P L D 2003 Lahore 310

Before M. Javed Buttar, J

Mrs. AMATUL JALIL KHAWAJA---Petitioner

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Interior, Islamabad and 3 others---Respondents

Writ Petition No.62 of 2003, decided on 17th February, 2003.

(a) Security of Pakistan Act (XXXV of 1952)---

----Preamble---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Doctrine of implied repeal---Applicability---Scope---Contention was that Security of Pakistan Act, 1952 was a dead law because of its implied repeal due to subsequent promulgation of Defence of Pakistan Ordinance, 1965 and Defence of Pakistan Ordinance. 1971 and due to its resultant non-existence because of the non-validation of the Security of Pakistan (Amendment) Ordinance, 1955 in time, by the Federal Legislature---Validity---Held, Defence of Pakistan Ordinance, 1971 was no more in existence as it was repealed by Defence of Pakistan (Repeal) Ordinance, 1977, therefore there was no repeal by implication---Even if it was presumed that the Security of Pakistan Act, 1952 stood repealed by implication because of the promulgation of Defence of Pakistan Ordinance, 1971, the repeal of Defence of Pakistan Ordinance, 1971 on 15-9-1977, resulted in the restoration of original law i.e. Security of Pakistan Act, 1952---Factors.

Federation of Pakistan and others v. M. Nawaz Khokhar and others PLD 2000 SC 26; Pir Sabir Shah v. Shad Muhammad Khan, Member, Provincial Assembly, N.-W.F.P. and another PLD 1995 SC 66 and Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad v. The General Public PLD 1988 SC 645 rel.

(b) Interpretation of statutes---

---- Presumption that Legislature passed the law in ignorance of the fact that the relevant law on the subject had already expired---Validity---Such presumption was misconceived as no such presumption could be attached to the Acts passed by the Legislature---Legislature enacts lays with a complete knowledge of all existing laws pertaining to the same subject---Failure to add a repealing clause indicated that the intent was not to repeal any existing Legislation.

Crawford's Statutory Constructions, 1st Edn., p.631 ref.

(c) Security of Pakistan Act (XXXV of 1952)---

----S. 3(1)---Constitution of Pakistan (1973), Art.199---Constitutional jurisdiction of High Court---Scope---Preventive detention ---Concept-- Essentials---Detaining Authority could not refuse the production of the material before the Court upon which the said Authority claimed to have been satisfied in terms of S.3(1) of the Security of Pakistan Act, 1952---Such Authority. however, at the most could claim privilege and request for holding the proceedings in camera.

The law of preventive detention, as it is understood today is that--

(i) the "satisfaction" of the detaining authority must be a state of mind, which has been induced by the existence of reasonable grounds of such satisfaction and therefore, the power of an Authority is not immune to judicial review subject to the right of the State to claim privilege in respect of secret information and the Court's power to hold proceedings in camera,

(ii) the existence of reasonable grounds is essential and a mere declaration for satisfaction is not sufficient,

(iii) the detaining authority is expected to exercise the public power of apprehension and detention in accordance with law as enjoined by Constitution and not arbitrarily or perversely and therefore the detaining authority can be required by the Court to show that reasonable grounds existed,

(iv) merely the subjective satisfaction of detaining authority will not be sufficient to protect the order of detention and the mere production of an order of a detaining authority, declaring that he was "satisfied" cannot be held to be sufficient to satisfy the Court and the Court has to see that the Executive or Administrative Authority had before it sufficient material upon which a reasonable person could have come to the conclusion that the requirements of the law were satisfied,

(v) the Court can in the proper exercise of its Constitutional duty, insist upon the disclosure of the material upon which the Authority had so acted so that it can satisfy itself that the Authority has not acted in an unlawful manner,

(vi) it can no longer be regarded as sufficient for the Executive Authority merely to produce its order saying that it is satisfied. It must also place before a Court the material upon which it so claims to have been satisfied so that the Court, in the discharge of its Constitutional duty, be in turn satisfied that the detenu is not being held without lawful authority or in an unlawful manner,

(vii) not only the jurisdiction of the detaining authority but also the manner of the exercise of that jurisdiction is subject to judicial review,

(viii) the question whether there are grounds upon which a reasonable person would have formed same opinion as that formed by detaining authority, is within the ambit of Constitutional power of judicial review, which power cannot be abridged or taken away by a sub constitutional legislation,

(ix) it cannot be argued that unless the mala fides is established the detaining authority cannot be called upon to disclose the material upon which he has based his opinion because the action taken upon no ground at all or without application of mind of the detaining authority would also not qualify as action in accordance with law and would therefore have to be struck down as being action taken in an unlawful manner,

(x) the Court can satisfy itself that the action taken is not a mere colourable exercise of power or the fraud upon the statute and reasonableness has to be established,

(xi) where there are no grounds or the grounds are such that no reasonable person would have acted then that is a case in which the Court in the exercise of its Constitutional power under clause (b)(i) of Article 199(1) of the Constitution can declare the act to have been done in an unlawful manner.

It is thus apparent that detaining Authority could not refuse the production of the material before the High Court, upon which it so claimed to have been satisfied in terms of section 3(1) of the Security of Pakistan Act, 1952. At the most, it could have claimed privilege and requested for holding of the proceedings in camera.

Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan and others PLD 1999 SC 57 distinguished.

(d) Security of Pakistan Act (XXXV of 1952)---

----S. 6(1)---Constitution .of Pakistan (1973), Art.199---Constitutional jurisdiction of High Court---Scope---Provision of S.6(1), Security of Pakistan Act, 1952 does not provide that Court cannot require the detaining Authority to disclose the necessary facts---Section 6(1) of the said Act merely means that the detaining Authority cannot be required by the detenue to disclose the facts which it considers to be against the public interest to disclose---Proviso of S.6(1) of the Act therefore, has not in any manner abridged or taken away the power of High Court of judicial review under Art. 199 of the Constitution---Refusal of detaining Authority to decide the detenue's representation on the ground of pendency of Constitutional petition in the High Court especially when it was directed by the High Court to decide the same by a specified date, amounted to refusal of a lawful jurisdiction.

Section 6(1) of the Security of Pakistan Act, 1952 does not provide that the Court cannot require the detaining Authority to disclose the necessary facts. It merely means that the detaining Authority cannot be required by the detenue to disclose the facts which it considers to be against the public interest to disclose. It was held that the question whether there are grounds upon which a reasonable person would have formed same opinion as that formed by detaining Authority, was within the ambit of power of judicial review under clause (b)(i) of Article 199(1) of the Constitution which power cannot be abridged or taken away by a sub-constitutional legislation. Therefore it cannot be argued that proviso of section 6(1) of the Security of Pakistan Act, 1952 has in any manner abridged or taken away the power of Court of judicial review under Article 199 of the Constitution.

Refusal of detaining Authority to decide the detenue's representations, merely on the ground of the pendency of writ petition in High Court especially when it was directed by High Court to decide the same amounted to refusal to exercise a lawful jurisdiction.

Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri PLD 1969 SC 14 rel.

(e) Security of Pakistan Act (XXXV of 1952)----

----S. 6(1)---Constitution of Pakistan (1973), Art.199---Constitutional petition---Refusal of detaining Authority to decide the detenue's representation on the ground of pendency of Constitutional petition in the High Court especially when it was directed by the High Court to decide the same by a specified date, amounted to refusal of a lawful jurisdiction.

(f) Security of Pakistan Act (XXXV of 1952)----

----Ss. 3(1) & 6(1)---Constitution of Pakistan (1973), Art.199-- Constitutional petition---Preventive detention---Validity---Material which was produced before the High Court by the detaining Authority had not established the allegations leveled against the detenues and there seemed to exist no reasonable ground against the detenues upon which a reasonable person could come to the conclusion that requirements of law were satisfied in passing the detention order against them ---Detenues had been detained merely because of suspicion due to their close relationship with other detenues and the suspicion could not be equated with "satisfaction"-- Detention order to the extent of such detenues was therefore liable to be set aside and they were entitled to be set at liberty at once.

(g) Security of Pakistan Act (XXXV of 1952)-----

----Ss. 3(1) & 6(1)---Constitution of Pakistan (1973), Arts. 199 & 40-- Constitutional petition---Preventive detention---Validity---Enough material was available on record, unearthed during the investigation, recoveries effected from the detenues and the evidence collected, which prima facie established the connection of detenues with a Terrorist Organisation as declared by the United Nations Security Council, and Pakistan being a Member State of the United Nations and Signatory of United Nations Resolutions and Conventions, said Organization was treated a terrorist organization in Pakistan---Detaining Authority, therefore could validly pass a detention order under S.3(1) of the Security of Pakistan Act. 1952 if such Authority was reasonably "satisfied" that the persons to be detained had connection with the said Terrorist Organization---Federation of Pakistan (detaining Authority) was under an obligation under Art.40 of the Constitution to take necessary steps to promote international peace and security and thus detention order to the extent of such persons was justifiable---High Court, however, made it clear that any observation by the Court in the present case shall not affect the proceedings in other connected cases.

Mrs. Arshad Ali Khan v. Government of Punjab through Secretary Home 1994 SCMR 1532; Mir Abdul Baqi Baluch v. Government of Pakistan and others PLD 1969 Kar. 87; Government of East Pakistan v. Mrs. Rowshan Bijaya Shaukat Ali Khan PLD 1966 SC 286; Maulvi Farid Ahmed v. Government of West Pakistan PLD 1965 (W.P.) Lah. 135; Malik Ghulam Jalani v. Government of West Pakistan through the Home Secretary, Lahore and another PLD 1967 SC 373; Mir Abdul Baqi Baluch v. The Government of Pakistan through the Cabinet Secretary, Rawalpindi and others PLD 1968 SC 313: Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri PLD 1969 SC 14; Major Mehtab v. The Rehabilitation Authority and another PLD 1973 SC 451; Goodwin v. Phillips (1907) 7 CLR 1; Kutner v. Phillips (1891) 2 QB 267; Government of West Pakistan v. Haider Bakhsh Jatoi and another PLD 1969 SC 210; Dr. Muhammad Shoaib Suddle v. Province of Sindh through Secretary, Home Department Sindh, Civil Secretariat, Karachi and others 1999 PCr.LJ 747: Khadija Bhabha v. Province of Sindh through the Secretary to the Government of Sindh, Home Department, Karachi and 2 others PLD 1973 Kar. 421; Government of Sindh through the Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others 1994 SCMR 1283; State v. Zahoor Elahi PLD i977 SC 394: Federation of Pakistan v. Malik Ghulam Jilani PLD 1974 SC 402: Haji Muhammad Shabbir Ahmed Khan v. Federation of Pakistan through Attorney-General for Pakistan and another PLD 2001 SC 18: Al-Qur'an: Surah 9, AI-Tawbah, Verse 38; Surah 4: AI-Nisa, Verses 75. 95; Surah 2: AI-Baqarah, Verse 193: Lahore Improvement Trust v. The Custodian; Evacuee Property, West Pakistan, Lahore and 4 others PLD 1971 SC 81 1; Tanvir A. Qureshi v. President of Pakistan, President House, Islamabad and 3 others PLD 1997 Lah. 263; Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan and others PLD 1999 SC 57: Mohtarma Benazir Bhutto v. The President of Pakistan through the Secretary to the President PLD 1992 SC 492: Saiyyid Abul A'la Maudoodi and others v. The Government of West Pakistan PLD 1964 (W.P.) Kar. 478; Halsbury's Laws of England, 3rd Edn., Vol.36. p.465; Crawford's Statutory Construction, 1st Edn- p.631; Federation of Pakistan and others v. M. Nawaz Khokhar and others PLD 2000 SC 26; Pir Sabir Shah v. Shad Muhammad Khan, Member, Provincial Assembly, N.-W.F.P. and another PLD 1995 SC 66; Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad v. The General Public PLD 1988 SC 645; State v. Zia-ur-Rehman and others PLD 1973 SC 49; Kubic Dariusz v. Union of India and others AIR 1990 SC 605; Rex v. Halliday 1917 AC 260; Mushtaq Ahmad v. Government of Pakistan, Ministry of Interior and 2 others 1981 PCr.LJ 1263; Jauhar Hussain and others v. Commissioner of Karachi PLD 1962 (W.P.) Kar. 126; Syed Sibte Hasan v. The Crown PLD 1954 Lah. 142; Syeda Shamim Akhtar v. Government of Pakistan and 3 others 1996 PCr.LJ 326;~Haji Rajah Ali v. Superintendent, District Jail, Quetta and another 1986 PCr.LJ 2928; Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan, Rawalpindi v. Saeed Ahmed Khan and others PLD 1974 SC 151; Lahore Improvement Trust, Lahore through Chairman v.

The Custodian, Evacuee Property, West Pakistan, Lahore and 4 others PLD 1971 SC 811; Zahoor Ahmad and others v. The Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others PLD 1999 Lah. 139 and Government of Punjab through Secretary, Home Department v. Zia Ullah Khan and 2 others 1992 SCMR 602 ref.

Hamid Khan, A.K. Dogar and Pervaiz Inayat Malik, for Petitioner.

Sher Zaman Khan, Dy. A.-G. for Pakistan.

Shabbar Raza Rizvi, A.-G. Punjab with Jalal-ud-Din Khalid, A.A.-G. for Respondents.

