

Regd. No. B. 5681

Editorial Committee :

N. M. JOSHI,
S. G. VAZE,

Vice-President and
Secretary respectively of
the All-India Civil
Liberties Council

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
Office : Servants of India Society, Poona

Annual
Subscription : Rs. 3
Per issue : annas 4
including postage

No. 41

February, 1953

PRIORITY OF THE RIGHT OF FREE SPEECH

We give below an extract from the judgment of Chief Justice Meredith of the Patna High Court which is of far-reaching consequence in the constitutional sense inasmuch as it asserts the United States Supreme Court's doctrine of the "preferred position" of the liberties of the First Amendment, from which is derived the rule that any legislation is "presumptively invalid" which touches the field of these liberties, the burden of proof resting on the Government which maintains that it is valid.

Before we deal with this case decided in the Patna High Court we would like to say how the doctrine that the First Amendment rights of free speech and press and assembly have a preferred status developed in the interpretation of the United States constitutional law.

1.—"PREFERRED POSITION" OF FIRST AMENDMENT RIGHTS

The judicial rule evolved by the United States Supreme Court that freedom of speech and assembly are to be treated as preferential rights resulted from the inevitable necessity, in deciding concrete cases, for weighing the social interests that competed with each other in those cases and determining which of those social interests was less valuable and must therefore yield to the more valuable interest that must be upheld. Such an evaluation often becomes necessary, which results in according to one right a preferred status over another.

Littering of the Streets

To take the simplest example of such evaluation, we may cite the case of *Schneider v. Irvington* (1939) 308 U. S. 147, in which the Court declared unconstitutional a group of municipal ordinances forbidding the distribution of handbills on the streets. The Court was faced in this case with the problem of deciding whether the ordinances violated the right to freedom of speech and the press secured by the First Amendment against abridgment on the part of the federal Government and by the Fourteenth Amendment against abridgment on the part of a state Government. The purpose of the municipal legislation was to prevent street littering possibly resulting from allowing distribution of leaflets on the streets, such pur-

STATE OF CRISIS

Mr. Nehru's philosophy, in virtually suspending individual liberty under the Detention Act, Public Safety Acts and similar other measures from a feeling that a state of crisis has arisen because of the doings of subversives, bears a close resemblance to the philosophy of Military Judge Effingham Swan in Sinclair Lewis's novel "It Can't Happen Here," who began a "hearing" on subversive activities with the statement :

Habeas Corpus ? Due Process of Law ?

Too, too bad! — All those ancient sanctities, dating no doubt from Magna Carta — been suspended — oh, just temporarily, y'know — state of crisis — unfortunate necessity.

pose being well within the competence of regulations which municipalities are empowered to enact in virtue of the police power of the states, i. e., regulations framed "in the interest of the public safety, health, welfare or convenience" of citizens. Should not the states be allowed to enforce such regulations as they considered necessary or desirable for the purpose of keeping the streets clean? And if incidentally these regulations put some check on free communication of ideas, should not this check be regarded as consistent with the rights guaranteed by the Constitution? The Court said no. It attached more importance to the unimpeded flow of ideas than to prevention of littering of the streets by such comprehensive regulations and held that the ordinances were a nullity. In its opinion the states may punish those who actually throw papers on the streets but they cannot rightfully prohibit a person on a public street from handing literature to one willing to receive it. The Court said in this case :

More legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other activities, but be insufficient to justify such as diminishes the exercise of

rights (of free speech and press) so vital to the maintenance of democratic institutions.

This Court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. . . . It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of preventing the restriction of enjoyment of these rights.

The ordinances were therefore declared to lay an unconstitutional restraint upon the freedom of speech and the press. The decision rested on comparing one right with another from the point of view of the public good and giving preference to that which is of greater value.

License Tax on Sale of Pamphlets

This is of course a very simple case. But what if municipalities enforce from pedlars of books a license tax which they lay generally on vendors? Is the exaction of such a tax to be regarded as violative of free speech and press? When the question first arose in the case of *Jones v. Opelika* (1942) 316 U. S. 584 in connection with religious literature, the Court was inclined to hold that there could be no constitutional objection to levying such a non-discriminatory tax since any curtailment of the rights guaranteed by the Constitution in such a case was only an indirect consequence of the exercise by the states of their undoubted right to raise money for the support of the administration. In this case tracts were sold by religious bodies as a source of funds, and there is no reason why such sales "partaking more of commercial than religious or educational transactions" should be exempt from payment of taxes laid on the sales of other wares. The Court said:

If proponents of religious or other social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as we may and should be to protect the freedoms safeguarded by the Bill of Rights, it is difficult to see in such enactments a shadow of prohibition of the exercise of religion or of abridgment of the freedom of speech or the press.

Four Justices dissented from this opinion, holding that business callings carried on for profit are in a different category from dealings in propaganda literature, and that "the constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas and taxing it as business callings are taxed." Among the dissenters was Chief Justice Stone who in his opinion used the phrase "preferred position" of the First Amendment rights. Referring particularly to the contention of the majority Justices that as the tax placed no special burdens on those who sold religious literature it did not invalidly restrict freedom of religion or freedom of speech, he wrote:

The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary, THE CONSTITUTION, BY VIRTUE OF THE FIRST AND THE FOURTEENTH AMENDMENTS, HAS PUT THOSE FREEDOMS IN A PREFERRED POSITION.

The very next year, this minority decision was converted into a majority decision, and Chief Justice Stone's opinion given above prevailed in *Murdock v. Pennsylvania* (1943) 319 U. S. 105. Here too the issue was the constitutionality of an ordinance permitting levy of a license tax from vendors of religious literature. The canvassing done here, the Court held, was not a commercial enterprise. It said: "An itinerant evangelist, however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. . . . It is a distortion of the facts . . . to describe their activities as the occupation of selling books and pamphlets." It is not enough that religious activities are not taxed higher than other activities. They may not be taxed at all. The Court held the ordinance unconstitutional in this case and, in a re-hearing, vacated the judgment in the *Jones v. Opelika* case rendered the year before. An important passage in the decision is quoted below:

The fact that the ordinance is "non-discriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and pedlars and treats them all alike. Such equality in treatment does not save the ordinance. FREEDOM OF THE PRESS, FREEDOM OF SPEECH, FREEDOM OF RELIGION ARE IN A PREFERRED POSITION.

