights declares in sec. 21 that "everyone has the right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise".

Though the US Constitution contains a specific provision in the Fourth Amendment against 'unreasonable search and seizure', it does not contain any express provision protecting the 'right to privacy'. However, the US Supreme Court has culled out the 'right of privacy' from the other rights guaranteed in the US Constitution. In India, our Constitution does not contain a specific provision either as to 'privacy' or even as to 'unreasonable' search and seizure, but the right to privacy has, as we shall presently show, been spelt out by our Supreme Court from the provisions of Arts. 19(1)(a) dealing with freedom of speech and expression, Art. 19(1)(d) dealing with right to freedom of movement and from Art. 21 which deals with right to life and liberty. We shall first refer to the case law in US relating to the development of the right of privacy as these cases have been adverted to in the decisions of this Court.

Privacy right in US initially concerned 'property':

The American Courts trace the 'right to privacy' to the English common law which treated it as a right associated with 'right to property'. It was declared in Entick v. Carrington (1765) that the right of privacy protected trespass against property. Lord Camden observed:

"The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole\005\005. By the laws of England, every invasion

of private property, be it even so minute, is a trespass. No man can set foot upon my ground without my licence but he is liable to an action though the damage be nothing."

This aspect of privacy as a property right was accepted by the US Supreme Court in Boyd v. United States (1886) 116 US 616 (627) and other cases.

From right to property to right to person:

After four decades, in Olmstead vs. United States (1928) 277 US 438, which was a case of wire-tapping or electronic surveillance and where there was no actual physical invasion, the majority held that the action was not subject to Fourth Amendment restrictions. But, in his dissent, Justice Brandeis, stated that the Amendment protected the right to privacy which meant 'the right to be let alone', and its purpose was 'to secure conditions favourable to the pursuit of happiness', while recognizing 'the significance of man's spiritual nature, of his feelings and of his intellect'; the right sought 'to protect Americans in their beliefs, their thoughts, their emotions and their sensations'. The dissent came to be accepted as the law after another four decades.

When the right to personal privacy came up for consideration in Griswold v. State of Connecticut: (1965) 381 US 278), in the absence of a specific provision in the US Constitution, the Court traced the right to privacy as an emanation from the right to freedom of expression and other rights. In that case, Douglas, J. observed that the right to freedom of speech and press included not only the right to utter or to print, but also the right to distribute, the right to receive, and the right to read and that without these peripheral rights, the specific right would be less secure and that likewise, the other specific guarantees in the Bill of Rights have penumbras, forced by emanations from those guarantees which help give them life and substance. It was held that the various guarantees created zones of privacy and that protection against all government invasions "of the sanctity of man's house and the privacies of life" was fundamental. The learned Judge stated that 'privacy is a fundamental personal right, emanating from the totality of the constitutional scheme, under which we (Americans) live'.

The shift from property to person was clearly declared in Warden v. Heyden: (1967) 387 US 294 (304) as follows:

"\005 the premise that property interests control the right of the Government to search and seize has been discredited\005.. We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts."

Katz and 'reasonable expectation of privacy':

Thereafter, in Katz v. United States (1967) 389 US 347, there was a clearer enunciation when the majority laid down that the Fourth Amendment protected 'people and not places'. Harlan, J. in his concurring opinion said, - in a passage which has been held to be the distillation of the majority opinion - that the Fourth Amendment scrutiny would be triggered whenever official investigative activity invaded 'a reasonable expectation of privacy'. Although the phrase came from Justice Harlan's separate opinion, it is treated today as the essence of the majority opinion (Terry v. Ohio (1968) 392 US 1. (See Constitution and Criminal Procedure, First Principles by Prof. Akhil Amar, Yale University Press (1997), p. 183 fn.42).

Stevens, J. in Thornburgh v. American College of O & G (1986) 476 US 747 observed that 'the concept of privacy embodies the moral fact that a person belongs to himself and not to others nor to society as a whole'. The same learned Judge had said earlier in Whalen v. Roe (1977) 429 US 589 that the right embraces both a general 'individual interest in avoiding disclosure of personal matters' and a similarly general, - but nonetheless distinct - 'interest in independence in making certain kinds of important decisions'. Fried says in 'Privacy' (1968) Yale Law Journal 475 (at 477) that physical privacy is as necessary to 'relations of the most fundamental sort\005.respect, love, friendship and trust' as 'oxygen is for combustion'. A commentator in (1976) 64 Cal L Rev 1447 says that privacy centres round values of repose, sanctuary and intimate decision. Repose refers to freedom from unwanted stimuli; sanctuary to protection against intrusive observation; and intimate decision, to autonomy with respect to the most personal of life's choices. (Prof. Lawrence H. Tribe's treatise, 'American Constitutional Law', (1988), 2nd Ed, ch.15)