Dates of hearing: 28th, 29th January, 3rd, 4h, 7th, 14th and 17th February, 2003.

JUDGMENT

Writ Petition No.21605 of 2002 involving similar legal and factual issues is also being disposed of with this petition.

2. The petitioner Amat-ul-Jaleel Khawaja, through this Constitutional petition, has assailed the detention orders dated 30-12-2002 passed by respondent No. 1 against the following detenus:--

(i) Dr. Ahmed Javed Khawaja son of Muhammad Yunus.

(ii) Dr. Umar Karar son of Dr. Ahmed Javed Khawaja.

(iii) Dr. Khizar Ali son of Dr. Ahmed Javed Khawaja.

(iv) Ahmed Naveed Khawaja son of Muhammad Yunus.

(v) Muhammad Usman son of Ahmed Naveed Khawaja.

The aforesaid detenus, hereinafter, are being referred through serial numbers mentioned above.

3. Detenu No.(i) is the husband of the petitioner, detenu No.(ii) and (iii) are sons of the petitioner, detenu, No.(iv) is brother-in-law of the petitioner being real brother of detenu No.(i) and detenu No.(v) is the nephew of the petitioner.

4. The petitioner previously instituted Writ Petition No.21605 of 2002, on 20-12-2002 assailing the arrest and detention of nine persons including four others who are no more under detention. It was alleged that during the night intervening 18th/19th of December, 2002 a large number of persons including some in police uniform, some in plain clothes and three foreigners, two males and one female, broke into the residences of detenu No.(i) and his two brothers, in the same premises, ordered the female inmates to remain within certain confined areas of the houses and took all nine male members present at that time including the above named five detenus, in their custody without rendering any explanation to the female members of the household, who were allegedly directed to keep shut and threatened with dire consequences. It was further alleged that whereabouts of the nine detenus was not known and there was every possibility, keeping in view the presence of the foreigners with the raiding party, that these detenus are going to be removed outside the limits of territory of Pakistan, if immediate action is not taken for their recovery and presentation before the Court. The petitioner also stated in para. 19 of the petition that certain articles in these houses including certain papers and documents were removed illegally without any warrant or legal justification by the said raiding party. It was therefore, prayed. inter alia, that a

direction may be issued to the respondents to produce the nine detenus and orders may be passed to set them free immediately.

5. The above said Writ Petition No.21605 of 2002 came up for hearing on 20-12-2002 when the learned Deputy Attorney-General as well as the learned Assistant Advocate-General, Punjab who were available on Court's call, were directed to seek instructions and render assistance on 24-12-2002. On 24-12-2002, learned Advocate-General, Punjab, informed the Court that out of the nine persons, whose arrest and detention was challenged by the petitioner through Writ Petition No.21605 of 2002, four persons who are not under detention now, had been released, under orders of Government of the Punjab by the Punjab Police. In regard to present detenus Nos.(i) and (iv) namely Dr. Ahmed Javed Khawaja and Dr. Ahmed Naveed Khawaja, it was submitted that they stand arrested in case F.I.R. No.412/2002 dated 19-12-2002. registered at Police Station Munawa, District Lahore, for the offences under sections 324/353/ 148/ 149/ 186, P. P.C. , section 7 of the Anti-Terrorism Act, 1997 and section 13 of the Arms Ordinance, 1965 and the learned Anti-Terrorism Court, Lahore has given remand for three days, on 23-12-2002 ending on 26-12-2002. In regard to the detenus mentioned at Serial Nos.(ii), (iii) and (v), in paragraph two of this petition, namely, Dr. Umar Karar, Dr. Khizar Ali and Muhammad Usman, it was submitted by the learned Deputy Attorney-General for Pakistan and the learned Advocate General, Punjab that they are foreign nationals and are being investigated by one of the Federal Agencies. The learned counsel for the petitioner on the other hand submitted that the detenus, mentioned above, who are reportedly under investigation of a Federal Agency. are Pakistani nationals and it was apprehended that they shall be removed outside the jurisdiction of this Court and will be sent abroad in an illegal manner. The hearing of the petition was adjourned to 27-12-2002 with the direction that in the meanwhile. the above said detenus mentioned at Serial Nos.(ii), (iii) and (v) shall not be removed beyond the jurisdiction of this Court and respondents Nos.1 and 4 were directed to submit detailed report and comments, in the meanwhile. On 27-12-2002, when the said petition came up for hearing, this Court observed that the learned Deputy. Attorney-General has not been able to produce any order either of arrest or detention of the detenus mentioned at Serial Nos.(ii), (iii) and (v) namely Dr. Umar Karar, Dr.Khizar Ali and Muhammad Usman, who were allegedly with Federal Agency. They were therefore, directed to be produced in Court on 31-12-2002. On 31-12-2002, the learned Advocate General. Punjab and the learned Deputy Attorney-General for Pakistan, produced copy of the impugned detention order dated 30-12-2002, wherein it has been stated that all the five detenus mentioned above including the two involved in the aforesaid case F.I.R. No.402/2002, have been detained under clause (b) of subsection (1) of section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952). The Court was also informed that the above said three detenus, who were directed to be produced on 31-12-2002, have not been produced due to security measures and because they are under detention through a proper order. The matter was postponed to 3-1-2003. In the meanwhile, the petitioner instituted the present W.P. No.62 of 2003, challenging as mentioned above the aforesaid orders dated 30-12-2002 passed by respondent No. 1, which came up for hearing on 6-1-2003 when the Advocate-General. Punjab was directed to render assistance on 7-1-2003. The proceedings thereafter were taken up in W.P. No.62 of 2003 and W.P. No.21605 of 2002 has merely been coming up for hearing alognwith W.P. No.62 of 2003. In my opinion, after the institution of W.P. No.62 of 2003 previous W.P. No.21605 of 2002, for all practical purposes, became infructuous and is accordingly disposed of. On 7-1-2003, respondents Nos.1 and 2 were directed to furnish reply to the petition with detailed reports, within one week. It was further observed that the petitioner or the detenus may, in the meanwhile, make a representation to the concerned Authority assailing the detention orders and the hearing of the petition was adjourned to 15-1-2003. On 15-1-2003, learned counsel for the petitioner requested for a short adjournment as he needed time to scrutinize the report and comments. which in the meanwhile had been filed by respondents Nos. 1 and 2, and if necessary, to tile rejoinder to the same. The Court was also informed that in the meanwhile, the detenus had made representations to respondent No.1, therefore,

learned Deputy Attorney-General for Pakistan was directed to obtain instructions in this regard and render assistance on the next date of hearing. The petitioner thereafter filed rejoinder to the comments furnished by respondents Nos. 1 and 2. On 22-1-2003 the learned Deputy Attorney-General submitted that the relevant confidential file containing: material against the detenus, was brought by an official on the last elate of hearing for the perusal of the Court and the same was not available on this date and for this reason requested for a short adjournment to make the same available, on the next date of hearing. The hearing was thereafter postponed to 28-1-2003 and in the meanwhile, respondent No. 1 was directed to proceed expeditiously with the representations of the detenus and decide the same before the next date of hearing. On 28-1-2003, the learned Deputy Attorney-General produced a written statement dated 27-1-2003 on behalf of respondent No. 1, the last paragraph of which shows that the representation filed by the detenus before respondent No. 1 is not being decided because respondent No. 1 (Secretary, Ministry of Interior) has become functus officio its the matter is sub judice in the Court of law.

6. I have heard the learned counsel for the parties and have also perused the parawise comments furnished by respondent No. 1 and by respondent No.2 alongwith the annexure, including a report from Capital City Police Officer, Lahore. It may also be mentioned here besides the parawise comments respondent No. l has also furnished two written statements respectively dated 27-1-2003 and 3-2-2003. It is mentioned in these two statements that the Ministry of Interior has sufficient incriminating evidence on record provided by the concerned Security Agency against the detenus. which is of highly sensitive nature and will be placed before the Review Board as referred to in clause (4) of Article 10 of the Constitution. Learned Deputy Attorney-General informed that for this reason the file containing the material against the detenus is being withheld and is not being produced before this Court.

7. The impugned detention Order No. 7/53/2002-S-III, dated 30-12-2002, issued by Government of Pakistan, Ministry of Interior, also containing the memorandum of grounds of detention, for the sake of convenience is reproduced below:--

> "Whereas the Federal Government has been informed that Messrs Khawaja Ahmed Naveed son of Haji Muhammad Younis, Khawaja Ahmed Naveed son of Haji Muhammad Younis, Dr.Khizar Ali Khawaja son of Dr.Ahmed Javed, Dr. Umar Karar Khawaja son of Dr. Khawaja Ahmed Javed and Muhammad Usman Khawaja son of Khawaja Ahmed Naveed. Pakistan Nationals are indulging in activities prejudicial to the Security of Pakistan.
>
> And whereas Federal Government is satisfied that detention of the above mentioned persons is essential.
>
> Now therefore, in exercise of the powers conferred by clause (b) of subsection (1) of section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952), the Federal Government is pleased to direct that the said named persons be detained in any jail in the Province of Punjab with immediate effect initially for a period of three months.
>
> (M. Irfan Kilan Jadoon),
> Section Officer (Police).
>
> **MEMORANDUM OF GROUNDS OF DETENTION**
>
> Whereas the Federal Government has made an order under clause (b) of subsection (1) of section 3 of the Security of Pakistan 'Act, 1952 (XXXV of 1952) directing that you be detained.

Now therefore, in pursuance of section 6 of the said Act, you are hereby informed of the grounds on which the order has been made to enable you to make a representation in writing against the order.

You are also informed that under the law you have a right of making such representation.

The Federal Government is satisfied that you have been involved in anti-State activities in Pakistan on behalf of a Foreign Country/Organizations and, thus, your activities have been prejudicial to the security of Pakistan. Therefore, with a view to preventing you from acting in such manner, you shall be detained in any jail in the Province of Punjab with immediate effect.

(M. Irfan Kilan Jadoon),
Section Officer (Police).

8. Respondent, No. 1 has replied paras. 2, 4 (viii), 6 and 7 of the writ petition as follows:--

Para. 2

M/s. Dr. Ahmed Javed Khawaja, Ahmed Naveed Khawaja, Dr. Umar Karar Khawaja, Dr. Khizar Ali Khawaja and Muhammad Usman Khawaja have been detained on account their involvement in activities prejudicial to the security of Pakistan under clause (b) of subsection (1) of section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952) vide Ministry of Interior's Order No.7/53/2002-S -III, dated 30th December, 2002 (copy annexed).

Para. 4 (viii)

The petitioner's contention is not based on facts. In fact the answering respondent had submitted a preliminary statement on 23rd December, 2002 and subsequently submitted parawise comments on 26th December, 2002 and another statement on 30th December. 2002 to the Hon'ble Court through Deputy Attorney- General for Pakistan after obtaining required information from the concerned quarters.

Para. 6

It was revealed through investigation that the Al-Qaida's most wanted terrorists were being harboured and facilitated at Manawan Compound owned by Dr. Ahmed Javed Khawaja and his family. The detainees evidences that they have contacts with following hard core terrorists:--

1. (a) Abu Yasir AI-Jazairi. Algerian/Moroccan National (Responsible for Business of Al-Qaida).

(b) Asadullah, Egyptian National (Member of al-Gamaat Al Islamia/Al-Qaida).

(c) Sheikh Said AI-Misri, Egyptian National (Financial Chief of Al- Qaida).

(d) Abu Faraj (Head of al-Qaida North Africa network and Deputy of Khalid Sheikh Muhammad).

2. Following foreign travel documents recovered from their clearly prove that Khawaja's family was involved in facilitating and harbouring AI-Qaida elements.

(i) Sudani Passports. 3

(ii) Egyption Passports 3

(iii) Afghani Passport 1

3. Foreign currencies of U.S.A., Saudia, Afghanistan, Iran and U. A. E. were also recovered from their possession.

Para. 7

Denied An order for their detention has been issued under the relevant law after collecting evidence as mentioned above.

9. Respondent No.2, in its parawise comments has mainly relied on the report No.217 dated 13-1-2003 submitted by the Capital City Police Officer, Lahore to the Provincial Police Officer, Punjab. Lahore which reads as follows:--

REPORT

On the night of 19-12-2002 an information regarding tiring by some unknown persons outside a house at G.T. Road was received by the Manawan Police through Emergency 15. On this information, S.H.O., P.S. Manawan alongwith his staff rushed to the spot and apprehended Dr. Ahmed Javed Khawaja, (2) Ahmed Naveed Khawaja, (3) Hassan Ahmed, (4) Muhammad Ali, (5) Ahmed Nadeem and (6) Muhammad Farooq. A pistol 30 bore alongwith 10 bullets was recovered from the possession of Dr. Ahmed Javed Khawaja and Kalashnikov alongwith 10 bullets from Ahmed Naveed Khawaja, which were taken into possession. 10 empties of pistol .30 bore and 15 empties of Kalashnikov were also taken into possession from the spot. Accordingly, a case vide F.I.R. No.412 of 2002, dated 19-12-2002 under sections 324/353/148/149/186, P.P.C. read with section 13(1)(20)65, A.O. and 7, A.T.A: was registered at P.S. Manawan, Lahore. Investigation of the case was conducted by Inspector Baqar Hussain Incharge Investigation (Crime against person). During investigation sufficient evidence was not available against Hassan 'Ahmed, Muhammad Ali, Ahmed Nadeem and Muhammad Farooq, who were released on executing bail bonds under section 169, Cr.P.C. However, Dr. Ahmed Javed Khawaja and Ahmed Naveed Khawaja were arrested in the above mentioned case. They retrained on physical remand for six days. During interrogation Dr. Ahmed Javed Khawaja and Dr. Ahmed Naveed Khawaja made the following disclosures:--

(i) Ahmed Naveed Khawaja disclosed that he visited Afghanistan in 1998 and met Abu Yasir Egypt National and Abdul Aziz Saudi national and worked there for the purpose of Jehad. Ahmed Javed Khawaja also visited Afghanistan and provided medical facility to the injured Mujahideen.