The same doctrine of the "preferred position" of these rights was invoked by the Court when it asserted in *Follett v. McCormick* (1944) 321 U. S. 573 complete immunity of literature of this kind from taxation. Similarly, in *Marsh v. Alabama* (1946) 326 U. S. 501, the constitutional right to distribute literature without prior permission was held to exist in a company-owned town, the Court saying:

When we balance the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, WE REMAIN MINDFUL OF THE FACT THAT THE LATTER OCCUPY A PREFERRED POSITION.

Due Process in Relation to Fundamental Rights

This priority of freedom of speech and press over property rights was most noticeable in Justice Holmes' interpretation of "liberty" in the due process clause: while he was unwilling to interfere with legislative judgments in matters of shifting economic arrangements, he "was far more ready to find legislative invasion" where

freedom of expression was concerned. The same philosophy found expression in the Supreme Court's decision in the case of *West Virginia State Board of Education v. Barnette* (1943) 319 U. S. 624 in the following words:

The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.

The doctrine of the preferred status of freedom of speech and the press in the U. S. scheme of constitutional values is a corollary to the clear and present danger rule cited above.

"Clear and Present Danger" Test

This became still clearer when in *Thomas v. Collins* (1944) 323 U. S. 516 the Supreme Court employed very strong language in dealing with the constitutional right of free utterance. It said

For these reasons any attempt to restrict those liberties (of the First Amendment) must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other context might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.

In this case the conflicting social interests were the necessity "to regulate labour unions with a view to protecting the public interest" and the necessity not to "allow trespass on the domain set apart for free speech and free assembly," and the Court had to decide which of these social interests is to prevail. The Court said:

Where the line shall be placed in a particular application rests... on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative

body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. And the answer, under that tradition, can be affirmative to support an intrusion upon this domain, only if grave and impending public danger requires this:

2.—PRESUMPTIVE INVALIDITY OF RESTRICTIVE LEGISLATION

The "relative evaluation" of social interests which come into clash with each other that is here spoken of has led the Supreme Court, in resolving the clash, to give first place in its evaluation to the rights of the First Amendment, i. e., liberties of speech, press, assembly, etc., and this evaluation has in its turn led the Court to evolve a rule of judicial interpretation in order to secure these liberties from unjust invasion, the rule, viz., of presumptive invalidity of legislation which appears to restrict these liberties. The Court gave expression to this rule in unambiguous terms in the above case. It said:

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.

The Old Rule

This well-known passage announces a change in the judicial procedure which was consistently followed before in passing on the validity of legislation. The rule heretofore in force was that a law would be presumed to be constitutional until those who had challenged it had proved that it was unconstitutional. The principle that was then followed in determining the validity of enactments has been thus stated: "The question whether a law is void for its repugnancy to the Constitution is at all times a question of great delicacy which ought seldom, if ever, to be decided in the affirmative in a doubtful case. *Fletcher v. Peck* (1810) 6 Cr. 87. A state law will not be held unconstitutional if it can upon any other principle be correctly explained. *Butler v. Pennsylvania* (1850) 10 How. 402. It is presumed that the legislature acts advisedly and with full knowledge of the situation. *Chesapeake & P. Telephone Co. v. Manning* (1902) 186 U. S. 238." A classic statement of this principle is contained in Justice Washington's judgment in *Ogden v. Saunders* (1827) 12 Wheat. 213. He had said:

It is but a decent respect to the wisdom, integrity, and patriotism of the legislative body, by which any

law is passed, to presume in favour of its validity until its violation of the Constitution is proved beyond all reasonable doubt.

The New Rule

The whole burden of proving the invalidity of a law was supposed to lie on him who denied its unconstitutionality, as in *Brown v. Maryland* (1827) 12 Wheat. 419. In *Thomas v. Collins*, however, the Court announced a radical change in the age-old principle. The doctrine that was laid down in this case and in subsequent cases is, as stated in the Report of the President's Committee on Civil Rights, that "when a law appears to encroach upon a civil right—in particular, freedom of speech, press, religion, and assembly—the presumption is that the law is invalid, unless its advocates can show that the interference is justified because of the existence of a clear and present danger to the public security." With the shift from the presumption of validity to that of invalidity, the burden of proof shifts also. It now rests upon those who defend the law to show that the invasion of civil liberty is amply justified by a clear and present danger. It is not contended that this doctrine of presumptive unconstitutionality of laws affecting the First Amendment rights based upon the theory that the rights occupy a preferred position does not occasionally evoke a dissent. For instance, in *Kovacs v. Cooper* (1949) 336 U. S. 77 Justice Frankfurter said that the phrase "preferred position" of free speech had "uncritically crept into some recent opinions of the Court," but Justice Frankfurter even denies validity to the clear and present danger doctrine which is now in an unassailable position. Notwithstanding such dissents, however, the doctrine of the "preferred position" of free speech and the consequent doctrine of presumptive invalidity of laws affecting it may now be said to be a generally accepted doctrine, and they are found to be of invaluable help in safeguarding this freedom and the other freedoms enumerated in the First Amendment against unjustifiable interference.

3.—THE INDIAN CASE

And now we shall refer to the case in our own country in which was enunciated this doctrine of presumptive unconstitutionality of laws which on their face violate the fundamental rights guaranteed by the Constitution. It is the case of *Brijnandan Sharma v. State of Bihar* decided by the Patna High Court on 29th March 1950 and reported in A. I. R. (37 Patna 332). The case concerns an order passed under sec. 2 (1)(b) of the Bihar Maintenance of Public Order Act, 1949, forbidding the petitioner to go to any place in the districts of Singhbhum and Manbhum. The section permits the Provincial Government to restrict the movements of any person if in the Government's opinion it is necessary to do so "with a view to preventing (such person) from acting in any manner prejudicial to the public safety and the maintenance of public order." The Public Safety Act of every other province also contains

a similar provision. In this case the validity of the section and the order made thereunder was challenged on the ground that the section was in conflict with Art. 19 (1) (d) of the Constitution which guarantees free movement and that it did not come within the ambit of Art. 19 (5) which saves laws imposing "reasonable restrictions" on the exercise of the right to freedom of movement "in the interests of the general public."