Prof. Tribe says (ibid, p 1306) that to make sense for constitutional law out of the smorgasbord of philosophy, sociology, religion and history upon which our understanding of humanity subsists, we must turn from absolute propositions and dichotomies so as to place each allegedly protected act and each illegitimate intrusion, in a social context related to the Constitution's test and structure. He says (p 1307) that 'exclusion of illegitimate intrusions into privacy depends on the nature of the right being asserted and the way in which it is brought into play; it is at this point that context becomes crucial - to inform substantive judgment'. If these factors are relevant for defining the right to privacy, they are quite relevant - whenever there is invasion of that right by way of searches and seizures at the instance of the State. In New Zealand, in the watershed case of R v. Jeffries (1994) (1) NZLR 290 (CA), Robertson, J. stated that the reasonableness of a search and seizure would depend upon the subject \026 matter and the unique combination of 'time, place and circumstances'. The Court made a distinction between illegality and reasonableness of the search or seizure, in the context of sec. 21 of the N.Z. Bill of Rights, 1990. It said 'a search may be legal but unreasonable; it may be illegal but reasonable'. Probably, what was meant was that a search under a Court warrant may be lawful but the manner in which it is executed may be unreasonable. Likewise, there may be very rare exceptions where a search and seizure operation is conducted without a warrant on account of a sense of grave urgency for preventing danger to life or property or where delay in procuring a warrant may indeed result in the evidence vanishing but still the search or seizure might have been conducted in a reasonable manner.

As to privacy of the home, the same has been elaborated. Chief Justice Burger stated in United States v. Orito: (1973) 413 US 139 that the Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, childbearing and education. Prof. Tribe states (p. 1412) that indeed, privacy of the home has the longest constitutional pedigree of the lot, "for the sanctity of the home\005 has been embedded in our traditions since the origins of the Republic"; when we retreat across the threshold of the home, inside, the government must provide escalating justification if it wishes to follow, monitor or control us there. In Stanley v. Georgia: (1969)394 US 557 it was declared that however free the State may be to ban the public dissemination of constitutionally unprotected obscene materials, the State cannot criminalize the purely private possession of such material at home - "The state has no business telling a man sitting alone in his own house, what books he may read

or what films he may watch".

The above discussion shows that in the United States principles regarding protection of privacy of the home have been put on strong basis and the right is treated as a personal right distinct from a right to property. The right is, however, not absolute though any intrusion into the right must be based upon probable cause as stated in the Fourth Amendment.

Intrusion into privacy may be by - (1) legislative provisions, (2) administrative/executive orders and (3) judicial orders. The legislative intrusions must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the Court can go into the proportionality of the intrusion vis-'-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case. (3) As to Judicial warrants, the Court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular state interest. In addition, as stated earlier, common law recognized rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property.

Development of law in India:

The earliest case in India to deal with 'privacy' and 'search and seizure' was M.P. Sharma v. Satish Chandra (1954 SCR 1077) in the context of Art. 19(1)(f) and Art. 20(3) of the Constitution of India. The contention that search and seizure violated Art. 19(1)(f) was rejected, the Court holding that a mere search by itself did not affect any right to property, and though seizure affected it, such effect was only temporary and was a reasonable restriction on the right. The question whether search warrants for the seizure of documents from the accused were unconstitutional was not gone into. The Court, after referring to American authorities, observed that in US, because of the language in the Fourth Amendment, there was a distinction between legal and illegal searches and seizures and that such a distinction need not be imported into our Constitution. The Court opined that a search warrant was addressed to an officer and not to the accused and did not violate Art. 20(3). In the present discussion the case is of limited help. In fact, the law as to privacy was developed in latter cases by spelling it out from the right to freedom of speech and expression in Art 19(1)(a) and the right to 'life' in Art. 21.

