

Regd. No. B. 5681

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Editorial Committee:

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

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

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. 47

August 1953

"CLEAR AND PRESENT DANGER" TEST * THE CONTRARY GITLOW HOLDING IGNORED OR SILENTLY OVERRULED

• By S. G. VAZE •

The practical effect of Art. 19(2), as it originally stood in the Constitution of India, was to apply the "clear and present danger" test, current in the U. S. A., to free speech. Inasmuch as the Article did not exclude from awful speech utterances that might be regarded as capable of merely disturbing "public order" in the broad sense but proscribed only those utterances that could be said to endanger the "security of the State," the Article, by making breach of "public security" instead of breach "public order" the farthest limit of permissible speech, as it were laid down for India the "clear and present danger" rule, which was thus explained by Justice Jackson of the U. S. Supreme Court in *C. I. O. v. Douds*, 339 U. S. 382 (1950): "The right to speak out or to publish is protected when it does not clearly and presently threaten some injury to society which the Government has a right to protect." The quatrel with the amendment made later in Art. 19(2) is that, by sanctioning "public order" as a basis for imposing valid restrictions on free speech, it so enormously widened the scope of limitations as to make mockery of free speech. As the memorandum submitted by the All-India Civil Liberties Council to the Press Commission put it, "public order" is indeed a "catch-all reservation," and that is why it met with vigorous opposition at the hands of the British delegate in the consideration of the right to freedom of information and expression as embodied in the draft Covenant on Human Rights.

But in regard to the "clear and present danger" test, it is argued by some scholars that the test does not apply even in the U. S. A., and that whatever vogue it may have had after its enunciation by Justice Holmes in *Schenck v. United States*, 249 U. S. 47 (1919), it ceased to be the rule of law after the Supreme Court's judgment in *Gillow v. New York*, 268 U. S. 652 (1925). They contend that the Court refused to apply the test to the facts of this case, and this judgment being later than the *Schenck*

decision and not being overruled subsequently, holds the field as to the state of law in the United States. The correctness of this contention is examined here, as the contention emanates from men of high authority in constitutional law including Dr. Ambedkar, the Law Minister of the period in which the Constitution was framed. In his very first speech in the Constituent Assembly on Fundamental Rights Dr. Ambedkar held forth the *Gillow* case, which is notorious for having shown excessive deference to legislative discretion and given first place to police power in the scheme of constitutional law, as if it was the last word on individual liberty, in so far as the United States was concerned.

* * *

In the *Gillow* case the defendant Gitlow, a leader of the Left Wing Socialists, who preceded the Communist Party of America, had been convicted under a New York statute which made it a crime to advocate the necessity or propriety of overthrowing the government by force. The evidence showed that he was responsible for publication of a manifesto urging the necessity of a militant "revolutionary socialism" based on class struggle and revolutionary mass action. "There was no evidence of any effect resulting from the publication and circulation of the manifesto." The majority of the Court

FREEDOM OF SPEECH—AND FREEDOM OF PERSON

UNDER THE PROTECTION OF HABEAS CORPUS

... These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.—*Thomas Jefferson* in his First Inaugural Address.

* By the courtesy of the Managing Editor of "The Indian Journal of Political Science," from the April-June number of which this article has been reproduced here.

indicated that the "clear and present danger" test formulated in the *Schenck* case was not applicable to this publication because the legislature having specifically proscribed certain utterances by statute, the statute must be held constitutional, and whether such an utterance would in actual fact result in danger which must be prevented was not a matter for judicial consideration at all. They said:

By enacting the present law, the state has determined, through its legislative body, that utterances advocating the overthrow of organized government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil that they may be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favour of the validity of the statute. *Mugler v. Kansas*, 123 U. S. 623 (1887). And the case is to be considered in the light of the principle that... (a state's) police statutes "may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in the state in the public interest." *Great Northern Ry. v. Clara City*, 246 U. S. 434 (1918). That utterances inciting to the overthrow of organized government by unlawful means present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the state.

When the legislative body has determined generally, in the constitutional exercise of its discretion, that utterances of a certain kind involve such danger of substantive evil that they may be punished, the question whether any specific utterance coming within the prohibited class is likely, in and of itself, to bring about the substantive evil, is not open to consideration. It is sufficient that the statute itself is constitutional and that the use of the language comes within its prohibition.