That sec. 2 (1) (b) of the Act restricts the right guaranteed by the Constitution in Art. 19 (1) (d) was plain enough, and the only question before the Court was whether it was saved by Art. 19 (5). "During the existence of a state of emergency," said Chief Justice Meredith, (the right of free movement) "might be saved under Art. 358. But there has been no proclamation of an emergency, and Art. 358 has no application to the present case." Is the Act then to be held to impose reasonable restrictions? In defending the restrictive provision in the Act the Advocate-General argued that it was not open to the courts to consider the reasonableness or otherwise of the provision. "The legislature itself is the sole judge of reasonableness, and if the legislature makes a provision the courts must accept it as reasonable." This contention the Chief Justice refused to accept. He said: "If this is correct, the word 'reasonable' in cl. 5 is rendered completely nugatory. The Constitution says the restrictions must be reasonable. Obviously, it is for the courts to decide whether restrictive provisions are reasonable or not," applying the objective test of reasonableness, that is, whether a normal average man would regard the restrictions as reasonable or otherwise. "If we hold that no normally constituted person of average intelligence could possibly regard the provision as reasonable, then our decision would be that it is an unreasonable provision." And it would be for the Government to establish that the restrictions in the circumstances were reasonable. For authority for this proposition regarding the burden of proof the Chief Justice cited the decision of the Privy Council in *Emperor v. Vimlabai Deshpande* (1946). He said:

In that case the Privy Council were considering rule 129, sub-rule (1), Defence of India Rules, 1939, under which "any police officer . . . may arrest without warrant any person whom he reasonably suspects of having acted . . . in a manner prejudicial to the public safety or to the efficient prosecution of the war." Where a police officer made an arrest under this provision the Privy Council held that the burden was on him to prove to the satisfaction of the Court before whom the arrest was challenged that he had reasonable grounds of suspicion. If he failed to discharge that burden, an order made by the Provincial Government under sub-rule (4) of rule 129 for the temporary custody of the detenu was invalid.

Applying this principle, the Chief Justice proceeded to say:

In exactly the same way the State Government having acted under Act 3 of 1950 (the impugned

Act) to interfere with the petitioner's fundamental rights, THE BURDEN IS ON THE GOVERNMENT TO ESTABLISH THAT THE PROVISION IS VALID, that is to say, that it is reasonable, for, under the Constitution the only restrictions that can be placed upon this particular fundamental right must be of reasonable character. There has been a prima facie infringement of that right, and prima facie no law can infringe that right. Therefore, the burden is, in my opinion, on the State to bring that law within the exception contained in Art. 19, cl. 5, which alone can save it.

The Chief Justice further observed that since the restrictive provision was based merely upon the "satisfaction" of the Provincial Government that the power given it by the provision must be used, and the courts could only inquire into the existence of the satisfaction, the provision had to be declared void. He said: "If the law enables orders to be passed which are unreasonable (because made for instance for the purpose of excluding political opponents), and yet are consistent with its terms, then that cannot be called a law operating to impose only reasonable restrictions. . . . In my opinion, a law to satisfy the criterion imposed by Art. 19 (5) must be so framed as to leave it open to the courts to apply the objective test of reasonableness to its operation. This law is not so framed."

But it is not to this part of the judgment that we wish to draw the attention of the reader. It is to that part in which he places the burden of justifying a prima facie infringement of a fundamental right on the authority which is responsible for that infringement. The Chief Justice invokes the authority of a Privy Council decision for doing so. But he might as well have invoked the principle laid down by the U. S. Supreme Court in *Thomas v. Collins*.

"Separate but Equal" Facilities Doctrine

TWO NOTABLE CASES

The question of the validity of racial segregation in public educational institutions has now been directly raised in the U. S. Supreme Court, as stated in the last issue of the BULLETIN. On this constitutional issue, it can either hold that segregation is constitutional under the equal protection clause of the Fourteenth Amendment where equal facilities are furnished, or it may hold that segregation per se violated the equal protection clause.

While a decision on the constitutionality of segregation in itself is awaited, we may cite a relatively recent decision of the Supreme Court in *Sipuel v. University of Oklahoma*, (1946) 332 U.S. 631, in which denial of equal educational opportunities was condemned as unconstitutional. Ada Louis Sipuel, a Negro woman, sought admission to the Oklahoma University Law School, the only institution for legal education

maintained by the state. Her application being denied solely on the ground of her colour, she petitioned for a writ of mandamus which was refused by the trial court and the supreme court of Oklahoma. On appeal to the Supreme Court of the U. S., the decision of the Oklahoma supreme court was reversed. The Court in a per curiam opinion said:

The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the state. The state must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group.

Subsequent to the decision of the Supreme Court, the trial court directed the Regents for Higher Education of the state to enrol the plaintiff in the first year class at the Oklahoma University Law School or, in the alternative, admit no students to that class until equal facilities in the form of a school of law had been established for Negroes. Thereupon the Regents undertook to set up a separate school for the coloured people in Oklahoma City, but the petitioner refused to attend it. And the petitioner again applied to the Supreme Court for a writ of mandamus seeking to compel compliance with the Court's decision. However, the Court denied the motion, holding that the trial court had not departed from the mandate which it had given it, and observing further that the constitutional issue had not been raised as to whether a state might not satisfy the equal protection clause by establishment of a separate school for Negroes.

In the opinion given above the Supreme Court cited the authority of an earlier decision of the same court, viz. *Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337, which also is worthy of note. The facts of this case are as follow: Lloyd Gaines, a Negro of the state of Missouri, was graduated with the degree of B. A. at the Lincoln University, an institution for Negroes. Desirous of receiving education in law, he applied for admission to the law school of the University of Missouri, the Lincoln University having no law school of its own. But admission was refused to him. The state authorities recognised their obligation to afford equal educational facilities to Negroes, and this obligation they thought was being sufficiently discharged by offering to pay to a Negro, for whose education no facilities were available in the state, tuition fees in the university of some adjacent state which admitted non-resident Negroes to its institutions. Asserting that the refusal on the part of the University of Missouri constituted a denial by the state of the equal protection of the laws in violation of the Fourteenth Amendment, Gaines brought action for mandamus in the Supreme Court to compel the University to admit him (Canada being its registrar). Chief Justice Hughes, speaking for the Court, said:

By the operation of the laws of Missouri a privilege has been created for white law students which is denied to Negroes by reason of their race. The white resident is afforded legal education within the state the Negro resident having the same qualification is refused it there and must go outside the state to obtain it. That is a denial of the equality of the legal right to the enjoyment of a privilege which the state has set up and the provision for the payment of tuition fees does not remove the discrimination.