(ii) An Egyptian lady alongwith 6 children and a Sudani woman alongwith 4 children wives of Abdul Aziz (a Sudani national and an active member of Al-Qaida) were living in their house.

(iii) The said women and children were left there after the incident of 11th September, 2001 by Abdul Aziz and Abu Yasir, both members of Al-Qaida.

(iv) Abdul Aziz and Abu Yasir had been visiting the house of the accused after every 10/15 days regularly and providing the necessities of life to the foreigner women/children.

3. On 26-12-2002, the accused were produced before the Court for obtaining their further physical remand however, request for further physical remand was declined by

the Court. During investigation the accused were found guilty of having relations with Al-Qaida Organization, providing accommodation to the active members of Al-Qaida. Consequently. section I I-V, A.T.A. was also added vide Case Diary No.9 dated 27-12-2002. After completion of investigation challan of the case has been submitted in the Court of competent jurisdiction for trial.

PARAWISE COMMENTS

Para 1--3. Calls for no comments.

Para. 4(i-iii), The factual position has been explained in the above report.

(iv) Dr. Ahmed Khawaja and Ahmed Naved Khawaja were found guilty of having relations with AI-Qaida, providing accommodation to the active members of Al-Qaida, assaulting Police and keeping illicit weapons in their possession. Accordingly they have been challaned in case F.I.R. No.412 of 2000, P.S. Manawan.

(v) It is correct that the petitioner earlier tiled Writ Petition No. 21605 of 2002 in the Hon'ble Court.

(vi) First part of this para. calls for no comments being matter of record. Rest of the para. is denied being incorrect. The factual position has been elaborated in the above report.

(vii) and (viii) Calls for no comments being matter of record.

Para. 5

It is correct that the Federal Government has issued detention order against the detenus under section 3 of Security of Pakistan Act, 1952 on 30th December, 2002.

Para. 6

Calls for no comments being matter of record.

GROUNDS

(a-e) These paras. do not relate to the answering respondent, hence no comments.

(f) Calls for no comments.

(g) The detention order was passed by the Federal Government, hence no comments.

Para. 7

Legal, hence no comments.

(Sd.)
Capital City Police Officer.
Lahore.

10. The only other material, besides parawise comments of respondents Nos, 1 and 2, which is being relied upon by the learned counsel representing the respondents is the statements on behalf of respondent No. 1 dated 27-1-2003 and 3-2-2003, produced

before this Court, during the pendency of this writ petition, which for the purpose of convenience are reproduced below:---

STATEMENT DATED 27-1-2003

"It is submitted that M/s. Dr. Ahmed Javed Khawaja (son of Haji Muhammad Younas), Ahmed Naveed Khawaja (son of Haji Muhammad Younas), Dr.Khizar Ali Khawaja (son of Dr. Ahmed Javed Khawaja), Dr. Umar Karar Khawaja (son of Dr. Ahmed Javed Khawaja), Muhammad Usman Khawaja (son of Mr.Ahmed Naveed Khawaja) have been detained on account of their activities prejudicial to the Security of Pakistan under clause (b). sub section (1) of section 3 of Security of Pakistan Act, 1952. The Ministry of Interior has sufficient incriminating evidence on record provided by the concerned Security Agency against the accused persons. The evidence is of highly sensitive nature and will be placed before the Review Board. as referred to in clause (4) of Article 10 of the Constitution.

As regards representation filed by the detenus before the Secretary, Ministry of Interior, it is stated that it has become functus officio (frozen) being subjudiced in the Court of law."

STATEMENT DATED 3-2-2003.

"It is submitted that M/s. Dr. Ahmed laved Khawaja (son of Haji Muhammad Younas). Ahmed Naveed Khawaja (son of Haji Muhammad Younas), Dr.Khizar Ali Khawaja (son of Dr. Ahmed Javed Khawaja), Dr. Umar Karar Khawaja (son of Dr. Ahmed Javed Khawaja), Muhammad Usman Khawaja (son of Mr.Ahmed- Naveed Khawaja) have been detained on account of their activities prejudicial to the Security of Pakistan under clause (b) sub section (1) of section 3 of Security of Pakistan Act, 1952. The Ministry of Interior has sufficient incriminating evidence on record provided by the concerned Security Agency against the accused persons. The competent authority (i.e. Secretary, Ministry of Interior) has reiterated that the evidence is of highly sensitive nature and will be placed before the Review Board, as referred to in clause (4) of Article 10 of the Constitution."

11. Mr. Hamid Khan, Advocate, learned counsel for the petitioner submitted that the detenus at Serial Nos.(i) and (iv) namely, Dr. Ahmed Javed Khawaja and Ahmed Naveed Khawaja stand involved in crime case F.I.R. No.412 of 2002, they were granted bail by the learned Anti-Terrorism Court on 30-12-2002, the other detenus are not accused in the aforesaid F.I.R., according to the aforesaid F.I.R., at the time of the raid, the police party never entered the premises/residences of the detenus whereas the stand of respondent No. 1 /Federal Government is that while conducting the raid the police, party entered the houses of the detenus. Reference in this regard was made to paras. 5. 14 and 19 of the parawise comments furnished by respondent No. 1, to W. P. No. 21605 of 2002 wherein it has been stated that "the raid was conducted for arresting such Pakistani and foreign nationals who were suspected to be involved in anti-State activities"; "The arrest of the detenus was necessary for the security of the country", and "The search of the house was necessary for the recovery of the any suspected material," that the F.I.R. does not account for detenus mentioned at Sr.Nos.(ii),(iii) and (v), that this Court on 27-12-2002, ordered the production of the aforesaid detenus before the Court on 31-12-2002 but the order was not obeyed. as the aforesaid detenus were not produced before the Court due to the security reasons that the impugned detention order narrates that Federal Government was informed that the detenus being Pakistani Nationals were indulging in the activities prejudicial to the security of Pakistan and in the memorandum of grounds of detention it is narrated that they were involved in anti-State Activities in Pakistan on behalf of foreign Country/Organizations but no such incriminating material has been produced by respondent No. 1. the

parawise comments on behalf of respondent No. 1 are also merely bald allegations not supported by any material, paragraph 6 of the same vaguely refers to Dr.Ahmed Javed Khawaja and his family without even naming the said family members including the other detenus, respondent No.2, on the other hand, has merely relied upon the report dated 13-1-2003 of the Capital City Police Officer which shows that some incident of tiring took place outside a house at G.T. Road, consequently F.I.R. No.412 of 2002 dated 19-12-2002, referred above. was registered and due to lack of sufficient evidence during investigation of the same F.I.R., Hassan Ahmed, Muhammad Ali, Ahmed Nadeem and Muhammad Farooq were released on executing bail bonds under section 169, Cr.P.C. and only Dr. Ahmed Javed Khawaja and Ahmed Naveed Khawaja, the detenus mentioned at Sr.Nos.(i) and (iv) were found to be prima facie involved and were thus proceeded against and arrested in the above said crime case. the said report refers to some disclosures made by Dr.Ahmed Javed Khawaja and Ahmed Naveed Khawaja during the interrogation and there is nothing against the detenus at Sr.Nos.(ii), (iii) and (v). that whatever material is allegedly available with respondents Nos. 1 and 2, is based on the investigation of a criminal case, that the Federal Government in its parawise comments has referred to the recovery of some Passports. foreign currency of U.S.A. Saudia. Afghanistan and U.A.E but the Provincial Government does not speak of any such recoveries, that, the disclosures made by respondents Nos. l and 2 through their parawise comments show that all the material which is being used by respondent No. 1 against the detenus, is based upon the disclosures made by Dr.Ahmed Javed Khawaja and Ahmed Naveed Khawaja, during interrogation of the aforesaid case F.I.R, No.412 of 2002, which in police custody and therefore, respondent No. 1 had no independent material before hand with it to pass the impugned order of detention, that the representations dated 11-1-2003 of the detenus before respondent No.1 assailing the impugned detention order have illegally not been decided on the alleged ground that the matter is subjudice in the Court of law although while hearing both these petitions, this Court specifically directed respondent No. l on 22-1-2003 to proceed with the representations expeditiously and decide the same before 28-1-2003, the stand taken by respondent No. 1 in this regard therefore, does not make any sense, that the file containing the alleged material against the detenus has been deliberately withheld and has not been produced before this Court in an adament manner which can lead to only one conclusion that respondent No. 1 is of the view that the material collected against the detenus cannot stand on its legs, that Ahmed Naveed Khawaja never visited Afghanistan in year 1998 as alleged, that Dr.Ahmed Javed Khawaja visited Afghanistan with a team of Doctors only on humanitarian grounds, the allegations of having any connection with any member of Al-Qaida have been specifically denied in the rejoinder submitted by the petitioner, it has been specifically stated that no member of Al-Qaida has ever stayed in their house that the bald allegations contained in the para-wise comments of respondents Nos. 1 and 2 are not supported by any affidavit whereas the petitioner's assertions in the writ petitions as well as in the rejoinders are supported with affidavits and that the detenus are highly respected professionals and are being humiliated in this manner without any reason.

12. It was further submitted that the impugned detention order is mala fide because--

(a) the circumstances show that the same has been passed under the pressure of a foreign Government,

(b) they were interrogated by persons with American accent,

(c) the detention order was passed after eleven days of arrest and there is no explanation whatever that under what authority of law the detenus mentioned at Sr.Nos.(ii), (iii) and (v) namely Dr.Umar Karar, Dr.Khizar Ali and Muhammad Usman were detained from 19-12-2002 to 30-12-2002 when the impugned order was passed, and

(d) the impugned order is the result of colourable exercise of powers with a collateral object;

that the grounds of detention are vague, ambiguous and indefinite as nothing has been particularized either in the detention order or in any material placed before this Court and therefore, the same is liable to be set aside, that the detention order has been passed by one Mr.M. Irfan Kilan Jadoon, Section Officer (Police) who apparently does not possess any lawful authority to pass the impugned order, it is thus coram non judice, that the word "satisfied" employed in section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952) has to meet the objective criteria of reasonableness and merely subjective satisfaction of the detaining authority would not meet the requirements. of law, that the detenus were not produced within 24 hours of their arrest and detention before any competent authority and therefore, Article 10(2) of the Constitution of Islamic Republic of Pakistan, 1973 has been violated and the detenus are thus entitled to be released forthwith, that the detention order being vague and indefinite has deprived the detenus of any meaningful representation, that the detention order on the face of it, is arbitrary and discriminatory as nothing has been particularized and such-like allegations can be leveled against any one and therefore, the same is violative of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, the contradiction in the stands taken by respondent No. 1 and respondent No.2 in regard to the raid are material in nature and have not been explained, that the facts and circumstances of the entire case as disclosed in the parawise comments of respondents Nos.1 and 2, show that no material was available before respondent No. 1 to pass the impugned order as the material which is referred to by respondents Nos. 1 and 2 is the result of investigation and interrogation of the aforesaid criminal case meaning absence of any previous material, that this further shows, that the raid was inherently illegal due to absence of any previous material and all subsequent proceedings therefore fall apart, that the allegations are based on alleged confessions made by Dr.Ahmed laved Khawaja and Dr.Ahmed Naveed Khawaja under coercion at the time when they were under the police custody, which, under Article 38 of the Qanun-e-Shahadat Order, 1984 cannot be used against the detenus, that there is no allegation whatever against the detenus at Sr. Nos.(ii), (iii) and (v) either in the F.I.R, or in the parawise comments furnished by respondents Nos. 1 and 2 which even otherwise are not supported with the affidavits and they have thus no value in the eye of law specially when the rejoinders furnished by the petitioner are supported with affidavits. that it is a case of gross abuse of authority the detenus are running three free Medical Clinics, detenus at Sr.Nos. (i), (11) and (iii) are medical doctors by profession they not only provide free consultation services but also provide free medicines to the poor of the locality, the detenus are very devotee Muslims and are known for their piety, philanthropy and generosity.

13. The learned counsel for the petitioner in support of his contentions, relied upon the following judgments:--

Mrs. Arshad Ali Khan v. Government of the Punjab through Secretary Home (1994 SCMR 1532):

In this case the detenu had been charged with the activity of extending threats to the Consulate General of U.S at Lahore. The police in this connection had already registered a case against him under sections 182/211/225/225-B/506 P.P.C. It was held that this clearly shows that the detenu was accused of substantive offences under the penal law, therefore, preventive detention on the same allegation could not be justified in law. The learned counsel for the petitioner, on the strength of this judgment, has argued that after the registration of the aforesaid F. I. R, there was no justification to pass the impugned detention order.