Two latter cases decided by the Supreme Court of India where the foundations for the right were laid, concerned the intrusion into the home by the police under State regulations, by way of 'domiciliary visits'. Such visits could be conducted any time, night or day, to keep a tag on persons for finding out suspicious criminal activity, if any, on their part. The validity of these regulations came under challenge. In the first one, Kharak Singh v. State of UP, 1964(1) SCR 332, the UP Regulations regarding domiciliary visits were in question and the majority referred to Munn v. Illinois (1876) 94 US 113 and held that though our Constitution did not refer to the right to privacy expressly, still it can be traced from the right to 'life' in Art. 21. According to the majority, Clause 236 of the relevant Regulations in UP, was bad in law; it offended Art. 21 inasmuch as there was no law permitting interference by such visits. The majority did not go into the question whether these visits violated the 'right to privacy'. But, Subba Rao J while concurring that the fundamental right to privacy was part of the right to liberty in Art. 21, part of the right to freedom of speech and expression in Art. 19(1)(a), and also of the right to movement in Art. 19(1)(d), held that the Regulations permitting surveillance violated the fundamental right of privacy. In the discussion the learned Judge

referred to Wolf v. Colorado: (1948) 338 US 25. In effect, all the seven learned Judges held that the 'right to privacy' was part of the right to 'life' in Art. 21.

We now come to the second case, Govind v. State of MP [1975] 2 SCC 148, in which Mathew, J. developed the law as to privacy from where it was left in Kharak Singh. The learned Judge referred to Griswold v. Connecticut (1965) 381 US 479 where Douglas, J. referred to the theory of penumbras and peripheral rights and had stated that the right to privacy was implied in the right to free speech and could be gathered from the entirety of fundamental rights in the constitutional scheme, for, without it, these rights could not be enjoyed meaningfully. Mathew, J. also referred to Jane Roe v. Henry Wade (1973) 410 US 113 where it was pointed out that though the right to privacy was not specifically referred to in the US Constitution, the right did exist and "roots of that right may be found in the First, Fourth and Fifth Amendments, in the penumbras of the Bill of rights, in the Ninth Amendment, and in the concept of liberty guaranteed by the first section of the Fourteenth Amendment'. Mathew, J. stated that, however, the 'right to privacy was not absolute' and that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness as explained in Olmstead v. United States (1927) 277 US 438 (471); the privacy right can be denied only when an 'important countervailing interest is shown to be superior', or where a compelling State interest was shown. (Mathew, J. left open the issue whether moral interests could be relied upon by the State as compelling interests). Any right to privacy, the learned Judge said, (see para 24) must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child bearing. This list was however not exhaustive. He explained (see para 25) that, if there was State intrusion there must be 'a reasonable basis for intrusion'. The right to privacy, in any event, (see para 28) would necessarily have to go through a process of case-by-case development.

Coming to the particular UP Regulations 855 and 856, in question in Govind, Mathew, J. examined their validity (see para 30). These, according to him, gave large powers to the police and needed, therefore, to be read down, so as to be in harmony with the Constitution, if they had to be saved at all. 'Our founding fathers were thoroughly opposed to a Police Raj!' he said. Therefore, the Court must draw boundaries upon these police powers so as to avoid breach of constitutional freedoms. While it could not be said that all domiciliary visits were unreasonable (see para 31), still while interpreting them, one had to keep the character and antecedents of the person who was under watch as also the objects and limitations under which the surveillance could be made. The right to privacy could be restricted on the basis of compelling public interest. The learned Judge noticed that unlike non-statutory regulations in Kharak Singh, here Regulation 856 was 'law' (being a piece of subordinate legislation) and hence it could not be said in this case that Art.21 was violated for lack of legislative sanction. The law was very much there in the form of these Regulations. Regulations 853(1) and 857 prescribed a procedure that was 'reasonable'. So far as Regulation 856 was concerned, it only imposed reasonable restrictions within Art. 19(5) and there was, even otherwise, a compelling State interest. Regulations 853(1) and 857 referred to a class of persons who were suspected as being habitual criminals, while Regulation 857 classified persons who could reasonably be held to have criminal tendencies. Further Regulation 855, empowered surveillance only of persons against whom reasonable materials existed for the purpose of inducing an opinion that they show a determination to lead a life of crime. The Court thus read down the Regulations and upheld them for the above reasons.

We have referred in detail to the reasons given by Mathew, J. in

Govind to show that, the right to privacy has been implied in Art. 19(1)(a) and (d) and Art. 21; that, the right is not absolute and that any State intrusion can be a reasonable restriction only if it has reasonable basis or reasonable materials to support it.