Manifestly, the obligation of the state to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the equality of legal right must be maintained. The obligation is imposed by the Constitution upon the states severally as governmental entities, each responsible for its own laws establishing the rights and duties of persons within its borders. It is an obligation the burden of which cannot be cast by one state upon another, and no state can be excused from performance by what another state may do or fail to do. That separate responsibility of each state within its own sphere is of the essence of statehood maintained under our dual system. . . . We find it impossible to conclude that what otherwise would be unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the state, can be justified by requiring resort to opportunities elsewhere. That resort may mitigate the inconvenience of the discrimination but cannot serve to validate it.

We are of the opinion that the ruling (of the lower court in denying a peremptory writ) was error, and that petitioner was entitled to be admitted to the law school of the State University in the absence of other and proper provision for his legal training within the state.

NOTES

Racial Restrictive Covenant

HELD INVALID IN CALIFORNIA

Following the Supreme Court's historic decision in *Shelley v. Kraemer* (1948) 334 U. S. 1, prohibiting in broad terms any use of the state's judicial process in enforcing private agreements designed to exclude persons of a certain race from the ownership or occupancy of real property as violating the equal protection clause of the Fourteenth Amendment (vide p.ii:116 of the BULLETIN), a California court recently took similar action in another case. The District Court of Appeals of that state in *Barrows v. Jackson* held that a Caucasian seller of real property to a Negro could not be held liable in damages even though his property was covered by a restrictive covenant to the effect that non-Caucasians could not use

or occupy the land. Giving full effect to the *Shelley* case, the Court said in this case:

The doctrine of the *Shelley* case, as we read it, means that no state sanction, direct or indirect, can constitutionally be imposed for the breach of a restrictive covenant if such sanction would result in the denial of any right guaranteed by the Constitution. Of the civil rights conferred, none is clearer and few more vital than the right to buy a home and live in it.

Thus, the principle of the *Shelley* ruling is being carried into effect. And it is a great principle fraught with immense good to the Negroes, for it will in course of time break down racial residential segregation effected by state enforcement of restrictive covenants. Dr. Thurgood Marshall, a Negro jurist of high eminence, says: "With judicial enforcement of restrictive covenants now held to be a denial of the equal protection of the laws, it becomes possible for coloured minorities to break out of crowded ghettos into unsegregated residential areas, with consequent opportunity of acceptance as members of an integrated community. Thus increased opportunity is given for eventual solution of the racial problems in this country."

Another law discriminating against persons because of their race has been held unconstitutional as violative of the equal protection of the laws guarantee of the federal and state constitutions.

In a case known as *In re Hahn*, Los Angeles Superior Court Judge Victor R. Hansen held invalid the section of the California Probate Code which prohibited persons "ineligible to citizenship" to be appointed guardians of an estate involving real property. He held that this section contravened the Fourteenth Amendment.

The petitioner in the *Hahn* case is a Korean. Koreans, under the present naturalization law, are ineligible for citizenship. Following the Court's ruling, however, *Hahn* was appointed the guardian of his minor son's estate.

Colour Bar in Restaurants

While considering the question of racial segregation in public schools, the U. S. Supreme Court will be asked to pass on the question of the legality of a racial ban in public restaurants. For an appeal is going to be filed by the officials of the District of Columbia against a five-to-four ruling of the Court of Appeals on 22nd January to the effect that Washington restaurants might legally refuse service to Negroes. The case arose out of the refusal of a restaurant in Washington to serve a group of Negroes in 1950. The district government brought a suit against the restaurant, but the municipal court of the district quashed the complaint, and the higher court affirmed. Thereupon, the matter was taken to the federal court.

To understand the history of this question, we must go back to the Civil Rights Act enacted by the Congress in 1875, the purpose of which was to declare that in the enjoyment of the services and privileges of inns, public conveyances, theatres and other public places of accommodation or amusement no distinction should be made between citizens differing in race or colour. The Act was directed against action by private individuals. But in 1883, in the famous Civil Rights Cases, the U. S. Supreme Court held this statute unconstitutional, on the ground that the statute could not be justified under the Fourteenth Amendment, for that Amendment was directed against discriminatory action by states and not against such action by private individuals. The effect of this decision is to leave the matter entirely to the states for regulation by means of legislation. They may either outlaw segregation or even compel it. And of the 48 states only 18 have statutes prohibiting discrimination in restaurants and other eating places.

It was the claim of the district government in the instant case that the laws of 1872 and 1873 passed by the Legislative Assembly of the District of Columbia against racial discrimination in restaurants and similar establishments made it obligatory on keepers of all restaurants in the District to admit both whites and coloured persons to the facilities they offered. But the Appeals Court held that the Legislative Assembly lacked authority to pass such prohibitory laws. These laws were passed in the brief period of 1871 to 1878 when Washington had been granted a kind of home rule to manage its local affairs. The Court held that the power granted then was limited to the enactment of regulations of a municipal or a local character and could not be used to pass general legislation. Besides, the Court noted that the statutes had remained a dead letter ever since they were adopted. Chief Judge Harold M. Stephens said for the court:

The enactments [of 1872 and 1873 by the District legislature forbidding racial discrimination in restaurants, taverns, etc.] were not within the power of the Legislative Assembly. . . . They were of the character of "general legislation," the power to enact which the Congress could not constitutionally, and did not, delegate to the Legislative Assembly . . . and they were repealed. . . . The enactments having lain unenforced for seventy-eight years, in the face of a custom of race disassociation in the District, the decision of the municipal authorities to enforce them now . . . was in effect a decision legislative in character. . . . Such a decision were better left, we think, to the Congress.