If it be contended that the statute cannot be applied to the language used by the defendant because of its protection by the freedom of speech or press, it must necessarily be found, as an original question, without any previous determination by the legislative body, whether the specific language used involved such likelihood of bringing about the substantive evil as to deprive it of the constitutional protection... (The *Schenck* decision) has no application to (cases) like the present, where the legislative body itself has previously determined the danger of substantive evil arising from utterances of a specified character.

As the statute is not unconstitutional in its application, it is not unconstitutional on its face either. Since it is entirely reasonable for a state to attempt to protect itself

from violent overthrow, the statute is perforce reasonable. The Court said:

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the state unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality. (And it may be applied to every utterance of the specified character.)

This meant harking back to the "bad tendency" test that was applied before the "clear and present danger" test was laid down in the unanimous opinion of the Supreme Court in the *Schenck* case.* At that time it was thought, as is said in the *Douss* case *supra*, that "speech having a reasonable tendency to lead to such conduct (i. e., conduct inimical to the public welfare) might be punished." The same reversion to the old principle was also noticeable in *Whitney v. California*, 274 U. S. 357 (1927). Here a criminal syndicalism statute was in question, making it a crime to assist in organizing a group assembled to advocate the commission of crime, sabotage, or unlawful acts of violence as a means of effecting political or industrial change. The defendant, Miss Whitney, was found to have assisted in organizing the Communist Labour Party of California, an organization of the specified character. The Court held, borrowing the language used in the *Gillow* case, that the legislature was not unreasonable in believing that organization of such a party "involves such danger to the public peace and the security of the state that these acts (which, as Justice Brandeis pointed out, included not merely the preaching of criminal syndicalism but even "association with those who propose to preach it") should be penalized in the exercise of its police power." In both of these cases Justices Brandeis and Holmes maintained, in opposition to other Justices, that even though the legislature had designated certain speech as criminal, this could not prevent the defendant from showing that there was no danger that the substantive evil would be brought about. Justice Brandeis said in the *Whitney* case:

The legislature must obviously decide, in the first instance, whether a danger exists which calls for a particular measure. But where a statute is valid only in case certain conditions exist, the enactment of a statute cannot alone establish the facts which are essential to its validity. Prohibitory legislation has repeatedly been held invalid, because unnecessary, where the denial of liberty involved was that of engaging in a particular business. The power of the

* "Bad tendency, however remote from success, was the sole official test of guilt" at the time, said Professor Chaffee in his Columbia University address of last year. "It might be tendency to interfere with the war, or a tendency to bring about an eventual violent revolution through the spread of opinions which had been knocking around Europe since 1848. The speaker had to take his chances with a jury and could look for no help from the constitutional guarantees of freedom of speech and press."

courts to strike down an offending law is no less when the interests involved are not property rights, but the fundamental personal rights of free speech and assembly.

* * *

If the majority opinion in the *Gillow* case was conclusive, as is contended by some, it would mean that if a statute was passed prohibiting a specified kind of speech as having a tendency to create an evil with which the legislature might deal, such a statute was exempt from scrutiny as to its constitutionality either on its face or in its application, and that the legislative judgment was supreme. The legislature could thus circumvent the very test set up by the *Schenck* decision to keep speech free. But the *Gillow* opinion is not conclusive. In *Herndon v. Lowry*, 301 U. S. 242 (1937). e. g., the Supreme Court rejected the contention put forward on the authority of the *Gillow* case that under a general law the standard of guilt may be made the "dangerous tendency" of one's words, and said:

The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this violates the principle of the Constitution.

Thus the supremacy of the legislative judgment which the *Gillow* case is supposed to have established was flatly denied in the *Herndon* case. The *Gillow* opinion has in fact been virtually set aside by later decisions, and the "clear and present danger" test has since been invariably applied in all free speech cases, the division of opinion that has occurred in the Supreme Court being merely as to the interpretation of the formula in the context of the facts of the particular case.

The only reason which those who swear by the *Gillow* opinion adduce for holding that that opinion still represents the constitutional law of the United States is that it has not been overruled. It is true that the opinion in the *Gillow* case has not been formally overruled, but it has been implicitly overruled and silently ignored in numerous decisions rendered in later cases. That the earlier *Schenck* test is in fact being applied will be clear from the following pronouncements of Justices of the Supreme Court in *Dennis v. United States*, 339 U. S. 162 (1950). Chief Justice Vinson, who announced the judgment of the Court in this case, said:

Although no case subsequent to *Whitney* and *Gillow* has expressly overruled the majority opinions in those cases, there is little doubt that the subsequent opinions have inclined toward the Holmes-Brandeis rationale.