A two-judges Bench in R. Rajagopal Vs. State of Tamil Nadu (1994) 6 SCC 632 held the right of privacy to be implicit in the right to life and liberty guaranteed to the citizens of India by Article 21. "It is the right to be let alone". Every citizen has a right to safeguard the privacy of his own. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed. The right to privacy has since been widely accepted as implied in our Constitution, in other cases, namely, PUCLVs. Union of India, (1997) 1 SCC 301; Mr. X Vs. Hospital 'Z', (1998) 8 SCC 296; People's Union for Civil Liberties Vs. Union of India, (2003) 4 SCC 399; Sharda Vs. Dharmpal, (2003) 4 SCC 4931.

The impugned provision of the A.P. Amendment on anvil :

It is in the background of the above, the validity of sec. 73 of the Stamp Act, 1899 falls to be decided.

The text of Sec.73 Indian Stamp Act and the text as amended in its application to State of A.P. have been set out in the earlier part of the judgment.

It will be seen that under sec.73, the Collector could inspect the 'registers, books, records, papers, documents or proceedings' in the public office. Obviously, this meant that the inspection must relate to 'public documents' in the custody of the public officer or to public record of private documents available in his office. The inspection could be carried out only by a person authorized __ in writing __ by the Collector. The purpose of inspection has to be specific and has to be based upon a belief that (i) such inspection may tend to secure any (stamp) duty, or (ii) it may tend to prove any fraud or omission in relation to any duty or (iii) it may tend to lead to the discovery of any fraud or omission in relation to any duty.

The above provisions have remained in sec. 73 even after the A.P. Amendment of 1986. The validity of the unamended provisions of sec.73 of the Stamp Act, 1899 is not in issue before us. It is a pre-constitutional law. It is obvious that in its operation after the commencement of the Constitution, even the unamended sec.73 must conform to the provisions of Part III of our Constitution.

When public record in the Sub-Registrar's Office or a Bank or for that matter any other public office is inspected for the purposes referred to in the impugned sec.73, the public officer may indeed have no objection for such inspection. But, as in the case before us, in the context of a Bank which either holds the private documents of its customers or copies of such private documents, the question arises whether disclosure of the contents of the documents by the Bank would amount to a breach of confidentiality and would, therefore, be violative of privacy rights of its customers?

Bank and its customers __ confidentiality of relationship

It cannot be denied that there is an element of confidentiality between a Bank and its customers in relation to the latter's banking transactions. Can the State have unrestricted access to inspect and seize or make roving inquiries into all Bank records, without any reliable information before it prior to such inspection? Further, can the Collector authorize 'any person' whatsoever to make the inspection, and permit him to take notes or extracts? These questions arise even in relation to the sec.73 and have to be decided in the context of privacy rights of customers.

There has been a great debate in the US about privacy in respect of Bank records and inspection thereof by the State. In United States Vs. Miller, (1976) 425 US 435, the majority of the Court laid down that once a person passes on cheques etc. to a Bank, which indeed is in a position of a third party, the right to privacy of the document is no longer protected. In that case, the respondent, who had been charged with various federal offences, made a pre-trial motion to suppress microfilms of cheques, deposit slips and other records relating to his accounts with two Banks, which maintained records relating to (US) Bank Secrecy Act, 1970. He contended that the subpoenas duces tecum pursuant to which the material had been produced by the Banks, were defective and that the records had thus been illegally seized in violation of the Fourth Amendment. The request was denied by the trial Court, the Respondent was tried and convicted. The Court of Appeals reversed, holding that the subpoened documents fell within the constitutionally protected zone of privacy. On further appeal, the US Supreme Court restored the conviction holding that, once the documents reached the hands of a third party, namely, the Bank, the Respondent ceased to possess any Fourth Amendment interest in the Bank records that could be vindicated by a challenge to the subpoenas, that the materials were business records of the banks and not the respondents' private papers; that, there was no legitimate 'expectation of privacy' (as stated in Katz) in the contents of the original cheques and deposit slips, since the cheques were "not confidential communications" but negotiable instruments to be used in commercial transactions and the documents contained only information voluntarily conveyed to the Banks which was exposed to the employees in the ordinary course of business. The Court laid down a new principle of "assumption of risk". It said the "depositor takes the risk, in revealing his affairs to another". The Court declared that the Fourth Amendment did not prohibit the obtaining of information revealed to a third party and conveyed by that party to government authorities. Once the person who had the privacy right "assumed the risk" of the information being conveyed to the outside world by the Bank, he could make no kind of complaint.