The court made it clear that it was ruling solely on the validity of the laws in question and not on the wisdom of a segregation policy. But the Supreme Court will have to consider the question in its wider aspect. It may be noted in passing that the President's Committee on Civil Rights said in its Report that the situation that exists in

this respect in the District of Columbia, which is under federal jurisdiction, is "intolerable."

Postal and Radio Censorship

It was recently discovered that, while "Pravda" and "Izvestia," Soviet newspapers, are being delivered by the Post Office of the United States to whoever subscribes to them, it was refusing to deliver certain Soviet magazines to certain persons, libraries and institutions. When the American Civil Liberties Union protested against this ban, the Post Office Department wrote in reply that, according to the Attorney General, political propaganda distributed in violation of the Foreign Agents Registration Act may be considered non-mailable, and it added that the publications had not been withheld from universities of "known standing" or from "certain researchers" who offer evidence as to the nature of their work. That the Post Office should constitute itself judge of academic standards is of course highly objectionable, and ACLU in its protest says:

The duty of the Post Office Department is to carry and deliver the mails, and, as the courts have consistently ruled, not to act as a censor.

The mere assertion of the power to withhold constitutes an inherent threat to freedom of opinion. [We urge you to] authorize delivery of all Soviet publications without discretion to anyone who requests or subscribes to them.

The protest gains in weight because it comes from a body, which is so anti-Communist as to bar all Communists from any kind of participation in its activities.

ACLU played the same role of raising its voice against denial of freedom of expression to persons with whom politically it has little sympathy when it protested against the ban imposed by a radio station on a campaign speech by Senator Joseph R. McCarthy. The radio station cancelled the Senator's broadcast when he refused to delete two paragraphs from his speech which the station's attorneys considered libellous. It is true that the station might have been held responsible for the libel and on this ground there was some reason for the action that the station had taken. In order to remove such a danger, ACLU could only ask the station "to seek an indemnification agreement holding the speaker totally responsible for the statements he makes." The Union said: "As a non-partisan organization, ACLU takes no position with respect to the political expression of any political candidate, but we believe that active practice of the American principle of free speech is essential to the health of our democracy." It is in this spirit that civil liberties unions in this country should go to work.

HABEAS CORPUS PETITIONS

High-handedness " in Using Power of Detention

DETAINED IN ORDER TO "TEACH A LESSON"

Mr. Man Singh was ordered to be detained by the Government of Patiala under sec. 3 of the Preventive Detention Act, 1950, the allegation against him being that he obstructed a police sub-inspector in recovering an abducted Muslim woman from his house. This was the only illegal act attributed to him which was made the ground of his detention. For the alleged illegal act the Government filed a prosecution against him under sec. 353 of the Penal Code, and yet the Preventive Detention Act was used against him.

The detenu made a habeas corpus petition in the Pepsu High Court challenging the legality of the detention order. On 24th December 1951 the Court allowed the petition and ordered the petitioner to be set at liberty. Teja Singh C. J. in his judgment said :

Even if we assume that the solitary incident mentioned in the grounds of detention did actually happen, there could be no ground for thinking that the detenu was engaged, or was likely to engage in future, in activities prejudicial to the maintenance of public order. . . . It may be that the detenu, by offering obstruction to the sub-inspector if he did so at all, committed an offence. But for this a case has been registered against him and if the case is put in court he will be properly tried for it, but this did not justify any action under the Preventive Detention Act.

After taking into consideration the entire material placed before me by the petitioner as well as the counsel for the State, I cannot help thinking that it was a case of high-handedness and misuse of the drastic powers that the Preventive Detention Act has vested in the executive authorities, and further that the detenu was ordered to be detained, not with a view to preventing him from indulging in any kind of illegal activities, but to teach him a lesson for offending a police officer.

It is true that in a case of this kind it is the satisfaction of the detaining authority that must be looked to, but it is now well recognised that unless there is any material on the strength of which the said authority can be satisfied that it is necessary to order the detention of the person concerned, with a view to preventing him from acting in a manner prejudicial to the maintenance of the public order, etc., the mere fact that it is mentioned in the order that he was so satisfied is not sufficient.

Four Months' Delay in Furnishing Particulars

SUPREME COURT ORDERS RELEASE OF TWO DETENUS

The Supreme Court on 23rd February 1951 allowed the two separate habeas corpus petitions of Ujagar Singh and Jagjit Singh, detained first under the East Punjab Public Safety Act and later under the Preventive Detention Act, 1950. When detention was ordered under the latter Act, the same grounds were communicated to the detenus as those given them when they were first detained some six months earlier, and it was contended on behalf of the detenus that this showed that the orders of detention passed against them on the second occasion were "made mechanically" and were "really mala fide," and that there was no fresh "satisfaction" on the part of the detaining authority that detention was necessary in the interests of public order.

The Court saw no force in this contention. Mr. Justice Chandrasekhara Aiyar, who delivered the Court's opinion, said :

There is nothing strange or surprising in the fact that the same grounds have been repeated after the lapse of several months in both the cases, when it is remembered that the petitioners were under detention and in jail during the whole of the intervening period. No fresh activities could be attributed to them. There could only be a repetition of the original grounds, whether good or bad. It does not follow from this that the satisfaction of the detaining authority was purely mechanical and that the mind did not go with the pen. The past conduct or antecedent history of a person can be taken into account when making a detention order, and, as a matter of fact, it is largely from prior events showing the tendencies or inclinations of the man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. If the authority satisfied himself that the original ground was still available and that there was need for detention on its basis, no mala fides can be attributed to the authority from this fact alone.

The decision means that, under the Preventive Detention Act, till it was amended in August 1952, a person could be held in detention indefinitely. A Government passes an order for detention; perhaps the detainee's case is inquired by an Advisory Board, though under the original Act of 1950 this happened only in some 5 per cent. of the cases of detention; the Board reports that there is cause for suspecting a prejudicial act; the detainee remains in custody; he is released and immediately afterwards re-detained; he is again placed before an Advisory Board; the Board must repeat its previous report; it cannot possibly find, in opposition to the Government, that the danger to public order has now ceased, since the

reason for detention is based on the previous history of the detainee; again, time comes for the detainee's release, and, again, the old process is repeated, with the detainee back in custody—and this goes on ad infinitum, with the result that the detention is validly prolonged indefinitely.