Mir Abdul Baqi Baluch v. Government of Pakistan and others (PLD 1969 Karachi 87):

In this case the order of preventive detention passed under the Defence of Pakistan Ordinance (XXIII of 1965) read with Defence of Pakistan Rules. 1965, "satisfaction" of detaining authority and the reasonableness of the grounds of detention were considered. by a Division Bench of Karachi jurisdiction. The police report alleged that the detenu was in league with anti-social group which was indulging in acts of lawlessness. It was held that there was no indication, however, given as to identity of such group or of any objectionable activities of the detenu. Police report suggested action under D.P.R. because detenu could not be taken to task for lack of evidence. It was held that such vague and self-contradictory allegations, could not furnish reasonable grounds for satisfaction of detaining authority to justify the detention order in the following manner:--

"Consequently these vague and self-contradictory allegations could not possibly furnish any reasonable ground upon which satisfaction of the detaining authority could be said to have been induced so as to justify the impugned action under rule 32 of the Defence of Pakistan Rules which according to the Supreme Court:--

"requires a stronger ground for action than mere suspicion however reasonable."

The learned counsel has thus argued that the vague and self contradictory allegations cannot become the basis for a detention order and that the "satisfaction" of the detaining authority has to test of objective reasonableness, to justify the detention order which even otherwise cannot be passed merely on the basis of suspicion.

The Government of East Pakistan v. Mrs.Rowshan Bijaya Shaukat Ali Khan (PLD 1966 SC 286):

In this case while considering the provisions of section 41 of East Pakistan Public Safety Ordinance (LXXVIII of 1958) and while considering the words "reasonably suspects", the Hon'ble Supreme Court considered the question:

"Whether or not suspicion was reasonable and justiciable?

It was held that the burden lies on the Arresting Officer to justify arrest by revealing reasonable grounds to satisfy "judicial conscience" and the arrest was had from very inception where no such grounds were revealed, even if detention was subsequently ordered under section 17 of the above Ordinance. It has thus been argued that the arresting/detaining officer has to satisfy the Court that he entertained his suspicion against the detenus on reasonable grounds.

Maulvi Farid Ahmed v., Government of West Pakistan (PLD, 1965 (W.P.) Lahore 135):

In this case a Full Bench of this Court, held that the right of a person to a petition for habeas corpus is a high-prerogative right and is a Constitutional remedy for all matters of illegal confinement. This is one of the most known fundamental rights to the Constitution. There being no limitation placed on 'the exercise of this right, it cannot be imported on the actual or assumed restriction which may be imposed by any subordinate legislation. The Constitution guarantees that it is an inalienable right of every citizen to enjoy the protection of law. The word "satisfaction" is a condition precedent to the exercise of

powers under section 3 of West Pakistan Maintenance of Public Order Ordinance, 1960. It is, therefore, open to the Court to look into the grounds supplied to the detenu in order to determine whether the detention is proper or improper. It can examine the grounds to ascertain whether they are definite and precise. Although the Court cannot question the sufficiency or otherwise of the case which is the basis of the satisfaction of the competent authority, yet the Court is well within the exercise of its judicial authority to satisfy itself that on the grounds which are the basis of the detention, the detaining authority could be satisfied as to the correctness of the order passed by it. If the grounds are riot relevant to the object which the legislation has in view, namely, maintenance of the public order, etc., there could be no basis for the satisfaction of the competent authority and the Court in that case can hold that the condition precedent for the passing of the order is non-existent. The Court, therefore, is bound to satisfy itself that .the detaining authority has not exceeded the limitations specified in law.

The learned counsel for the petitioner argued that the grounds mentioned in the detention order are not within the ambit of section 3(1)(b) of the Security of Pakistan Act, 1952 (XXXV of 1952) and therefore, the impugned order cannot be justified and is to be set aside by this Court.

Malik Ghulam Jilani v. Government of West Pakistan through the Home Secretary, Lahore and another (PLD 1967 SC 373):

In this case the Hon'ble Supreme Court while considering the Defence of Pakistan Ordinance (XXIII of 1965) held that "satisfaction" of the detaining authority acting under rule 32 must be a state of mind, which has been induced by the existence of reasonable grounds for such satisfaction. The power of an authority is therefore not immune to judicial review, subject to the right of the State to claim privilege in respect of secret information and the Court's power to hold proceedings in camera.

It was laid down that "the existence of reasonable grounds is essential and a mere declaration of satisfaction is not sufficient".

Furthermore, the argument that the use of the words "appearing to such authority to be reasonable" indicates that the ascertainment of "reasonable grounds" is not justiciable, was repelled and it was held that the detaining authority is expected to exercise the public power of apprehension and detention in accordance with law as enjoined by Constitution and not arbitrarily or perversely and, therefore, the detaining authority can be required by the Court to show that reasonable grounds existed and his subjective satisfaction will not be sufficient to protect the order of detention.

Mir Abdul Baqi Baluch v. The Government of Pakistan through the Cabinet Secretary, Rawalpindi and others (PLD 1968 Supreme Court 313):

In this case it was held that if the mere production of an order of a detaining authority, declaring that he was so satisfied, was to be held to be sufficient also to "satisfy" the Court then what would be the function that the Court was expected to perform in the discharge of its Constitutional duty and that the Court is to see that the Executive or Administrative Authority had before it sufficient material upon which a reasonable person could have come to the conclusion that the requirements of the law were satisfied and it cannot be said that it would be unreasonable for the Court, in the proper exercise of its Constitutional duty, to insist upon a disclosure of the material upon which the authority has so acted so that it should satisfy itself that the authority has not acted in an unlawful manner. The apex Court went on to hold that the majority

decision in Ghulam Jilani's case (supra) altered the law laid down in Liversidge's case ((1941) 3 AER 338) to the extent that it is no longer regarded as sufficient for the Executive Authority, merely to produce its order, saying that it is satisfied. It must also place before a Court the material upon which it so claims to have been satisfied so that the Court, can in discharge of its duty under Article 98 (2) (b) (i) (1962 Constitution) be in turn satisfied that the detenu is not being held without lawful authority or in an unlawful manner. The wording of clause (b) (i) of Article 98 (2) (1962 Constitution) shows that not only the jurisdiction but also the manner of the exercise of that jurisdiction is subject to judicial review. If this function is to be discharged in a judicial manner, then it is necessary that the Court should have before it the materials upon which the authorities have purported to act. If any such material is of a nature for which privilege can be claimed, then that too would be a matter for the Court to decide as to whether the document concerned is really so privileged. In exercising this power the High Court does not sit as an Appellate Authority nor does it substitute its own opinion for the opinion of the authority concerned. It may be mentioned here that the wording of clause (b) (i) of Article 199(1) of the present Constitution of 1973 is similar to the above referred clause of the Constitution of 1962.

It was further held that after the decision in Ghulam Jilani's case, the High Court should have examined the grounds of detention to test their reasonableness.

Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 Supreme Court 14):

In this case it was held that the question whether there are grounds upon which a reasonable person would have formed same opinion as that formed by detaining authority, was within the ambit of power of judicial review under Article 98 of the Constitution of Pakistan (1962). which power cannot be abridged or taken away by a sub Constitutional legislation. The subjective satisfaction of the detaining authority was urged as enough and it was further argued that it must then be presumed that the detaining authority had acted bona fide in the lawful exercise of its powers and unless the party challenging his action is able to substantiate that he had acted mala fide or without any grounds whatsoever, the Courts cannot call upon the authority or the officer concerned to disclose the material upon which he had based his opinion, belief- or satisfaction. The argument was repelled by the Apex Court and it was held that the action taken upon no ground at all or without proper application of mind of the detaining authority would also not qualify as action in accordance with law and would, therefore, have to be struck down as being action taken in an unlawful manner.

It was further held that there can be no doubt that the Court can satisfy itself that the action taken is not a mere colourable exercise of power or a fraud upon the statute. In view of the provisions of Article 98 of the Constitution of Pakistan (1962) that degree of reasonableness has at least to be established which has been indicated in the case of Abdul Baqi Baluch (supra), otherwise the authority could protect himself by merely saying that he believed himself acting in pursuance of a statute and in that case what would be the material upon which the Court could say that it was satisfied that the detention or the impugned action had not been taken in an unlawful manner. It was further held that a person acting in pursuance of a statute cannot be said to be acting bona fide if he has no reasonable ground for believing that the statute justifies him in what he does. If the case, therefore, is one where there are no. grounds or the- grounds are such that no reasonable person would have acted on the supposition that he was acting under the authority of the statute then that is a

case in which the Court would in exercise of the. power under Article 98 of the Constitution (1962) declare the act to have been done in an unlawful manner.

It was thus argued that the impugned order is the result of arbitrary, unguided, uncontrolled and naked power exercised by respondent No. 1 which is thus colourable, mala fide and without any material as, it does not meet the test of reasonableness and it does not show any honest application of the mind which is definitely unlawful, without jurisdiction and liable to be struck down.

14. Mr. A.K. Dogar, Advocate has also been appearing in this case, for the petitioner, with the permission of learned counsel representing the petitioner. He submitted that the impugned orders have been passed by respondent No. 1, in exercise of powers conferred by clause (b) of sub section (1) of section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952), which is an obsolete and dead law. It was enacted on 5th May, 1952 (Gazetted on 6th May, 1952) initially for a period of three years as prescribed in subsection (3) of section 1 of the Act, which period was extended from time to time, through later amendments and although the time limit was altogether omitted through Security of Pakistan (Second Amendment) Ordinance XXIII of 1961, promulgated on 29th June, 1961 bat the Act itself was superseded by Defence of Pakistan Ordinance XXIII of 1965. promulgated on 6th September, 1965 alongwith Defence of Pakistan Rules, 1965 commonly known as D.P.R, made by the Central Government, on the same date, in exercise of powers conferred by section 3 of Defence of Pakistan Ordinance, 1965 and thereafter the detention matters concerning the Security of Pakistan, Public Safety, Defence of Pakistan, Maintenance of Public Order, Pakistan Relations with any other power, etc., were regulated by rule 32 of the above said Rules and the aforesaid Ordinance XXIII of 1965 and the Rules made thereunder, now stand superseded and repealed by Defence of Pakistan Ordinance XXX of 1971 and Defence of Pakistan Rules, 1971, promulgated and made on 23-I1-1971, containing the similar provisions, furthermore section 4 of the Defence of Pakistan Ordinance XXX of 1971. which is currently holding the field, provides that any rule made under section 3. and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance and therefore because of the promulgation of Defence of Pakistan Ordinance XXX of 1971 and the making of Defence of Pakistan Rules, 1971, including the famous rule 32, the entire subject-matter of Security of Pakistan Act, 1952 (XXXV of 1952) stands covered and taken away by the above Ordinance of 1971 and the Rules made thereunder, which is a subsequent legislation and therefore the aforesaid Security of Pakistan Act, 1952 stands repealed by implication. Learned counsel in this regard, for this limited purpose, has -referred to Major Mehtab v. Rehabilitation Authority and another (PLD 1973 Supreme Court 451 at page 463, sideline F) wherein the Hon'ble Supreme Court of Pakistan reiterated the accepted principle of interpretation of Statutes that "subsequent legislation on the same subject would by necessary implication, repeal the earlier law to the extent of their mutual inconsistency or repugnancy". As observed in Goodwin v. Phillips (1907) 7 CLR 1, "the latest expression of the will of Parliament must always prevail".

In the same paragraph the Hon'ble Supreme Court held that "The Court naturally leans against implying a repeal, and unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. (Reference was made to Kutner v. Phillips (1891) 2 .Q B 267). The prior statute would be repealed by implication if its provisions were wholly incompatible with a subsequent one, or if' the two statutes together would lead to wholly absurd consequences: or if the entire subject-matter were taken away by the subsequent statute.

He next contended that the detention orders result in the imprisonment of the detenus without trial and conviction and the presumption in law is that every imprisonment without trial and conviction is prima facie unlawful. Reference in this regard was made

to a paragraph from the judgment delivered by the Hon'ble Supreme Court in Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 Supreme Court 14 at page 35 sideline E) per Hamoodur Rahman, J, the former Chief Justice of Pakistan, which is as follows:--

"It must also be remembered that initially the onus is on the detaining authority to justify the detention by establishing the legality of his action for under the principles of English Law, which have been adopted in our system also, the presumption is that every imprisonment without trial and conviction is prima facie unlawful (per Lord Atkin in Liversidge v. Anderson) and it is only then that the onus shifts on the detenu to show mala fides. Again having regard to the fact that in such cases the materials upon which the belief is based will be mainly in the special knowledge of the detaining authority and not of the detenu, section 106 of the Evidence Act itself would require the detaining authority to discharge this burden."