After saying this, he proceeds to cite a number of cases in which the *Schenck* test was applied, namely, *Craig v. Harney* (1947); *Pennkamp v. Florida* (1946); *Bridges v. California* (1941); *Thomas v. Collins* (1945); *Taylor v. Mississippi* (1943); *Thornhill v. Alabama* (1940); *West Virginia Board of Education v. Barnette* (1943); *Carlson v. California* (1940); and *Cantwell v. Connecticut* (1940). And Justice Frankfurter, referring to the contention of the defendants in this case that the *Gillow* decision has been overruled by subsequent decisions, said:

It has not been expressly overruled. But it would be disingenuous to deny that the dissent in *Gillow* has been treated with the respect usually accorded to a decision.

When the case was in the Court of Appeals Circuit Judge Learned Hand similarly wrote for the Court:

It (the *Schenck* decision) has been often cited in the twenty-five years that have passed, never with disapproval, frequently as authoritative.

There cannot be any doubt at all therefore that the "clear and present danger" test was, in spite of *Gillow* and *Whitney*, regarded as a valid test and was actually applied in subsequent free speech cases.*

* * *

It is true that the test is not as precise as one could wish it to be: it has not the exactness of a mathematical formula and cannot be mechanically applied, as the Supreme Court itself has warned. But "more we cannot expect from words." * Anyhow it is a good "working principle" (Justice Black's phrase), a good "operative rule" (Justice Cardozo's phrase), that enables the Court to judge whether any particular speech in the particular circumstances should be treated as lawful or otherwise. What the Court does, when the interest of free speech comes into conflict with other social interests like the public security, is to see whether concern for freedom of speech can be reconciled with concern for the security of the state, and when it finds that the two opposing concerns cannot be accommodated, it weighs between these interests and determines which of the conflicting interests "demands the greater protection under the particular circumstances presented." And for so resolving the conflict the test of the *Schenck* case affords valuable guidance. But the most important point is that it is the Courts that resolve the conflict; it is not left to the legislatures to do so. A

* Mr. Osmond K. Fraenkel says in "The Supreme Court and Civil Liberties" with reference to *Gillow* and *Whitney* in which the test of "reasonable tendency" was applied: "But a generation later the views of Holmes and Brandeis became those of the Court in this, as in other cases." In his address to the Columbia University Professor Chafee said that although eight years went by "before the majority of the Court would apply Holmes' test so as to let anybody out of prison," referring to *Fiske v. Kansas*, 274 U. S. 380 (1927), "still, the 'clear and present danger' test did eventually reverse many convictions, and no doubt it staved off many prosecutions which would otherwise have taken place both in peace and during the second World War."

legislature may enact a law making any particular kind of speech unlawful as having a harmful tendency. However, such a legislative judgment is subject to judicial review. In the *Dennis* case the Supreme Court made it plain that if the legislature passes a law subjecting any kind of speech to criminal sanctions, such a law is "subject to review here" as to its constitutionality, whether on its face or in its application. Where a conflict of interests arises, the Supreme Court says to itself, as in *Schneider v. Irvington*, 308 U. S. 147 (1939): "We must undertake 'the delicate and difficult task . . . to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.'" In this weighing and appraisal it may be that different judges may come to different conclusions, which of course is inevitable. But there can be no denying that the "clear and present danger" rule is treated by the Supreme Court as the rule on the basis of which free speech cases have to be decided. In the *Douglas* case the Court said:

The high place in which the right to speak, think, and assemble as you will was held by the Framers of the Bill of Rights and is held to-day by those who value liberty both as a means and an end indicates the solicitude with which we must view any assertion of personal freedom. . . .

That Amendment (the First Amendment) requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom.

Thus it will be seen that as late as 1950 the clear and present danger test was held to be applicable to cases concerning speech. In the *Dennis* case itself (decided in December 1950) concerning the Smith Act making advocacy of forcible overthrow of government a crime, the test was applied, though it was applied, in a way which many believe was not satisfactory. The Court came to the conclusion that "the words (clear and present danger) cannot mean that before the Government may act it must wait until the putsch is about to be

executed, the plans have been laid, and the signal is awaited." The conclusion may not be agreeable, but the fact remains that the clear and present danger test is still held applicable, and that the legislative judgment in making a specified kind of speech criminal is not held to be supreme, as was done in the *Gillow* case. The latest judicial statement about the applicability of the "clear and present danger" test is that of Justice Jackson in *Beauharnais v. Illinois*, 343 U. S. 250 (1952), viz.,

Punishment of printed words based on their tendency either to cause breach of the peace or injury to persons or groups, in my opinion, is justifiable only if the prosecution survives the "clear and present danger" test. It is the most just and workable standard yet evolved for determining the criminality of words whose injurious or inciting tendencies are not demonstrated by the event but are ascribed to them on the basis of probabilities. (Emphasis in the original.)