At last, however, a stop was put to such a possibility of an unending series of detentions by the Preventive Detention (Second Amendment) Act. This legislation in sec. 11-A fixed twelve months to be the maximum period of detention in respect of any person, and in sec. 13 (2) laid down, in order to make this outside limit effective, that a fresh detention order could be made after the expiry of the first order against the same person only in cases "where fresh facts have arisen" on which the detaining authority becomes satisfied that a fresh detention is required. This indeed is the most noteworthy improvement effected by the Act.

In both the instant cases, the Supreme Court found that the grounds originally furnished to the petitioners by the Punjab Government "were highly vague," and this vagueness, the Court says, "by itself, would constitute a justification for release of the petitioners" if Iswar Das's case (petition no. 30 of 1950, S. C.) were to be followed. But the grounds first communicated to the petitioners did not stand alone: they were supplemented later by additional grounds. Only, these were supplied months afterwards; in Jagjit Singh's case, they were served two days after he had preferred his habeas corpus petition to the Supreme Court. And the Court says on this point: "It is impossible to justify the delay of nearly *four months* in furnishing what have been called additional or supplementary grounds." (The emphasis is in the original.) Nor was this all. In the so-called supplemental grounds furnished to Ujagar Singh "there are several which do not apparently relate to the original ground;" they are "new grounds," and *State of Bombay v. Atmaram Shridhar Vaidya* (A.I.R. 1951 S. C. 157) and *Tarapada De v. State of West Bengal* (A. I. R. 1951 S. C. 174) have laid down the principle "that no new grounds could be supplied to strengthen or fortify the original order of detention." These new grounds "have to be eliminated, therefore, from consideration." In the result, the Court says:

As the petitioners were given only vague grounds which were not particularised or made specific so as to afford them the earliest opportunity of making representations against their detention orders, and there having been inexcusable delay in acquainting them with particulars of what was alleged, the petitioners have to be released; the rules being made absolute.

Non-Mention of Period of Detention

IN CONFIRMATION ORDER ILLEGAL

Hari Prosad Dhanuka and Kishanlal Dhanuka were ordered to be detained by the Assam Government under sec. 3 (2) of the Preventive Detention Act, no. 4 of 1951, no period being specified for which detention was to last. Their cases were referred to the Advisory Board, which reported that there was sufficient cause for the detention. Thereupon the Government confirmed its original order of detention under sec. 11 without mentioning in the confirmation order how long the detention would continue. The validity of the detention was challenged in a habeas corpus petition on the ground that an order of detention for a period not specified in the confirmation order was bad in law.

Deka J. of the Assam High Court on 20th December 1951 upheld this contention and allowed the petition. His Lordship said that the argument put forward on behalf of the Government that no period need be mentioned since sec. 11 (1) says Government may continue the detention "for such period as it thinks fit" was "totally misconceived."

The Government has to express its intention in a way at the time of passing an order (of confirmation), so that its implication may be known to the person whose interest is affected or whose personal liberty is infringed. A mental reservation on the part of the Government might go to any extent. When the Preventive Detention Act itself definitely suggests that the detention should be for such period as it thinks it fit, it is only just and natural that the person whose liberty is interfered with should know for what period he will have to be in detention or his movement will be restrained.

It is clear that the confirmation is not an automatic process, but the Government has to apply its mind and exercise its discretion, and after the order of confirmation is passed, the Government is authorized under the Act to continue the detention of the person concerned for such period as it thinks fit. To my mind it is absurd to suppose that what sec. 11 (1) of the Act suggests is that the Government will just confirm the order as originally passed under sec. 3 of the Act and continue detaining the person till an uncertain future date when the order of detention may be again considered with a view to terminate the detention or allow it to continue till the Act expires. I do not think such a construction of sec. 11 of the Act is conceivable. . . . (The section contemplates) that the Government has to think (while acting under the section) about the fitness and duration of detention, and they cannot do without it. If it does not think or apply its mind to this aspect of the matter, it amounts to non-compliance of the provisions of this section.

My opinion, therefore, is that the order of detention for an indefinite period or without specifying the period at the time of confirmation as provided under sec. 11 (1) of the Act is bad in law and has to be set aside in keeping not only with the provisions of law but also according to the principle of natural justice. I hold therefore that the orders of detention in both these cases have been in contravention of the strict provisions of law and they have to be set aside.

Magistrate Must not Specify Period of Detention

IN THE DETENTION ORDER

Hari Shah was arrested on 26th June 1951 and detained by order of the district magistrate of Amritsar under sec. 3 of the Preventive Detention Act, and it was stated in the order that he was to remain in detention for three months. His case was considered by the Advisory Board, and as a result of this the Punjab Government confirmed the order under sec. 11 of the Act and directed that the detention should continue for three months more. In a habeas corpus petition the detention was challenged on the ground that when the Government extended the duration from three to six months, it ought to have given fresh grounds for this extension, which however was not done in this case, thus rendering the detention illegal.

Bhandari and Soni JJ. of the Punjab High Court, who heard the petition, rejected this contention, saying that the Government, in confirming an order of detention, does not become the "authority making the order" which under sec. 7 is required to supply the grounds of detention. Their Lordships, therefore dismissed the petition (16th November 1951).

But another question arose in connection with this petition, viz., whether in the order of detention passed by the district magistrate under sec. 3 the period of detention should have been mentioned. On this point Their Lordships said :

Sec. 3 of the statute does not empower any person or authority to order the detention of a person for a specified period. All that it says is that an order of detention may be made. The Act appears to contemplate that the authorities specified in sec. 3 should only make an order of detention and leave it to the appropriate Government to specify the period of detention after it has had the opportunity of considering the grounds of detention, the representation (if any) made by the detenu and the report submitted by the Advisory Board. The question whether an order should be confirmed or revoked, and if it is confirmed whether the detention should or should not be continued, is in the sole discretion of the appropriate Government.