15. It was also argued that if one ground of detention is found to be invalid the entire order becomes unsustainable because out of many reasons given by the detaining authority without distinguishing them, if one or more reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the Authority or- whether the detention order would have been made at all if only one or two good reasons had been before them. It was argued that this view has been consistently followed by the Court in Pakistan. Reliance in this regard was placed on Government of West Pakistan v. Haider Bakhsh Jatoi and another (PLD 1969 Supreme Court 210 at Page 222) followed by a Division Bench of Karachi High Court in Dr. Muhammad Shoaib Suddle v. Province of Sindh through Secretary, Home Department Sindh, Civil Secretariat, Karachi and another (1999 PCr.LJ 747 at page 764). He also relied on Khadija Bhabha v. Province of Sindh through The Secretary to the Government of Sindh, Home Department, Karachi and 2 others (PLD 1973 Karachi 421) to contend that where the allegations as contained in the detention order are vague, indefinite, lacking in particulars, the said order, is liable to be held as illegal and is to be struck down.

16. Mr.A.K. Dogar, Advocate further submitted that the High Court in the exercise of its Constitutional jurisdiction under Article 199(1)(b), (i) is competent to examine and satisfy itself that the detenu is not being held in custody, without lawful authority or in an unlawful manner and this can be achieved only when the Court examines the information, reasons and facts and causes leading to detention. Reference in this case was made to para.8 of the judgment delivered by the Hon'ble Supreme Court in Government of Sindh through the Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others (1994 SCMR 1283) which reads as follows:--

> "It is now settled principle of law that where petition under Article 199 is filed challenging the arrest and detention of any person, the High Court will not straightaway refuse to exercise jurisdiction the moment an information is made that the detenu is involved in any criminal case registered with the Police. The Nigh Court leas the jurisdiction to examine the facts and information laid before it to determine prima facie that it does not lack bona tide, is not a cocked up and manipulated affairs, the detenu has not been illegally detained without a proper and legal remand order where it is required and there appear reasonable grounds for believing that the detenu is involved in the crime charged with. If once it is conceded that on receipt of information as supplied the High Curt should refuse to exercise its Constitutional jurisdiction without examining it, the very provision of the Constitution (Article 199 (1)(b)(i) conferring power of judicial review will be frustrated. The High Court is competent to examine and satisfy itself that the detenu is not being held in custody without lawful authority or in an unlawful manner. This can be achieved only when the Court examines the information, reasons, facts and causes leading to detention. While examining, the High Court will not act as an Appellate Court nor will it make

sifting investigation. In such Constitutional petition the prosecution is bound to disclose the material upon which it has acted and Court is to satisfy itself that such action is lawful and not in violation of law and fundamental rights."

17. It was further argued that the Government has shown contemptuous disregard to the High Court's orders for the production of the detenus and for the production of the material, allegedly forming the basis of the impugned order, which attitude was not encouraged in State v. Zahoor Elahi (PLD 1977 Supreme Court 394) and the review petition filed by the State was dismissed. Further reliance in this regard was placed on Federation of Pakistan v. Malik Ghulam Jilani (PLD 1974 Supreme Court 402) wherein it was held that the High Court has power to direct production in Court of persons detained for purpose of satisfying itself as to the legality of the detention. In the end the learned counsel submitted that after addition Of Article 2A in the Constitution of Islamic Republic of Pakistan, 1973, the Holy Qur'an and Sunnah have become the supreme law of Pakistan and the Courts are obliged to enforce the existing laws with such adaptation as are necessary in the light of the Holy Qur'an and Sunnah to uphold the holy provisions thereof and every organ of the State is duty bound to act and implement the Islamic principles as enshrined in the Holy Qur'an and Sunnah. (Referred Haji Muhammad Shabbir Ahmed Khan v. Federation of Pakistan through Attorney-General for Pakistan and another (PLD 2001 SC 18) and also relied upon Surah 9: Al-Tawbah Verse 38, Surah 4: AI-Nisa, Verses 75 and 95, Surah 2: Al-Baqarah, Verse 193, of the Holy Qur'an to contend that Al -Qaeda is not a Terrorist Organization and is a group of "Mujahideen" as enunciated and defined in the above Verses of the Holy Qur'an and therefore, in the alternate even if the detenus are held to be the persons having connections with any Member or members of Al-Qaeda, as alleged by respondent No. 1, they cannot be imprisoned for being Muslims having faith in Almightly Allah and for leading their lives in accordance with the Sunnah of the Holy Prophet (p.b.u.h.).

18. Mr. Sher Zaman, Deputy Attorney General for Pakistan, while answering a Court's query in' regard to the statutes of the Al-Qaeda in Pakistan, on instructions, submitted--

I. that Al-Qaeda has been globally declared as a Terrorist Organization by the United Nations Security Council vide Resolution No. 1373, which makes it mandatory for all member States of the United Nations to implement it. As Pakistan is a Member of the United Nations and signatory of United Nations Resolutions and Conventions, Al-Qaeda is treated as a Terrorist Organization in Pakistan;

II. that harbouring of any member of Al-Qaeda in Pakistan is an offence under section 21 J (i) of. Anti-Terrorism Act, 1997;

III. that four members of Al-Qaeda, as mentioned in para.6 of the parawise comments on behalf of respondent No. 1, have been declared as terrorists under United Nations Security Council Resolution No. 1373 and the Government of Pakistan treats these ,persons as terrorists. The learned Deputy Attorney-General, in this regard, placed on the record of this petition a written statement dated 6-2-2003 on behalf of respondent No.1, which is to the similar effect.

19. Mr. Sher Zaman, learned Deputy Attorney-General for Pakistan, while opposing this petition with zeal, submitted that there is sufficient material available on the record of this petition as well as in possession of the Federal Government which justifies the passing of the impugned detention order, in the detention order the names of all five detenus are given, it is mentioned therein that they are indulging in activities prejudicial to the security of Pakistan, in the grounds of detention, served upon them on the same day, it is mentioned that they have been involved in Anti-State activities in Pakistan on behalf of a foreign country/Organization, and, thus their activities have been prejudicial to the security of Pakistan, their detention is based on solid material which is confidential in nature and will be produced at the relevant time before the

Review Board, in para.2 of parawise comments submitted on behalf of respondent No.1, it has been emphasized that all the five detenus have been detained on account of their involvement in activities prejudicial to the security of Pakistan, in para. 4 (viii) of the same comments, reference has been made to parawise comments submitted in the connected Writ Petition No.21605 of 2002, in which it has been explained that the raid was conducted for arresting such Pakistanis and foreign nationals who were suspected to be involved in Anti-State activities, para.6 of the same comments refers to the disclosures made by the accused, during investigation of crime case F.I.R, No.412 of 2002 dated 19-12-2002, which revealed that Al-Qaeda's most wanted terrorists were being harboured and facilitated at Manawan compound owned by Dr.Ahmed Javed Khawaja and his family and that they had contacts with Abu Yasir Al-Jazairi, (Algerian/Moroccan National), Assadullah, (Egyptian National), Sheikh Said Al-Misri, (Egyptian National) and Abdu Faraj, who are all hard core terrorists of Al-Qaeda and the reference to family members of Dr.Ahmed Javed Khawaia, in this paragraph in fact refers to all the five detenus, in the investigation of the said case foreign Passports and foreign currencies were also recovered from the accused of the above said case, para.7 of the same comments clarifies that the impugned order of detention has been issued after collecting the material against the detenus, that report furnished by the Capital City Police Officer, Lahore to the Provincial Police Officer, Punjab, Lahore attached with the para-wise comments furnished on behalf of the Home Secretary, Punjab, shows that during the interrogation of above referred F.I.R. No.412 of 2002 dated 19-12-2002, the detenu Dr.Ahmed Naveed Khawaja disclosed that he visited Afghanistan- in 1998 and met the Al-Qaeda terrorist Abu Yasir, Abdul Aziz and worked there for purposes of Jehaad' and Dr.Ahmed Javed Khawaia also visited Afghanistan to provide medical facility to the injured Mujahideen, they further disclosed that the wives of Abdul Aziz alongwith the children were living in their house and Abdul Aziz and Abu Yasir had been visiting their house after every 10/ 15 days regularly, these facts and disclosures show that all the detenus have relations with Al-Qaeda Organization and the statements dated 27-1-2003 and 3-2-2(X)3, produced before this Court, on behalf of respondent No.1 also shoes that sufficient incriminating material is available against the detenus which is of highly sensitive nature and has been provided by Security Agency, that all the live detenus are citizens of Pakistan and there is no reason for the Government of Pakistan to concoct stories against them, that they have links with Al-Qaeda or were harbouring members of Al-Qaeda.

20. He submitted next that the presumption in law is in favour of the validity of the orders of detention passed by respondent No. 1, Article 150 of the Constitution of Islamic Republic of Pakistan, 1973. provides that full faith and credit shall be given throughout Pakistan to public acts and records, Article 129(e) of the Qanun-e-Shahadat Order 10 of 1984 provides for the presumption. in favour of official acts and the petitioner has miserably failed to rebus this strong presumption and has failed to show that the detention order has been passed in an unlawful manner. Reliance in this regard was placed on Lahore Improvement Trust v. The Custodian , Evacuee Property, West Pakistan, Lahore and 4 others (PLD 1971 Supreme Court 811) wherein it has' been laid down that before an order passed by public authority is struck down, it is the duty of the Court to explore every possible explanation for its validity. Further reliance was placed on Tanvir A. Qureshi v. President of Pakistan, President House, Islamabad and 3 others (PLD 1997 Lahore 263).

21. The learned Deputy Attorney-General further submitted that the scope of judicial review by this Court, in the exercise of its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is extremely limited, the appraisement of material forming the basis of the detention order is the function of the Review Board, as envisaged in Article 10(4) of the Constitution and section 6-A of the Security of Pakistan Act XXXV of 1952, this Court therefore cannot appraise the relevant material, that the impugned detention order has been passed under section 3 (1) (b), of the above said. Act XXXV of 1952, and the word "satisfied" employed in subsection (1) of section 3 of the Act, refers to the satisfaction of the Central

Government and of nobody else, which is entirely subjective in nature and meaning and the satisfaction of the Central Government cannot be assailed and successfully challenged on the criteria that the same does not meet the objective test .of a reasonable person. It was submitted that the law of objectivity as laid down by the Hon'ble Supreme Court successively in the years 1967, 1968 and in 1969 in the cases of Malik Ghulam Jilani, Meer Abdul Baqi Baluch and Begum Agha Abdul Karim Shorish Kashmiri (supra) has undergone a change through a recent judgment delivered by the Hon'ble Supreme Court reported as Sardar Farooq Ahmed Khan Leghari and others v. Federation of Pakistan and others (PLD 1999 SC 57).

In this case the President of Pakistan issued a Proclamation of Emergency on 28-5-1958 under Article 232 (1) of the Constitution and enforecement of all fundamental rights was suspended on the same day under clause (2) of Article 233 of the Constitution. The petitioners assailed the above orders through Constitutional petitions under Article 184 (3) of the Constitution of Islamic Republic of Pakistan, 1973.

Clause (1) of Article 232 of the Constitution provides, inter alia, that if the President is "satisfied" that a grave emergency exists he may issue a Proclamation of Emergency.

It was argued by the learned Deputy Attorney-General that the word "satisfied" in clause (1) of Article 232 of the Constitution has been employed in similar manner as in section 3(1) of the Security of Pakistan Act XXXV of 1952 and the Hon'ble Supreme Court after reviewing the entire case-law on the subject, including the three judgments referred above, held that the satisfaction provided for in clause (1) of Article 232 of our Constitution is subjective satisfaction of the President. He relied on the following three points noted by the Hon'ble Supreme Court in para.39 of the judgment (per Ajmal Mian, C.J., as he then was)----.

"(i) that the satisfaction provided for in clause (1) of Article 232 of our Constitution and clause (1) of Article 352 of the Indian Constitution is the subjective satisfaction of the President;

(ii) that the above subjective satisfaction of the President is final subject to judicial review to the limited extent referred to herein below;

(iii) that the satisfaction of the President is a condition precedent to the exercise of power and it' it can be shown, that there was no satisfaction of the President at all, or that the satisfaction was absurd or perverse or mala fide or based on extraneous or irrelevant grounds, it would be no satisfaction."

One may however, refer to, para.42 of the same judgment in which legal position, in this regard was concluded as follows:--

"42. The learned counsel for the petitioners have referred to a number of dictionaries to show the meaning of the words inter alia "satisfied", "satisfy", "external" and "aggression", the definitions of which have been quoted hereinabove. The words "satisfied" and "satisfy" indicate that the same connote inter alia free from anxiety, doubt, perplexity, suspense or uncertainty or a mind which reached a clear conclusion. Whereas the word "external" inter alia means apparent, visible from outside, physical or corporeal; whereas the word "aggression" has been defined inter alia as means inroad. invasion or encroachment of rights of others. It may be observed that Cornelius, C.J. in the case of Malik Ghulam Jilani (supra), while construing [lie word "satisfaction" used in Rule 32 of the Defence of Pakistan Rules, pointed out that the requirement of satisfaction contained in the above Rule involves the exercise of

,judgment in relation to a number of relevant factors and that belief would also be necessary as to the existence of certain facts and potentialities that they possess danger to public order. Whereas Hamoodur Rehman, J. (as he then was) in the case of Mir Abdul Baqi Baloch (supra) highlighted the difference between "being satisfied" and "suspecting upon reasonable grounds" by observing that the former connotes a state of mind bordering on conviction introduced by the existence of facts which have removed the doubts, if any, from the mind and taking it out of stage of suspicion.