This statement, it will be noted, is flatly contradictory to the *Gillow* decision. Thus, this decision stands, to all intents and purposes, overruled. It has been consistently ignored for over twenty-five years. This fact has put the Holmesian test in an unchallengeable position. As the American Civil Liberties Union has said, "In case after case the clear and present danger doctrine has been utilised as a litmus with which to test for any curtailment of liberty under the First Amendment." Reviewing the development of the doctrine, the Supreme Court summarized its purpose as follows in *Bridges v. California*, 314 U. S. 252 (1941):

What finally emerges from the "clear and present danger" cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthestmost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights.

DENIAL OF THE FRANCHISE TO NEGROES

ANOTHER ATTEMPT TO CIRCUMVENT CONSTITUTION'S MANDATE DEFEATED

The Supreme Court of the United States recently frustrated the fourth attempt made by Texas, a southern state, to exclude Negroes from voting in spite of the command of the Fifteenth Amendment that no person shall be barred from participating in any election because of his race or colour.

1

THE BACKGROUND

Constitutional and Statutory Provisions

Before giving details of the case in which the right of some Negroes to take part in a local election was upheld,

it would be well to give the background of this subject and an account of the previous three attempts of Texas to circumvent the constitutional provision against racial discrimination in the matter of the franchise by using certain legal devices. In 1867 Congress passed an Act requiring the ten southern states to extend to the coloured people the franchise from which they had been kept out till then. Statesmen of the time were not content merely with imposing Negro suffrage on these states as a matter of congressional policy of reconstruction, but they gave three years later a permanent constitutional basis to this policy

by adopting the Fifteenth Amendment which secures the franchise exercised by citizens of the United States against abridgment by any state on the basis of race or colour. That Amendment provides as follows :

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, colour, or previous condition of servitude.

The Amendment does not require the states to enfranchise all their coloured citizens as it does not require them to enfranchise all their white citizens. The determination of the actual qualifications for suffrage is left by the United States Constitution to the individual choice of the various states, but whatever be the qualifications, the Amendment provides that they shall be equally applied to all citizens, white or coloured, and that colour shall not be one of the qualifications or disqualifications. Thus the Amendment bans racial discrimination in voting; it concedes to Negroes the right not to be discriminated against as voters. Sec 2 of the Fifteenth Amendment empowers Congress "to enforce this Article by appropriate legislation," and accordingly Congress passed a law defining the scope of the Amendment. The law said: "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at such elections, without distinction of race, colour, or previous condition of servitude." The anti-exclusionary rule was thus made applicable in all elections, whether national, state, or local.

The White Primary

Notwithstanding these constitutional and statutory provisions the southern states have used many contrivances, which appeared to them to be technically constitutional, to disfranchise the Negro population. We shall deal here with the devices adopted by Texas alone. The state said to itself: "It is in the general election that discrimination against Negroes is prohibited. We cannot maintain discrimination there, of course; but we can achieve the same result indirectly if we exclude Negroes from the primary election held by a party for the purpose of nominating candidates for the general election. Let us therefore do so." Since in Texas, as in most southern states, nomination through a primary is equivalent to final election, denial of voting rights in the primary is virtually the same as complete disfranchisement. (And the Democratic Party is the single dominant party in the South; it alone holds primaries.) Thus in 1923 Texas passed a law providing that "in no event shall a Negro be eligible to participate in a Democratic Party primary election held in the state of Texas, and should a Negro vote in a Democratic primary election, such ballot shall be void and election officials are herein directed to throw out such ballot and not count the same." The question as to whether primary elections for the choice of candidates at the general elections were

within the scope of the Fifteenth Amendment had arisen as a side-issue in *Newberry v. United States*, 256 U. S. 232 (1921) and on that issue the Justices of the Supreme Court were equally divided. Relying on this case, Texas thought that the Fifteenth Amendment's provision outlawing exclusion of Negroes would be held applicable only to elections in which candidates selected at the primary elections would be finally chosen and not to the primary elections themselves, which would be regarded as political party affairs, handled by party and not governmental officers. But the state authorities were disillusioned in this matter by the Supreme Court's decision in *Nixon v. Herndon*, 273 U. S. 536 (1927), the Court holding that the action of Texas in denying the ballot to Negroes by statute was in violation of the equal protection clause of the Fourteenth Amendment. Justice Holmes, speaking for the Court, wrote: "We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth."