It follows as a consequence that when a district magistrate purporting to act under the provisions of sec. 3 specifies the period for which a person may be detained, he acts in excess of the powers conferred upon him by law and appropriates to himself the functions of Government. His order in so far as it specifies the period of detention must therefore be deemed to be void and of no effect.

Advisory Board Not Properly Constituted

A division bench of the Patna High Court consisting of Narayan and Ahmed JJ. on 19th December allowed the application, filed on behalf of Mr. Karmavir Singh for a writ of habeas corpus against his detention in the Central Jail at Hazaribagh and ordered that the petitioner be immediately released. It would appear that the Bihar Government placed the case of this detention before an Advisory Board within the time prescribed by law, but in appointing the Board omitted to appoint one of the members as its chairman, and it was contended that on account of this failure on the part of the State Government the Board was not such as could be regarded as a properly constituted Board.

Their Lordships upheld this contention. They pointed out that an amendment of sub-sec. (2) of sec. 8 of the Preventive Detention Act of 1950 by Act IV of 1951 provided that the Advisory Board was to consist of three persons (instead of two as before), and a further provision was added to sec. 8, which provided that the Government would appoint one of the three, who was or had been a High Court Judge, to be its chairman. An Advisory Board which did not satisfy these requirements was not a validly constituted Board.

It appears that subsequently a new Board was appointed with Mr. Justice Ramaswami as chairman. But a reference of this case to the new Board was made only on 11th November 1952, whereas the provisions of the law required a reference to be made within 30 days of the date of detention, which in this case meant till 23rd October.

Their Lordships said that the reference being made to a Board which had not been validly constituted was no reference in the eye of law, and the detention had to be regarded as illegal and invalid.

HARIJANS AND HARIJAN CONVERTS

Concessions Denied to Converts

OF MORE THAN ONE GENERATION OLD

Under the educational rules of the Madras State Harijan boys are exempted from the payment of fees, but the concession is denied to Harijan boys converted to Christianity, the only exception being that if the pupil himself or his parent be a convert the concession will be allowed. These rules operated in refusal of the concession to M. Thomas whose grandfather, originally a Harijan, had been converted to Christianity. The father of the boy filed an application in the Madras High Court, pleading that this was unconstitutional discrimination under Arts. 14, 15 (1) and 16 of the Constitution.

Rajamannar C. J. on 21st April 1952 held that the State had made no discrimination and dismissed the application. He said :

The State (has) made an exception in the case of recent converts. . . It is not for us to speculate on the reasons for the policy underlying this exception. In making the exception the State is certainly entitled to fix limits to its operation. After all the State was granting an indulgence, and it was for the State entirely to decide how far the indulgence would go. The policy of the State evidently was to allow the

concession to pupils or students who themselves had been converted or whose parent or guardian had been converted. But the State apparently was not willing to extend the concession where the conversion was more than one generation old... In our opinion, the petitioner has entirely misconceived his remedy. It is certainly open to him to impress upon the State the desirability of extending the concession even to persons in his position. But as a court of law we are unable to see how we can give any relief to the petitioner under Art. 226.

C. L. U. NEWS

Firing in a Village

ACTION BY THE MADHYA PRADESH UNION

Arising out of the discontent of the people with the order of the Madhya Pradesh Government reducing the tahsils of Drug district, firing by the police took place at Chhuikhadan on 8th January, in which five persons were killed and thirty wounded. The places where people were fired at, it is alleged, "are either inside a building or with a private fencing or compound far away from the place where the people were making a peaceful demonstration" against the order for district re-organisation. The Government has appointed a High Court Judge, Mr. B. K. Choudhari, to inquire into the circumstances, which led to the firing. Such appointment was very necessary, but the Madhya Pradesh Civil Liberties Union has urged upon the Government to appoint two non-officials to participate in the inquiry in order to inspire public confidence in the inquiry. The Union is also deputed Mr. M. L. Shrivastava, Bar-at-law, to attend the inquiry as an observer.

Mr. Ruiker's Detention

The Union also passed the following resolution on the detention of the well-known labour leader, Mr. Ruiker :

This Union views with great concern the statement of Mr. R. S. Ruiker, General Secretary, All-India Forward Bloc, that he along with Messrs. Rajeshwar-rao Karne and Krishnarao Dixit was arrested (without warrant) at 4 p. m. on the 31st December 1952 at Chanda for alleged offences under sections 117 and 188 I. P. C. and detained in jail custody for five days before they were produced in the court of a magistrate at Chanda on 5th January 1953, and strongly condemns such a flagrant violation of Article 22(2) of the Constitution which guarantees that citizens will not be detained in custody without being produced before the nearest magistrate within 24 hours of their arrest."

COMMENTS

Number of Persons in Detention

In the Gazette of India are given figures of persons held in detention in the various States under the Preventive Detention Act as on 31st December 1952. The total number of detenues is 338, whereas six months ago it was as much as 1,190. Of these 338 as many as 323 were detained in the interest of the maintenance of public order. To this figure of 328 Bombay contributed 192; Pepsu 60;

Saurashtra 30; Hyderabad 14; Punjab 7; Madhya Pradesh 5; Kutch 4; Assam, Bihar, Uttar Pradesh, Rajasthan and West Bengal 3 each; and Ajmer 1. Of the remaining ten, eight owed their detention to activities prejudicial to the maintenance of essential supplies and services. The Bombay Government has explained that of the total of 193 people held in detention in the State 185 are "goondas," only 8 being "politicals."

Jan Sangh Leaders Detained

On the eve of the meetings of the working committees of the Jan Sangh and Hindu Mahasabha in New Delhi on 7th February, arrests on a large scale were made in the Punjab and Delhi of supporters in these organizations of the agitation which the Jammu Praja Parishad has been carrying on for two months and a half for securing a complete accession of the Kashmir State to the Indian Union, application of the Union Constitution to the State and the financial integration of the State with India. After arrest, the persons were detained in custody under the Preventive Detention Act. The working committee of the Jan Sangh condemned the arrests and detentions as a move to suppress political freedom (that of the Mahasabha doing likewise) and appointed a five-man committee to explore means to a peaceful solution of Jammu's problems. It was suggested that, if as a result of the committee's labours an amicable settlement could not be reached, it might be necessary to start a mass movement to achieve Praja Parishad's legitimate objective.