The above decision led to a serious criticism by jurists (See 'A' below) that the broad proposition, namely, that once a person conveyed confidential documents to a third party, he would lose his privacy rights, was wrong and was based on the old concept of treating the right of privacy as one attached to property whereas the Court had, in Katz accepted that the privacy right protected 'individuals and not places'; Congress came forward with the Right to Financial Privacy Act, 1978 (Pub L No.95-630) which provided several safeguards to secure privacy, __ namely __ requiring reasonable cause and also enabling the customer to challenge the summons or warrant in a Court of law before it could be executed; (See (B) below) (We do not mean to say that any law which is not on those lines is invalid. Indian laws such as s.132 etc. of the Indian Income Tax Act, 1961; or secs. 91, 165 and 166 of the Criminal Procedure Code, 1973 as to search and seizure have, as stated below, been extensively considered by the Courts in India and have been held to be valid).

(A) Criticism of Miller: (i) The majority in Miller laid down that a customer who has conveyed his affairs to another had thereby lost his privacy rights. (i) Prof. Tribe states in his treatise (see p.1391) that this theory reveals 'alarming tendencies' because the Court has gone back to the old theory that privacy is in relation to property while it has laid down that the right is one attached to the person rather than to property. If the right is to be held to be not attached to the person, then 'we would not shield our account balances, income figures and personal telephone and address books from the public eye, but might instead go about with the information written on our 'foreheads or our bumper stickers'. He observes that the majority in Miller confused

'privacy' with 'secrecy' and that "even their notion of secrecy is a strange one, for a secret remains a secret even when shared with those whom one selects for one's confidence". Our cheques are not merely negotiable instruments but yet the world can learn a vast amount about us by knowing how and with whom we have spent our money. Same is the position when we use the telephone or post a letter. To say that one assumes great risks by opening a bank account appeared to be a wrong conclusion. Prof. Tribe asks a very pertinent question (p. 1392):

"Yet one can hardly be said to have assumed a risk of surveillance in a context where, as a practical matter, one had no choice. Only the most committed - and perhaps civilly committable \026 hermit can live without a telephone, without a bank account, without mail. To say that one must take a bitter pill with the sweet when one licks a stamp is to exact a highly constitutional price indeed for living in contemporary society".

He concludes (p. 1400):

"In our information-dense technological era, when living inevitably entails leaving not just informational footprints but parts of one's self in myriad directories, files, records and computers, to hold that the Fourteenth Amendment did not reserve to individuals some power to say when and how and by whom that information and those confidences were to be used, would be to denigrate the central role that informational autonomy must play in any developed concept of the self."

(ii) Prof. Yale Kamisar (again quoted by Prof. Tribe) (p.1392) says: "It is beginning to look as if the only way someone living in our society can avoid 'assuming the risk' that various intermediate institutions will reveal information to the police is by engaging in drastic discipline, the kind of discipline of life under totalitarian regimes".

This reminds us of what Mathew, J. said in Govind, that we are not living in a police-Raj.

(iii) Richard Alexander, a jurist-lawyer in an article published in South West University Law Review (1978) Vol.10 (pp.13-33), titled, 'Privacy, Banking Records and Supreme Court: A Before and After Look at Miller', says:

"The Supreme Court (in Miller) followed the old property interest line of analysis under the Fourth Amendment, ... such confidentiality is due to the longstanding recognition that the information contained in such records is highly personal . . . . . In the light of the liberty given to the government to inspect banking records through use of administrative summonses, it is impossible to reconcile Miller with Katz and Griswold . . . . . The United States Supreme Court rejected the Katz's 'justifiable expectation of privacy' analysis and opted for a mechanical 'property interest' analysis which is unwieldy in its application to twentieth century technology."

(iv) Polyviou G. Polyviou in his book 'Search and Seizure' (Duckworth, 1982) in an exhaustive discussion on Miller (pp.67 to 71) concludes that "Miller, partly through reliance on property considerations and partly through insensitive application of a rigid 'misplaced confidence' doctrine, has brought about a 'highly questionable' gap in Fourth Amendment coverage".

(v) La Fave in his book 'Search and Seizure' (1978) (quoted by Polyviou) calls the Miller decision as 'pernicious' and characterizes its reasoning as 'woefully inadequate'.