Thereupon, in the same year, the Texas legislature repealed the provision condemned by the Court and enacted that "every political party in this state through its state executive committee shall have the power to prescribe the qualifications of its own members" and determine in its own way who should be qualified to vote or participate in the party. Thus, by giving autonomy to political parties, the state sought to free itself from all legal consequences. Promptly, the executive committee of the Democratic Party adopted a resolution that white citizens and none other might participate in the primaries of that party. Nixon, a Negro citizen, was again refused the privilege of voting in a primary and the Supreme Court decided again, in *Nixon v. Condon*, 286 U. S. 73 (1932), as it had done in the previous case. It declared, through Justice Cardozo, that because the state acted by virtue of the statutory mandate, the action of the executive committee in denying the vote to Negroes was state and not private action and was therefore invalid as discriminatory under the Fourteenth Amendment.

The Party as a Club

In the course of this opinion the Court said that the executive committee of a party could not be held to constitute the party as the convention of the party would be, but it took care not to pass on the question that had been raised as to whether a political party has power, "without restraint by any law, to determine its own membership." Taking its cue from what the Court had said about a party convention, the Democratic Party, three weeks after the decision of this case, held a convention in which it adopted a resolution that all white citizens qualified to vote shall be eligible to membership in the party and as such entitled to participation in its deliberation. Thereafter a Negro voter qualified to vote in a primary election, except for the exclusion worked by this resolution, demanded a ballot which was refused.

In this case, *Grovey v. Townsend*, 295 U. S. 45 (1935), the Court held that exclusion of Negroes from the primary was no longer state action, the convention not being an organ of the state, but was party action, voluntary in character. And it announced that, while for a state to deny a vote in a general election on the ground of race or colour would violate the Constitution, to deny it in a primary would not, for denial of a vote in a primary was a mere refusal of party membership with which the state need have no concern."

If this opinion were to be regarded as controlling, it would have meant that the state legislatures had only to keep quiet and let the political parties bring about exclusion of the coloured people from the electorate as these parties were declared to be private clubs entitled to limit their membership to whites if they so chose. But the opinion has been overruled. In the case of *United States v. Classic*, 313 U. S. 299 (1941), concerning frauds in a Louisiana primary, it was held that a primary election was a vital part of the election machinery of the state and thus not a non-governmental and unofficial activity of a private voluntary association, as was held in *Grovey v. Townsend*. Opportunity was afforded to the Supreme Court, in deciding *Smith v. Allwright*, 321 U. S. 649 (1944), of applying this principle to primaries, the principle, namely, that "a private club" which was employed by the state to perform the function of holding primaries was actually an agent of the state, and that if Negroes were excluded from primaries, such exclusion would be denial of a right guaranteed by the Constitution. In this last mentioned case Justice Reed, delivering the opinion of the Court, pointed out how a primary election, in which the Negro petitioner was refused a ballot, was conducted by the Democratic Party under the state's statutory authority, and said:

We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party.

If the state requires certain electoral procedure, prescribes a general election ballot made up of party nominees so chosen, and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names appear on such a ballot, it endorses, adopts and enforces the discrimination against Negroes, practised by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment.

The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any state because of race. This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practise racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied.

The privilege of membership in a party may be, as this Court said in *Grovey v. Townsend*, no concern of a state. But when, as here, that privilege is also the essential qualification for voting in a primary to select nominees for a general election, the state makes the action of the party the action of the state.

Grovey v. Townsend is overruled

2

THE INSTANT CASE,

Of John Terry et al. v. A. G. Adams et al.

It being decided that political parties are prohibited by the Fifteenth Amendment from conducting a racially discriminatory primary election, Texas sought to bring about the result of an all-white electorate at a primary by another contrivance. Just as the state had removed itself from the scene since the *Condon* case *supra*, leaving it to the Democratic Party to do the job, so the Democratic Party itself withdrew from the scene and let a caucus of that party see to it, that no coloured person could enter the arena of election. This caucus, called the Jaybird Democratic Association, operating in Fort Bend County of Texas state, conducted a sort of straw vote, as if to ascertain the wishes of the white Democrats who alone could join the body. But the straw vote in actual fact determined who were to be the Democratic Party's nominees both at the primary and the general election. The organization took several precautions in order that its activities would not fall within the prohibition of the Fifteenth Amendment. Its primaries were held prior to the regular primaries of the Democratic Party (the former in May and the latter in July as the state law for primaries provided). The names of its nominees were put on the ballot in the Democratic primary but without indication that they had been nominated by the organization. (The information that they were its nominees was unofficially communicated to the public.) Persons not so nominated were technically free to enter as candidates in the Democratic primaries. However, in practice the organization's nominees won without opposition in these primaries and in the general elections that followed. The admitted purpose of the organization was to deny Negroes any voice in the election.