Keeping in view the definition of the above words and the construction placed by two eminent Chief Justices of this Court on the words "satisfaction" and "satisfied", it is evident that before the President can issue a proclamation under clause (1) of Article 232 of the Constitution, his satisfaction as to the existence of a grave emergency in which the security of Pakistan or any part thereof is threatened by war or external aggression or by internal disturbance beyond the power of a Provincial Government to control, should be based on proper application of mind which involves exercise of judgment in relation to a number of relevant factors having nexus with the objects mentioned in the aforesaid clause of Article 232 of the Constitution. The judgment should be founded on a state of mind bordering on conviction introduced by the existence of facts which have removed the doubts, if any, from the mind of the President keeping in view far-reaching consequences which flow from the imposition of emergency under the provisions of the Constitution highlighted hereinabove in para-37."

The learned Deputy Attorney-General has also referred to a few lines of para.33 of the judgment delivered by Irshad Hassan Khan, J. (as he then was), in the same case. However, I am of the view that for the purposes of guidance, the whole of above said paragraph 33 is relevant which is reproduced below:--

"33. Having considered the submissions made by Syed Shabbar Raza Rizvi and the case-law cited by him the answer to all the pleas raised by him is that the Proclamation issued by the President was based on existence of objective conditions justifying issuance of Proclamation of Emergency under Article 232(1) of the Constitution. I agree with Syed Shabbar Raza Rizvi that when the Proclamation is challenged by making out a prima facie case with regard to its invalidity, the burden would be on the Federal Government to satisfy as to the existence of pre-conditions justifying issuance of Proclamation of Emergency under Article 232(1) of the Constitution. The same view was taken in the case of S.R. Bommai v. Union of India (AIR 1994 SC 1918), wherein it was inter alia observed that where such material would be exclusively within the knowledge of the Union Government. in view of the provisions of section 106 of the Evidence Act, the burden of proving the existence of such material would be on the Union Government. However, it is well-settled that this Court while examining the material cannot sit as a Court of Appeal and inquire into the sufficiency or otherwise of the same. I am of the view that the material used by the President in arriving at his 'satisfaction' bore nexus with the objects of Article 232(1). This Court, therefore, cannot interfere with the proclamation, inter alia, on the ground that there did not exist on 28th May, 1998 any, material, which had the direct nexus for the purpose of Proclamation. Mr. Shabbar Raza Rirvi has taken great pains in highlighting the concept of Adal in an Islamic State with reference to material referred above. There can be no cavil with the responsibilities of the Judges and the Executive Authorities as referred ill Nahjul Balagha, Sermons letters and Sayings of Imam Ali. Reference was aptly made to the last sermon of the Holy Prophet (peace be upon him), in the context of the controversy raised herein and other material with reference to society and tile state in Islam. I appreciate tile interest taken

by Syed Shabbur Raza Rizvi and tile research made in digging out tile relevant material for assistance of the Court."

22. The learned Deputy Attorney-General on the basis of law laid down in Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan (supra) further argued that this Court cannot appraise the material which formed the basis of the passing of the impugned detention order and this Court has only to see the nexus of the impugned order with the objects of Security of Pakistan Act, 1952 and not the sufficiency of the material which formed the basis of the passing of the impugned order because primarily under section 3(1) of the Security of Pakistan Act, 1952, it is the function of the Federal Government and thereafter it' the situation arises, it is function of the Review Board, as envisaged in section 6-A of the Security of Pakistan Act. 1952 and Article 10(4) of the Constitution of Islamic Republic of Pakistan. 1973.

23. He then went on to submit that under Article 199(1)(b)(i) this Court may satisfy itself only to the extent that the detenus are not being held in custody without lawful authority or in an unlawful manner, in the present case the detention order has been passed with lawful authority and the burden of proving that tile detention order has been passed in an unlawful manner is on the person approaching the Court and the said burden has not been discharged that the writ jurisdiction of this Court under Article 199 of the Constitution is discretionary ill nature and even it this Court comes to the conclusion (without conceding) that the impugned order is illegal or unlawful it should not in tile exercise of its discretion, grant the relief to the petitioner because of the following factors:--

(a) The Court should take judicial notice of the events in Pakistan and the International Scenario,

(b) In war against terrorism, Pakistan is a front line ally,

(c) Al-Qaeda is a target of war against terrorism alongwith other Terrorists Organizations,

(d) The allegations are that the detenus have links with Al-Qaeda which is a Terrorist Organization, therefore, they are not entitled to the grant of discretionary relief,

(e) The national policy of Pakistan, being a front line ally State in war against, terrorism, is a matter of State policy and therefore any interference by the Court, in this matter, is likely to harm Pakistan, and

(f) This Court in the exercise of its judicial function should not interfere in the performance of the functions of Government by the Executive.

24. The learned Deputy Attorney-General further submitted that the Federal Government in its statements dated 27-1-2003 and 3-2-2003 has taken a stand that the Ministry of Interior, has sufficient incriminating evidence, against the detenus, provided by the concerned Security Agency, which is of highly sensitive nature and for this reason it is not being produced in Court and the same shall be placed before the Review Board, if required, as provided in clause (4) of Article 10 of the Constitution and this stand of respondent No.1/Federal Government amounts to claiming of the privilege from production in Court of the relevant file or tiles containing material against the detenus, as envisaged in Articles 6 and 158(2) and (3) of the Qanun-e-Shahadat Order (10 of 1984). Reliance in this regard was also placed on para.8 of the judgment delivered by Rustam S. Sidhwa, J. (as he then was) in Mohtarma Benazir Bhutto v. The President of Pakistan through the Secretary to the President PLD 1992 Supreme Court 492), which reads as follows:--

"8. I would, therefore, hold that where a document is required to be produced in evidence, in respect of which the Secretary or the head of the department concerned wishes to claim privilege, the document should be brought in Court with the affidavit of the Head of the Department concerned claiming privilege, which should be filed. If the document does not relate to an affair of the State but some other privilege or statutory bar to its production is being urged, the document can be inspected and other evidence taken to determine its admissibility. The Court is not compelled to accept the claim. It has the jurisdiction to assess its worth. If the document relates to an affair of State, the Court, in the first instance need not inspect it, but must examine the affidavit to see if the claim appears to be well founded. If the document belongs to a class where secrecy is required to be maintained as an essential feature of the proper and due functioning of the department itself or the maintenance of the system, the Court must give credence to the claim. It' the document relates to an affair of State where its disclosure would affect public interest, the Court has the right to assess it to see it' it is well founded. Whether the document belongs to the "class" category or the "contents", category, it' there is sortie doubt as regards this matter, the Court can take other evidence, which would include the examination of the head of the department in respect of matters stated in his affidavit. The Court has the power and the duty to hold a balance between the public interest, as claimed by the head of the department to withhold the production of a document and the public interest that must be maintained in the proper and fair administration of justice: and the right to determine which shall supervene. Where the Court desires to examine the document to ensure that privilege is not being claimed frivolously or in advisedly or in bad faith or on incorrect premises or as a matter of routine or fir other unfair reasons, the Court has a right and a duty to do so and more specially in cases where the document relates to routine or unimportant matters or where the Court considers the claim more technical than real."

25. The learned Deputy Attorney-General, in the last but tot in the least, submitted that the arguments from petitioner's side that the Security of Pakistan Act, 1952 is an obsolete and dead law because of its implied repeal by the promulgation of subsequent Ordinances i.e. Defence of Pakistan Ordinance XXIII of 1965 and thereafter by the Defence of. Pakistan Ordinance XXX of 1971 and the rules made thereunder, are totally, incorrect, irrelevant and unfounded. It was submitted that although the Security of Pakistan Act, 1952 was initially enacted for a period of three years, as prescribed in subsection (3) of section I of the said Act but this provision containing the time frame, after this extension from time to time, was altogether omitted through Security of Pakistan (Second Amendment) Ordinance XXIII of 1961 and thereafter this Act became a permanent statute and the principles of repeal are well-settled, it can be made only expressly whereas the Act still exists on the Statute Book and has not been expressly repealed by any subsequent statute or law and even otherwise the Defence of Pakistan Ordinance XXX of 1971. as it existed, merely partly supplemented the Security of Pakistan Act, 1952 and it did not wholly cover the subject matter of the Act of 1952, furthermore, if these two laws are read together they, do not lead to the conclusion that they-are inconsistent with each other or the provisions of Security of Pakistan Act, 1952 are repugnant to any of the above mentioned later Ordinances. The learned Deputy Attorney General, in this regard, referred to page 465, Volume 36 of Halsbury's Law of England (Third Edition) and pages 631 and 628 from Crawford's "Statutory Construction", First Edition, referred in Saiyyid Abul A'la Maudoodi and others v. The Government of West Pakistan PLD 1964 (W.P.) Karachi 478 at pages 488 and 489), which are as follows:--

"Page 465, Volume 36 of Halsbury's Laws of Eneland (Third Edition).

"Repeal by implication is not favoured by the Courts for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of

a law without expressing its intention to do so. If, however, provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that Parliament, unless it failed to address its mind to the question, intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms. The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done; and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision amongst them must be regarded as such an indication. "

Crawford's "Statutory Construction" First Edition

Page 631

"This presumption against the intent to repeal by implication rests upon the assumption that the Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, so that the failure to add a repealing clause indicates that the intent was not to repeal any existing legislation."

Page 628

"Where a repeal is effected through implication, the later enactment thus affecting pre-existing law must be subjected to close scrutiny in the light of its own provisions and those of the law apparently abrogated in whole or in part. The construction of the new law becomes an important consideration, since its meaning and scope will determine whether a repeal takes place, and if so, its extent. And usually one of two questions will arise:

(1) Whether the new law is intended as a substitute for the old: and (2) Whether the new is irreconcilably inconsistent with the old, so that the former is thereby terminated. In brief, the problem will be simply to determine what is the legislative intention---whether the old law shall cease or whether it shall be supplemented. "

26. The learned Deputy Attorney-General, in this regard, went on to submit that the learned counsel for the petitioner who made submissions in regard to the implied repeal to the Security of Pakistan Act, 1952 due to the promulgation of Defence of Pakistan Ordinance XXIII of 1965 and after its repeal and supersession by Defence of Pakistan Ordinance XXX of 1971 and the Rules framed thereunder, was perhaps not aware that the Defence of Pakistan Ordinance XXX of 1971, itself was repealed by Defence of Pakistan (Repeal) Ordinance XXXII of 1977, promulgated on 15-9-1977 and therefore the only relevant law on the subject-matter, in existence is the Security of Pakistan Act, 1952. It was submitted, in the alternate, that even if it is presumed (without conceding) that the Act of 1952 stood repealed by implication because of the promulgation of Defence of Pakistan Ordinance, 1971, the repeal of the Defence of Pakistan Ordinance, 1971 on 15-9-1977, resulted in restoration of original law i.e. Security of Pakistan Act, 1952. Reliance in this regard was placed on Federation of Pakistan and others v. M. Nawaz Khokhar and others PLD 2000 SC 26 and Pir Sabir Shah v. Shad Muhammad Khan, Member, Provincial Assembly, N.-W.F.P. and another PLD 1995 SC 66.

In both these cases, it was held that on the repeal of an amending Ordinance making amendments in an Act, the original provisions of the Act stood revived.

27. Syed Shabbar Raza Rizvi, Advocate-General, Punjab, representing respondent No.2, additionally submitted that certain: provisions of the Pakistan Security Act XXXV of 1952 were declared to be repugnant to the Injunctions of Islam by the Federal Shariat Court, during the suo motu examination of certain laws, under Article 203-D of the Constitution, Islamic Republic of Pakistan, 1973, vide its judgment dated 27-3-1984 aria the appeal of the Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad v. The General Public PLD 1988 Supreme Court 645, was partly allowed by the Shariat Appellate Bench of the Supreme Court of Pakistan and the judgment of the Shariat Court to the extent it held the entire provisions contained in sections 11-A, 11-B and 11-C of the Security of Pakistan Act, 1952 as against the Injunctions of Islam and directed their omission from the Statute Book, was set aside and: therefore had the Security of Pakistan Act, 1952, been a dead law, the Hon'ble Supreme Court would have declared it as such and would not have bothered to examine the provisions of the Act in the light of Injunctions of Islam. He further submitted that in 1981 all (Federal Laws were revised Federal Laws (Revision and Declaration) Ordinance XXVII of 1981---PLD 1982 Central Statute page 10)) and the Security of Pakistan Act, 1952 was neither repealed nor amended and had this Act been a dead law it would have been wholly repealed alongwith other laws specified in the 1st Schedule of the above Ordinance. He next submitted that proviso to section 6(1) of the Act of 1952 provides that the Authority passing the orders under subsection (1) of section 3 of the above Act cannot be required to disclose the facts which it considers to be against the public interest to disclose, these wordings are not provided in M.P.O., 1960 and the law-makers were conscious of the special powers being given to the Government. The learned Advocate-General, in this regard, referred to the Parliamentary debates held in the Constituent Assembly (Legislature) dated 21-4-1952 when the Security Bill (enacted as the Security of Pakistan Act, 1952 on 5-5-1952) came up for consideration before the Constituent Assembly and Mr. Mushtaq Ahmed Gurmani, the then Minister for Interior, States and Frontier Regions, while moving the Security Bill and while supporting it address the Legislature at length. Following is the excerpt of the speech delivered by Mr. Mushtaq Ahmed Gurmani, selected by the learned Advocate-General, provided at pages 1544 and 1545 of the Parliamentary Reports dated 21-4-1952:--

> "I wish to draw the attention of the Hon'ble Members to the prevailing international situation. The world is divided at present into two opposing camps, each determined by all possible means at its command to denounce and defeat the other. Through the resultant conflict of interests and ideologies, Pakistan has to forge its way with care and safeguard its own rich heritage of concepts of equality and justice. To do this and to defeat the insidious influences openly or surreptitiously fostering ideologies or movements subversive of the, values held dear by Pakistanis, we must be well-equipped with right and effective weapons ideologically as well as administratively. An aspect of the international situation nearer home and therefore, affecting Pakistan immediately and most vitally is our existing relations with India and Afghanistan. Conflicts, not of our making, have arisen here, which we greatly deplore, but till these conflicts are resolved we must make certain that the security and defence of Pakistan are not undermined through espionage, sabotage or other subversive action initiated from outside or organized in sympathy or association with the outsiders.
>
> Sir, I think I have been given enough indication as to why Government, consider it necessary and essential to take the special powers enunciated in the present Bill. I shall now proceed to indicate what has been cone by Government to improve or remove those features of the earlier emergency legislation which,

though not always for very good reasons have been subject to criticism in the past.