The resolution added, the Parishad's demands were far from communal or subversive. "It is deplorable that the Government of India is helping Sheikh Abdullah's Government in suppressing the Praja Parishad agitation by sending its police."

The working committee of the Jan Sangh took a serious view of the Government of India's refusal to permit "members of the fact-finding delegation of the Jan Sangh to proceed to Jammu while persons of other parties were allowed to undertake similar tours."

Second Communist Trial

UNDER THE SMITH ACT

On 20th June 1951, i. e., sixteen days after the Supreme Court upheld the conviction of the eleven top leaders of the American Communist Party, thirteen of the Party's "second team" of leaders, among whom is Miss Flynn, a member of the national committee, were put on their trial for violation of the Smith Act. They were accused of wilfully conspiring "with intent to teach and advocate the duty and necessity of overthrowing the Government by force and violence as speedily as circumstances would permit, and to organize the party to that end." The trial went on for nine and a half months in a federal court, and the jury on 21st January, after nearly a week's deliberation, returned a unanimous verdict of guilty, convicting all of them.

The question of principle, viz., whether the rights of free speech and due process of law are violated by the Smith Act, did not arise, not being within the province of a trial jury, though when the case goes on appeal it will certainly be discussed again. The jurors were asked only whether on the evidence before them they thought the defendants had violated the Act.

In his charge to the jury the Judge had instructed it to weigh the evidence separately against each defendant and to be sure it did not convict through "guilt by association."

He said it must first find that the Communist party, was not merely a legitimate political party, but actually had violent revolution among its objectives, then find that a conspiracy existed to bring about such a revolution "as speedily as circumstances would permit." He said it must also determine whether each individual defendant, knowing the party's true aims, and acting not solely as party members or office-holders but as "initiates" or "insiders" among party leaders, had "wilfully" joined such a conspiracy.

The maximum sentence that can be imposed under the Smith Act for criminal conspiracy to advocate forcible overthrow of the Government is five years' imprisonment and \$10,000 fine, and the Government Attorney pressed for the maximum sentence to be imposed on each defendant. The Judge, however, surprised everybody in the court when he asked the defendants if they would prefer going voluntarily to Russia and spending the rest of their lives there to serving a prison sentence in the U. S. All the defendants rejected this unusual offer, Miss Flynn remarking: "We feel we belong here and have a political responsibility here. We feel we would be traitors to the American people if we turned our backs on them just to escape jail." Thereupon the Judge on 3rd February awarded jail sentences ranging from one to three years and fines totalling \$64,000.

Bill to Outlaw Poll Tax

AS A "LEGAL" DEVICE TO DISFRANCHISE NEGROES

Ten Democratic Senators from southern states (headed by Senator Holland of Florida) moved in the Senate on 23rd January a bill as a constitutional amendment intended to prohibit all state legislation requiring payment of a poll tax as a pre-requisite to voting in federal elections.

Several devices have been used by some of these states to circumvent the provisions of the Fifteenth Amendment, adopted in 1870, which prohibits abridgment of the right to vote "by any state on account of race, colour or previous condition of servitude." Among these devices the chief are the white primary, which the Supreme Court in *Smith v. Allwright* (1944) 321 U. S. 649 held to be contrary to "the well-established principle of the Fifteenth Amendment forbidding the abridgment by a state of a citizen's right to vote" and therefore unconstitutional, and poll tax legislation requiring the payment of a fee before a person can be regarded as having the qualification to cast his ballot in the ballot box. But the poll tax (which is in force in five of the southern states—Alabama, Arkansas, Mississippi, Texas and Virginia), is levied not on Negroes alone but on whites as well, as a requisite to eligibility. It therefore might not in the eye of law be discriminatory, though many would share Mr. Justice Frankfurter's view expressed by him in *Lane v. Wilson* (1939) 307 U. S. 268 that the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination."

While the poll tax has curtailed the size of the entire electorate—white and Negro—in these states, it

has curtailed that of the black much more severely. It is learnt, for instance, that in Georgia 82 per cent. of the white population above the age of 21 years was registered, while of the Negro population only 18 per cent. had access to the polls though every third person in the state was a Negro. These are figures for 1948, just after Georgia had repealed its poll tax law.

The Bill has been referred to the Judicial Committee which is headed in the new Congress by Republican Senator William Langer of North Dakota, described as "long a proponent of civil rights legislation." This is regarded as a good sign, and it is surmised that at least six of the southern states would ratify the amendment which would be enough to make it effective. The chief sponsor of the Bill has expressed the hope that once "this imposition of an undemocratic handicap on Negro citizens" is out of the way, it will pave the way to a harmonious approach to the settlement of other civil rights that had been blocked or beaten in the past by Senate filibusters. Filibusters employ unlimited debate to a point where an opposed measure is withdrawn from consideration to let other legislation go through. Only in this Congress an attempt made by liberal Senators to break the filibuster was decisively beaten with the help of the new majority leader, Senator Taft. If the passing of the anti-poll tax bill and its ratification by the south leads to the adoption by general consent of such measures as federal Fair Employment Practices Act, it would indeed be a happy issue.

Promise to End Segregation

U. S. President Eisenhower, in his State of the Union message, repeated on 2nd February the promise he had made in his campaign speeches to end racial segregation in Washington. The message contained the following statement on civil rights:

Our civil and social rights form a central part of the heritage we are striving to defend on all fronts and with all our strength.

I believe with all my heart that our vigilant guarding of these rights is a sacred obligation binding upon every citizen. To be true to one's own freedom is—in essence—to honour and respect the freedom of all others.

A cardinal ideal in this heritage we cherish is the equality of rights of all citizens of every race and colour and creed.

We know that discrimination against minorities persists despite our allegiance to this ideal. . . .

I propose to use whatever authority exists in the office of the President to end segregation in the District of Columbia, including the Federal Government, and any segregation in the armed forces. He did not favour a federal Fair Employment Practices Act which is the Democratic Party's project, but he said in this connection:

In this manner, and by the leadership of the office of the President exercised through friendly conferences with those in authority in our states and cities, we expect to make true and rapid progress in civil rights and equality of employment opportunity.