(vi) Profs. Jackson and Tushnet in 'Comparative Constitutions Law' (2001) say (p.404) that "in the USA the Fourth Amendment to the Constitution bars police from conducting 'unreasonable' searches, but the Supreme Court has been willing to stamp nearly every troublesome form of police activity as either not a search or not unreasonable. Oddly enough, the Court has made the law in this area nearly unintelligible . . . . . "

(vii) In this connection, two other articles, the 'Note, Government Access to Bank Records' (1974) 83 Yale Law Journal 1439 and 'A Bank customer has no reasonable expectation of Privacy of Bank Records', United States v. Miller: 14 San Diego L. Rev (1974) are also relevant. (quoted by Polyvious G. Polyviou P.67)

(B) We shall next refer to the response by Congress to Miller. (As stated earlier, we should not be understood as necessarily recommending this law as a model for India). Soon after Miller, Congress enacted the 'Right to Financial Privacy Act, 1978 (Public Law No.95-630) 12 USC with ss.3401 to 3422). The statute accords customers of Banks or similar financial institutions, certain rights to be notified of and a right to challenge the actions of government in Court at an anterior stage before disclosure is made. Sec.3401 of the Act contains 'definitions'. Sec. 3402 is important, and it says that 'except as provided by sec. 3403(c) or (d), 3413 or 3414, - no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and that (1) such customer has authorized such disclosure in accordance with sec. 3404; (2) such records are disclosed in response to (a) administrative subpoenas or summons to meet requirement of sec. 3405; (b) the requirements of a search warrant which meets the requirements of sec.3406; (c) requirements of a judicial subpoena which meets the requirement of sec. 3407 or (d) the requirements of a formal written requirement under sec. 3408. If the customer decides to challenge the Government's access to the records, he may file a motion in the appropriate US District Court, to prevent such access. The Act also provides for certain specific exceptions.

While we are on (B), it is necessary to make a brief reference to sec. 93(1) of the Code of Criminal Procedure, 1973 which deals with power of the Court to issue 'search warrants' (a) where the Court has 'reason to believe' that a person to whom a summons or order under sec.91 or a requisition under sec. 92(1) has been, or might be, addressed, - will not or would not produce the document or thing as required by summons or requisition, or (b) where such document or thing is not known to the Court to be in the possession of any person, or (c) where the Court considers that the purposes of any inquiry, trial or other proceeding under the Code, will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions contained in the Code. Under sec.93(2), the Court may, if it thinks fit, specify in the warrant, the place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or

inspect only the place or part so specified. Under sec.93(2), a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority, has to be issued by the District Magistrate or Chief Judicial Magistrate.

Sec. 165 of the Code deals with the power of a police officer to search. Under sec. 165(1) he must have reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence, which he is authorized to investigate, may be found in any place within the limits of the police station and that such thing cannot, in his opinion, be otherwise obtained without undue delay. He has to record the grounds of his belief in writing and specify, so far as possible, the thing for which search is made. Sec.166 refers to the question as to when an officer-in-charge of a police station may require another to issue search warrant.

In the Income-tax Act, 1961 elaborate provisions are made in regard to 'search and seizure in sec.132; power to requisition books of account etc. in sec. 132A; power to call for information as stated in sec. 133. Sec. 133(6) deals with power of officers to require any Bank to furnish any information as specified there. There are safeguards. Sec.132 uses the words "in consequence of information in his possession, has reason to believe". Sec. 132(1A) uses the words "in consequence of information in his possession, has reason to suspect". Sec. 132(13) says that the provisions of the Code of Criminal Procedure, relating to searches and seizure shall apply, so far as may be, to searches and seizures under sec. 132(1) and 132(1A). There are also Rules made under sec.132(14). Likewise sec. 132A(1) uses the words "in consequence of information in his possession, has reason to believe". Sec. 133 which deals with the power to call for information from Banks and others uses the words "for the purpose of this Act" and sec. 133(6) permits a requisition to be sent to a Bank or its officer. There are other Central and State statutes dealing with procedure for 'search and seizure' for the purposes of the respective statutes.

Under all these enactments, there are several judgments of this Court explaining the scope of the provisions, and the safeguards provided by those provisions while upholding their constitutional validity and pointing out their limitations. It is not necessary in this case to refer to those judgments. Suffice it to say that, in the present case we are concerned mainly with the validity of sec. 73 of the Stamp Act, as amended in its application in 1986 in A.P.