The most important change incorporated in the Bill is the new powers which Government propose to take to ensure the maintenance of essential supplies and services for the community. Experience has shown that the ordinary law is ineffective in dealing with public enemies such as black-marketers hoarders, smugglers, and other anti-social elements. Unfortunately, what happens is that those who are really at the back of these anti-social activities escape the punishment provided under the law and it is their henchmen who come under the mischief of those laws and the position unfortunately is that it is like a spider's web a fly has got in it but a wasp peers through it---and a provision is being made under this new legislation that the real culprit---those who instigate, organize and protect such anti-social crimes in the economic field of the nation---could be dealt with effectively and sternly. It is proposed, therefore, under the present Bill to take effective measures against such persons who wittingly or unwittingly destroy the economic fabric of the country. Secondly there has been conic criticism in the past that persons detained under the Pakistan Public Safety Act were not informed of the charges for which they were detained. This to my mind was a valid criticism and I have tried to remedy the situation in the present Bill. Provision has now been made in the Bill making it obligatory on Government to communicate to the detenu the grounds for his detention and to afford him the earlier opportunity of making a representation against the order of detention. Provision has also been made in the Bill that the cases of all persons detained under it shall he referred to an Advisory Board consisting of two persons who are or have been or are qualified to be Judges of a High Court. This provision is analogous to a provision which existed in the United Kingdom in respect of action taken under Regulation XVIII-B of 1939. The Advisory. Committee appointed under that Regulation consisted of a Chairman and two or more members nominated not a Judge, and in the case of members of the Committee, legal qualification were not essential. We have, however, thought it necessary to impart to our Advisory Board as near judicial a character as possible. All cases of detenus and also those cases where Government have ordered the winding up of a subversive organization, or controlled the Publication of information in news, or Taken action against newspapers for reasons specified in the Bill will be placed before the Advisory Board. This is, I beg to submit, a great improvement on previous legislation as the cases of all persons. including printers and publishers of newspaper and other documents affected by certain orders under the Bill will in future be scrutinized by impartial legal experts.

Exception has been made in the case of detentions for reasons of Defence External Affairs and the Security of Pakistan to this extent that these cases need not be referred to the Advisory Board if the period of detention is less than one year.

Now, Sir, I would like to explain briefly why this provision has been made in the Bill. The provisions of this Bill are not to be used in ordinary cases. It is only in the type of cases which I have described earlier in my speech which will invoke action under the provisions of this Bill, and in a case where Defence, External Affairs or the security of Pakistan are involved, it may be desirable, it may not be possible to reveal that information at the moment the person is taken under detention.

Because the very fact of giving away that information may be in itself a threat to the security of country because the security of that information at that particular moment would be of the utmost importance and it would be most undesirable to reveal the information of that secret nature to anyone while in the previous Acts no provision existed limiting the period of detention without reference to the Advisory Board."

28. The learned Advocate-General on the strength of the above said proviso of section 6(1) of the Security of Pakistan Act, 1952 and on the strength of the intention of the law makers, briefly revealed above, submitted that in certain situations the giving away of the relevant information can itself threat the security of the country and it would be most undesirable to reveal the information and therefore the above said, proviso of section 6(1) of the Act of 1952 provides that the Authority cannot be compelled to disclose the facts. which it considers to be against the public interest to disclose.

29. The Advocate-General further submitted that the Security of Pakistan Act, 1952 is a special law governing the preventive detentions and it will therefore prevail upon the general law. Reliance in this regard, was placed on State v. Zia-ur-Rehman and others (PLD 1973 Supreme Court 49) wherein well established rule of interpretation was reiterated that where in a statute there are both general provisions as well as special provisions for meeting a particular situation then it is the special provision which must be applied to that particular case or situation instead of general provisions. He further submitted that there is a difference between preventive detention and arrest and detention under the general law and the matters of preventive detention are treated differently. He relied on Mr. Kubic Dariusz v. Union of India and others (AIR 1990 Supreme Court 605) wherein it was held that a preventive detention as was held in Rex v. Halliday (1917 AC 260 (268)) is not punitive but precautionary measure. He then referred to the following judgments, wherein the detention orders passed under the Security of Pakistan Act, 1952, came up for consideration before this Court as well as before Karachi High Court.

Mushtaq Ahmad v. Government of Pakistan, Ministry of Interior and 2 others (1981 PCr.LJ 1263).

In this case the petitioner was tried by the Military Court and was acquitted and after his acquittal he was sent to civil prison and a detention order was passed against him under the Security of Pakistan Act, 1952. The learned Single Judge of this Court after perusing of the record of the Government of Pakistan, Interior Division and after examining the comments sent by the said Ministry held that no exception could be taken to the order of detention.

Jauhar Hussain and others v. Commissioner of Karachi (PLD 1962 (W.P.) Karachi 126):

In this case the detention order under section 3 of the Security of Pakistan Act, 1952 was passed by the Commissioner of Karachi Division. The argument that the Commissioner was not competent to pass such an order on behalf of the Central Government, was repelled and it was held that the power exercised by the Commissioner was of the Central Government and he had exercised that power on behalf of the Central Government in his capacity as a delegatee.

Syed Sibte Hasan v. The Crown (PLD 1954 Lahore 142):

In this case while considering the detention order passed under section 3 of the Security of Pakistan Act. 1952 and while considering that what information should be conveyed to the detenu which would be sufficient to enable him to make a proper representation, it was held that it is difficult to lay down any hard and fast rule in each case it would depend upon the circumstance of that case and the test, therefore, is whether in any particular case the grounds supplied to the person affected by the order of the detention were fact such as would enable him to make an effective representation against his detention, to Government or not."

30. It was also argued by the Advocate-General that this Court while considering a detention order, must also take into consideration the prevalent conditions of the country region and the world. The same were taken into consideration by a learned

single Judge of this Court in Syeda Shamim Akhtar v. Government of Pakistan and 3 others (1996 PCr.LJ 325 (343, para. 9)).

31. He also made a passing reference to Haji Rajab Ali v. Superintendent, District Jail, Quetta and another (1986 PCr.LJ 2928) (sideline "C"), wherein it was held "that the detaining authority is entitled to withhold the disclosure of only those facts and not all facts, the disclosure of which it considers to be against the public interest".

32. He then referred to police file of above said crime case F.I.R, No.412 of 2002, dated 19-12-2002 registered at Police Station, Manawan, against the detenus, Ahmed Javed Khawaja and Ahmed Naveed Khawaja and placed reliance on the material contained in the said file, in the shape of (i) recovery memos. dated 26-12-2002, in regard to the recoveries effected from Ahmed Javed Khawaja and Ahmed Naveed Khawaja which are C.P.Us. & C.Ds allegedly belonging to Abdul Aziz Misri, Abu Yasir Al-Jazairi, floppy discs, three Sudani Passports and three Egyptian Passports, (ii) statement of Muhammad Riaz, A.S.-I., under section 161 Cr.P.C, (iii) Report of the Capital City Police Officer, Lahore to the Provincial Police Officer, Punjab, Lahore (already discussed above) (photocopies produced) to contend that the police file of the said case also shows that the detenus were harbouring the members of 'Al-Qaida' Organization and their links are visible.

33. He further submitted that during investigation of the above said crime case, as mentioned in the above said Report, Ahmed Naveed Khawaja disclosed that he visited Afghanistan in 1998 and Ahmed laved Khawaja also visited Afghanistan and these visits were in violation of the provisions of the Passports Act. 1974, without obtaining any visa.

34. He reiterated that presumption of truth is attached to all the official acts and referred to Article 150 of the Constitution of Islamic Republic of Pakistan. 1973 and Article 129 (illustration (E) of the Qanun-e-Shahadat Order, 1984 and placed reliance, in this regard; -on The Federation .of Pakistan through the Secretary, Establishment Division, Government of Pakistan, Rawalpindi v. Saeed Ahmed Khan and others (PLD 1974 SC 151 (170)' sideline "G"), Lahore Improvement Trust, Lahore through its Chairman v. The Custodian, Evacuee Property, West Pakistan, Lahore and 4 others (PLD, 1971 SC 811 (837) sideline "J"), Zahoor Ahmed and others v. The Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1999 Lahore 139 (155) sideline "D").

35. In the end, he submitted that the Principles of Policy as contained in Chapter 2, Part II of .the Constitution (Articles 29 to 40) are the guidelines, and it is the responsibility of each organ or. Authority of the State, and of each person (Article 29(1) performing functions on behalf of an organ or Authority of the State, to act in accordance with these principles insofar as they relate to the functions of organ or Authority and Article 40 provides amongst other, that the State shall promote international peace and security, foster goodwill and friendly relations among all nations, and, therefore, the impugned detention order is justifiable on this policy guideline as well.

Mr. A.K. Dogar, Advocate, at the time of making submissions in rebuttal, attacked the Security of Pakistan Act, 1952 on entirely a fresh ground. He submitted that initially the Act of 1952, was enacted only for a period of three years expiring on 4-5-1955, its life was extended for another period of three years vide Ordinance XV of 1955 (PLD 1955 Central Statutes 137), which was promulgated just a few days before the expiry period on 27-4-1955, and under the then law i.e. section 42(3) of the Government of India Act, 1935, as amended by the Constituent Assembly of Pakistan, on 31st January, 1950, vide Government of India (Second Amendment) Act, 1950 (PLD 1950 Central Statutes 95), the above said Ordinance XV of 1955 had to be laid before the Federal Legislature within six weeks of the re assembly of the Legislature, the Constituent

Assembly after the promulgation of the above said Ordinance of 1955, met on 14-5-1955, as is evident from the perusal of the Constituent Assembly (Proceedings and Privileges) Act, 1955 (PLD 1955 Central Statutes 228), which was passed by the Constituent Assembly of Pakistan on 14th July, 1955, received the assent of Governor-General on 28-7-1955 and was published in the Gazette Extraordinary, on 6-8-1955 and therefore, under section 42(3) of the Government of India Act, 1935, as amended in 1950, the above said Ordinance XV of 1955 had to be laid before the said Assembly within six weeks from 14-7-1955 and as it was not done, the above said Ordinance XV of 1955 ceased to operate on 31-8-1955 and, therefore, the subsequent extensions in the life of the Security of Pakistan Act, 1952, including the Security of Pakistan (Second Amendment) Ordinance XXIII of 1961, whereby the time limit was altogether omitted, are of no consequence, because after 31-8-1955, Security of Pakistan Act, 1952 was no more in existence and no amendments, under the law, could be made in law which had already expired and was not in existence. It was further submitted that Legislature could have passed a retrospective law to give life to Security of Pakistan Act, 1952 or could have passed a fresh law altogether but could not give life through amendment in a non-existing law. He further submitted that the Security of Pakistan (Amendment) Act XVI of 1956 (PLD 1956 Central Statutes 205) was passed in ignorance of the fact that Ordinance XV of 1955 had already expired. He also argued that Article 224 of the 1956 Constitution whereby continuance was given to all laws in force in Pakistan is also of no avail as the said Constitution was passed on 2-3-1956, whereas the above said Ordinance XV of 1955 had already expired and was not in force. Learned Counsel, in this regard, referred to paragraphs from Crawford's Statutory Construction and Maxwell on Interpretation of Statutes, as mentioned in Government of Punjab through Secretary, Home Department v. Zia Ullah Khan and 2 others (1992 SCMR 602 at pages 611 and 612) to contend that many laws are of temporary nature, they expire of their own force when the time arrives for their expiration and if an Act expired or was repealed, in the absence of provision to the contrary, it is to be regarded as having never existed except as to matters and transactions past and closed.

37. Learned counsel for the petitioner, in the end, submitted that not a single instance of the so-called anti-national activities of the detenus has been referred to by respondent No. 1. These are mere allegations, which cannot be considered as valid grounds of detention the detenus have nothing to do with 'Al-Qaida' as reiterated in the rejoinders as well as the affidavits attached with the rejoinders, Ahmed Naveed Khawaja never visited Afghanistan and has no contact with any person as alleged in the above said Police Report, Ahmed Javed Khawaja, however, visited Afghanistan lawfully after obtaining a visa and that the judgment of the Hon'ble Supreme Court in Farooq Ahmad Khan Leghari's case (PLD 1999 SC 57) relied upon by the learned Deputy Attorney-General is distinguishable, it is not in relation to the law of preventive detention and is in relation to the law of Proclamation of Emergency and in fact through this judgment the law of Proclamation of Emergency has been further advanced in favour of judicial review.

38. It may be mentioned here that at the time of the closure of the arguments from both sides, the learned Deputy Attorney-General submitted/requested that in case this Court holds that the detention order is liable to be struck down/set-aside, wholly or partly, the operation of the Court's order/judgment may be suspended for two weeks to give a chance to respondent No. 1 to avail remedies against the Court's order/judgment.

39. All the arguments from the petitioner's side that the Security of Pakistan Act 1952 (XXXV of 1952) is a dead law because of its implied repeal due to subsequent promulgation of Defence of Pakistan Ordinance XXIII of 1965 and Defence of Pakistan Ordinance XXX of 1971 and due to its resultant non-existence because of the non-validation of the Ordinance XV of 1955 in time, by the Federal Legislature, have no force. Defence of Pakistan Ordinance XXIII of 1965 including the Rules framed thereunder was superseded and repealed by Defence of Pakistan Ordinance XXX of

1971 alongwith the rules framed thereunder. Mr. A.K. Dogar, Advocate while advancing his argument of implied repeal presumed that the above said Ordinance XXX of 1971 and the Rules framed thereunder were still in the existence and therefore the above said Act XXXV of 1952 was impliedly repealed, whereas in fact, as correctly pointed out by the learned Deputy Attorney-General, the Ordinance XXX of 1971 is no more in existence. It was repealed by Defence of Pakistan (Repeal) Ordinance XXXII of 1977. Therefore there is no repeal by implication. The learned Deputy Attorney- General correctly submitted that even if it is presumed that the above said Act of 1952 stood repealed by implication because of the promulgation of Defence of Pakistan Ordinance, 1971, the repeal of Defence of Pakistan Ordinance, 1971 on 15-9-1977, resulted in the restoration of original law i.e. Security of Pakistan Act, 1952. Reliance, in this regard, was correctly placed on Federation of Pakistan and others v. M. Nawaz Khokhar and others and Pir Sabir Shah v. Shad Muhammad Khan, Member, Provincial Assembly, N.-W.F.P. and another (supra). Similarly the argument that Security of Pakistan Act, 1952, became non-existent after 31-8-1955 because of the non-validation of Ordinance XV of 1955, in time, by the Legislature, has no force. The Parliament thereafter enacted Security of Pakistan (Amendment) Act XVI of 1956 whereby the life of Security of Pakistan Act, 1952 was further extended. The difficulty, if any, in the continuation of the Security of Pakistan Act XXXV of 1952, thus stood cured retrospectively. The argument that the Security of Pakistan (Amendment) Act XVI of 1956 was passed by the Legislature, in ignorance of the fact that Ordinance XV of 1955 had already expired, is misconceived. No such presumption is attached to the Acts passed by the Legislature. Legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject. This assumption is well-recognized in law and for this reason there is a presumption against the intent to repeal by implication. It may further he added that failure to add a repealing clause indicates that the intent was not to repeal any existing legislation. Reference, in this regard, can be made to Crawford's "Statutory Constructions", 1st Edition, page 631 already reproduced above in para. 25 of this judgment. It may further be mentioned here that by virtue of section 3 of Security of Pakistan (Amendment) Act, 1956, the Ordinance XV of 1955 was repealed. This repealing clause itself shows that Legislature was not ignorant of the existence of Ordinance XV of 1955. Furthermore, in 1981 all Federal laws were revised and (Federal Laws ' (Revision and Declaration) Ordinance XXVII of 1981) and the Security of Pakistan Act, 1952, which has never been expressly repealed and still exists on the Statute Book, was neither repealed nor amended and had this Act been a dead law it would have been wholly repealed alongwith other laws, specified in the 1st Schedule of the above Ordinance. This clearly manifests the legislative intent. It may further be mentioned here, as correctly submitted by the learned Advocate-General (para.27), that the appeal of Federation of Pakistan against the declaration of certain provisions of the Security of Pakistan Act, 1952, to be repugnant to the Injunctions of Islam by the Federal Shariat Court, was partly allowed by the Shariat Appellate Bench of the Hon'ble Supreme Court (Federation of Pakistan through Secretary, Ministry of Interior. Government of Pakistan, Islamabad v. The General Public (supra), Therefore, had the Security of Pakistan Act, 1952, been a dead law the Hon'ble Supreme Court would have declared it as such and would not have bothered to examine the provisions of the Act in the light of Injunctions of Islam. It cannot thus be argued before this Court, that the Security of Pakistan Act 1952 is a dead law.

40. The arguments from the respondent's side, on the other hand, that the word "satisfied" employed in subsection (1) of section 3 of the Security of Pakistan Act, 1952, connotes subjective satisfaction of the Central Government and the same cannot be assailed and successfully challenged on any Objective standards or tests, have also no force. The study of judgments passed in the cases of Malik Ghulam Jilani, Mir Abdul Baqi Baloch and Begum Agha Abdul Karrim Shorish Kashmiri, successively in the years 1967, 1968 and 1969 (supra) shows that the law of preventive detention as it is understood today is that:--

(i) the "satisfaction" of the detaining authority must be a state of mind, which has been induced by the existence of reasonable grounds of such satisfaction and therefore the power of an Authority is not immune to judicial review subject to the right of the State to claim privilege in respect of secret information and the Court's power to hold proceedings in camera.

(ii) the existence of reasonable grounds is essential and a mere declaration of satisfaction is not sufficient,
(iii) the detaining authority is expected to exercise the public power of apprehension and detention in accordance with law as enjoined by Constitution and not arbitrarily or perversely and therefore the detaining authority can be required by the Court to show that reasonable grounds existed.

(iv) merely the subjective satisfaction of detaining authority will not be sufficient to protect the order of detention and the mere production of an order of a detaining authority, declaring that he was "satisfied" cannot be held to be sufficient to satisfy the Court and the Court has to see that the Executive or Administrative Authority had before it sufficient material upon which a reasonable person could have come to the conclusion that the requirements of the law were satisfied.

(v) the Court can in the proper exercise of its Constitutional duty, insist upon the disclosure of the material upon which the Authority had so acted so that it can satisfy itself that the Authority has not acted in an unlawful manner.

(vi) it can no longer be regarded as sufficient for the Executive Authority merely to produce its order saying that it is satisfied. It must also place before a Court the material upon which it so claims to have been satisfied so that the Court, in the discharge of its Constitutional duty be in turn satisfied that the detenu is not being held without lawful authority or in an unlawful manner.

(vii) not only the jurisdiction of the detaining authority but also the manner of the exercise of that jurisdiction is subject to judicial review.

(viii) the question whether there are grounds upon which a reasonable person would have formed same opinion as that formed by detaining authority is within the ambit of Constitutional power of judicial review which power cannot be abridged or taken away by a sub- Constitutional legislation.

(ix) it cannot be argued that unless the mala fide is established the detaining authority cannot be called upon to disclose the material upon which he has based his opinion because the action taken upon no ground at all or without application of mind of the detaining authority would also not qualify as action in accordance with law and would therefore have to be struck down as being action taken in an unlawful manner,

(x) the Court can satisfy itself that the action taken is not a mere colourable exercise of power or the fraud upon the statute and reasonableness has to be established,

(xi) where there are no grounds or the grounds are such that no reasonable person would have acted then that is a case in which the Court in the exercise of its Constitutional power under clause (b) (i) of Article 199 (1) of the Constitution can declare the act to have been done in awful manner.

41. It is thus apparent that respondent No. 1 could not have refused the production of the material before this Court upon which it so claims to have been satisfied in terms of section 3(1) of the Security of Pakistan Act, 1952. At the most, it could have claimed

privilege and requested for holding of the proceedings in camera, but no such request was ever made. The learned Deputy Attorney-General in this regard, wrongly relied upon the case of Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan and others (supra). The said case dealt with the powers of the President of Pakistan in regard to the Proclamation of Emergency under Article 232 (1) of the Constitution and not in regard to the law of preventive detention, as developed in this country by the Hon'ble Supreme Court.

42. The argument of learned Advocate-General, in this regard, with reference to the proviso of section 6 (1) of the Security of Pakistan Act. 1952 is also without any force. The said proviso does not provide that the Court cannot require the detaining authority to disclose the necessary facts. It merely means that the detaining authority cannot be required by the detenu to disclose the facts which it considers to be against the public interest to disclose. In any case in Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri, it was held that the question whether there are grounds upon which a reasonable person would have formed same opinion as that formed by detaining authority, was within the ambit of power of judicial review under Article 89 (2) (b) (i) of the Constitution of 1962 (the wording of clause (b) (i) of Article 199 (1) of the present Constitution is similar which power cannot be abridged or taken away by a sub- Constitutional legislation. Therefore, it cannot be argued that proviso of section 6 (1) of the Security of Pakistan, 1952 has in any manner abridged or taken away the power of this Court, of judicial review under Article 199 of the present Constitution.

43. The attitude of the concerned authority in refusing to decide the petitioner's representations, merely on the ground of the pendency of writ petition in this Court especially when it was directed by this Court on 22-1-2003 to decide the same before 28-1-2003, is not understandable. It amounted to refusal of exercise of a lawful jurisdiction.

44. This Court is therefore left only with the material, which has been produced by the respondents before this Court to determine as to whether reasonable grounds existed, objectively as against the subjective satisfaction of the detaining authority. The said material is in the shape of the impugned detention order itself, the para-wise comments of respondent No. 1, the para wise comments of respondent No.2, the Report dated 13-1-2003 of the Capital City Police Officer, Lahore to the Provincial Police Officer, Punjab, Lahore, attached with the para-wise comments of respondent No.2, the statements of respondent No. 1 dated 27-1-2003, 3-2-2003 and 6-2-2003, the recovery memos in regard to the recoveries effected from the detenus Khawaja Ahmed Naveed and Khawaja Ahmed Javed in the investigation of crime case F.I.R. No-412 of 2002 dated 19-12-2002 registered at Police Station Manawan, Lahore, the statement of Muhammad Riaz, A. S.-I. under section 161 Cr.P.C. recorded in the above said crime case and the photocopies of the Passports recovered in the above said crime case from Khawaja Ahmed Naveed.

45. The above said material has been detailed in paras. 7, 8, 9, 10, 18, 32 and 33 above and need riot be detailed again. All this material which is before me does not establish the allegations levelled against the detenus Dr. Umar Karar Khawaja, Dr. Khizar Ali Khawaja and Muhammad Usman Khawaja and in my opinion no reasonable ground exists against these detenus upon which a reasonable person could come to the conclusion that requirements of law were satisfied in passing the detention order against them. It seems that these detenus have been detained merely because of the suspicion, due to their close relationship with other detenus, and the suspicion cannot be equated with satisfaction. The detention order, to their extent is therefore liable to be set aside and they are entitled to be set at liberty at once.

46. However, the case of other detenus, namely Dr. Khawaja Ahmed Javed and Khawaja Ahmed Naveed stands entirely on a different footing. There is enough

material available on the record unearthed during the investigation of the above said crime case F.I.R No.412 of 2002 dated 19-12-2002 registered at Police Station Manawan, District Lahore and the, recoveries effected from them and the evidence collected, prima facie establish their connection with members of Al-Qaeda, justifying the passing of the impugned order: Al-Qaeda has been declared as a Terrorist Organization by the United Nations Security Council vide Resolution No.1373 and Pakistan being a Member State of the United Nations and signatory of United Nations Resolutions and Conventions. Al-Qaeda is treated as a terrorist organization in Pakistan. Respondent No. I therefore can validly pass a detention order under section 3(1) of the Security of Pakistan Act, 1952, if it is reasonably "satisfied" that the person to be detained has, connection with Al-Qaeda. Under Article 40 of our Constitution, respondent No.1 is under an obligation to take necessary steps to promote international peace and security and the impugned detention order, to the extent of these two detenus is justiciable on this policy guideline as well. It is however, held that any observation made herein shall not affect the proceedings in the above said crime case F, LR No.412 of 2002 dated 19-12-2002 registered at Police Station Manawan, Lahore. In my opinion, after the institution of the present writ petition the petitioner's previous Writ Petition No. 21605 of 2002 for all practical purposes became infructuous.

47. The request of the learned Deputy Attorney-General, mentioned in para 38 above, for the suspension of the operation of this judgment for two weeks, has been considered. It has no merit. There is no justification for keeping the detenus in detention any further, who are being set at liberty.

48. In view of the above discussion, Writ Petition No.21605 of 2002 is disposed of as having become infructuous and the present writ petition is partly allowed to the extent of detenus Dr. Umar Karar Khawaja, Dr. Khizar Ali Khawaja and Muhammad Usman Khawaja, who are directed to be set a liberty at once, if not required in any other case and is dismissed to the extent of the d6tenus Dr. Khawaja Ahmed Javed and Khawaja Ahmed Naveed.

M.B.A./A-719/L Order accordingly.

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