Once we have accepted in Govind and in latter cases that the right to privacy deals with 'persons and not places', the documents or copies of documents of the customer which are in Bank, must continue to remain confidential vis-'-vis the person, even if they are no longer at the customer's house and have been voluntarily sent to a Bank. If that be the correct view of the law, we cannot accept the line of Miller in which the Court proceeded on the basis that the right to privacy is referable to the right of 'property' theory. Once that is so, then unless there is some probable or reasonable cause or reasonable basis or material before the Collector for reaching an opinion that the documents in the possession of the Bank tend, to secure any duty or to prove or to lead to the discovery of any fraud or omission in relation to any duty, the search or taking notes or extracts therefore, cannot be valid. The above safeguards must necessarily be read into the provision relating to search and inspection and seizure so as to save it from any unconstitutionality.

Secondly, the impugned provision in sec. 73 enabling the Collector to authorize 'any person' whatsoever to inspect, to take notes or extracts from the papers in the public office suffers from the vice of excessive delegation as there are no guidelines in the Act and

more importantly, the section allows the facts relating to the customer's privacy to reach non-governmental persons and would, on that basis, be an unreasonable encroachment into the customer's rights. This part of the Section 73 permitting delegation to 'any person' suffers from the above serious defects and for that reason is, in our view, unenforceable. The State must clearly define the officers by designation or state that the power can be delegated to officers not below a particular rank in the official hierarchy, as may be designated by the State.

The A.P. amendment permits inspection being carried out by the Collector by having access to the documents which are in private custody i.e. custody other than that of a public officer. It is clear that this provision empowers invasion of the home of the person in whose possession the documents 'tending' to or leading to the various facts stated in sec. 73 are in existence and sec. 73 being one without any safeguards as to probable or reasonable cause or reasonable basis or materials violates the right to privacy both of the house and of the person. We have already referred to R. Rajagopal's case wherein the learned judges have held that the right to personal liberty also means the life free from encroachments unsustainable in law and such right flowing from Article 21 of the Constitution.

In Smt. Maneka Gandhi Vs. Union of India & Anr., (1978) 1 SCC 248 ___ a 7-Judges Bench decision, P.N. Bhagwati, J. (as His Lordship then was) held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status distinguishing as fundamental rights and give additional protection under Article 19 (emphasis supplied). Any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

The constitutional validity of the power conferred by law came to be decided from yet another angle in the case of Air India Vs. Nergesh Meerza & Ors., (1981) 4 SCC 335, it was held that a discretionary power may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or norms, the power has to be struck down as being violative of Article 14.

An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence and it cannot be acted upon by that person or by any public officer. This is the penalty which is imposed by law on the person who may seek to claim any benefit under an instrument if it is not duly stamped. Once detected the authority competent to impound the document can recover not only duty but also penalty, which provision, protects the interest of revenue. In the event of there being criminal intention or fraud, the persons responsible may be liable to be prosecuted. The availability of these provisions, in our opinion adequately protects the interest of revenue. Unbridled power available to be exercised by any person whom the Collector may think proper to authorize without laying down any guidelines as to the persons who may be authorized and without recording the availability of grounds which would give rise to the belief, on the existence where of only, the power may be

exercised deprives the provision of the quality of reasonableness. Possessing a document not duly stamped is not by itself any offence. Under the garb of the power conferred by Section 73 the person authorized may go on rampage searching house after house i.e. residences of the persons or the places used for the custody of documents. The possibility of any wild exercise of such power may be remote but then on the framing of Section 73, the provision impugned herein, the possibility cannot be ruled out. Any number of documents may be inspected, may be seized and may be removed and at the end the whole exercise may turn out to be an exercise in futility. The exercise may prove to be absolutely disproportionate with the purpose sought to be achieved and, therefore, a reasonable nexus between stringency of the provision and the purpose sought to be achieved ceases to exist.

The abovesaid deficiency pointed out by the High Court and highlighted by the learned counsel for the respondents in this Court has not been removed even by the rules. The learned counsel for the respondents has pointed out that under the Rules the obligation is cast on the bank or any other person having custody of the documents though it may not be a party to the document, to pay the duty payable on the documents in order to secure release of the documents.

For the foregoing reasons we agree with the view taken by the High Court that Section 73 of the Indian Stamp Act as amended in its application to the State of Andhra Pradesh by Andhra Pradesh Act No. 17 of 1986 is ultra vires the Constitution. As we do not find any infirmity in the judgment of the High Court all the appeals are dismissed.