But this device, all too transparent, to get round the Constitution did not succeed in the Supreme Court when

John Terry and some other Negro citizens, who for many years had been denied, solely because of their race, the right to vote in the primaries of the Jaybird Democratic Association, instituted a class action against officers of the organization for declaratory and injunctive relief. The defence was that the organization was a self-governing voluntary club, whose action was not state action within the terms of the Fifteenth Amendment. Eight members of the Supreme Court (only one dissenting) held (4th May 1953) that the discriminatory practices of the organization were prohibited by the Constitution. Justice Black said:

The only election that has counted in this Texas county for more than fifty years has been that held by the Jaybirds from which Negroes were excluded. The Democratic primary and the general election have become no more than the perfunctory ratifiers of the choice that has already been made in Jaybird elections from which Negroes have been excluded. It is immaterial that the state does not control that part of this elective process which it leaves for the Jaybirds to manage. The Jaybird primary has become an integral part, indeed the only effective part, of the elective process that determines who shall rule and govern in the county. The effect of the whole procedure, Jaybird primary, plus Democratic primary plus general election, is to do precisely that which the Fifteenth Amendment forbids—strip Negroes of every vestige of influence in selecting the officials who control the local county matters that intimately touch the daily lives of citizens.

Holding that the Jaybird Democratic Association operates as part and parcel, as an adjunct, of the Democratic Party, which is an organization existing under the auspices of Texas law, Justice Clark said:

To be sure, the Democratic primary and the general election are nominally open to the coloured elector. But his must be an empty vote cast after the real decisions are made. And because the Jaybird-indorsed nominee meets no opposition in the Democratic primary, the Negro minority's vote is nullified at the sole stage of the local political process where the bargaining and inter-play of rival political forces would make it count.

When a state structures its electoral apparatus in a form which devolves upon a political organization the uncontested choice of public officials, that organization itself, in whatever disguise, takes on those attributes of government which draw the Constitution's safeguards into play.

In sum, we believe that the activities of the Jaybird Democratic Association fall within the broad principle laid down in *Smith v. Allwright*.

Justice Minton on the contrary came to the conclusion that the Jaybird Association was only a pressure group

and its straw vote was like a bar association's poll of its members. However objectionable its activities were, they did not constitute state action.

A Recent South Carolina Case

In his opinion Justice Black cited a recent South Carolina case decided by the Court of Appeals, *Rice v. Elmore*, 165 F. 2d 387 (1948), in which officials of the Democratic Party had refused primary ballots to Negroes. Because in *Smith v. Allwright* the Supreme Court had previously held that the resolution of the Texas Democratic Party about the party convention deciding its membership and thus determining the participants in its primary was unconstitutional on the theory that under the Texas statute the primary constituted an integral part of the state's electoral machinery, South Carolina repealed all constitutional and statutory provisions which mentioned primaries so that it could plead that the Democratic Party of South Carolina was a private organization, and not a part of the electoral system, and hence not subject to the constitutional restrictions on the states. The Court of Appeals held that the denial of the ballot to the Negroes violated the Fourteenth and Fifteenth Amendments. Justice Black concluded in the instant case that the Jaybird Association was no more a private group than the Democratic "Clubs" of South Carolina, and said that the only distinction was that while South Carolina's was a "two-step" exclusion process, Texas' was a "three-step" exclusion process.

NOTES

Preferred Position of Freedom of Speech

The most recent case in which the principle of the preferred status of the First Amendment rights was invoked in the U. S. Supreme Court was that of *Poulos v. New Hampshire*, decided on 27th April 1953. (For earlier cases, see p. ii:222 and ii:247 of the BULLETIN.)

Poulos, a member of Jehovah's Witnesses, applied for a license, as required by the city council's ordinance, to hold a religious meeting in a public park, but the city council refused the license. Nevertheless Poulos held the meeting, whereupon he was arrested and prosecuted for violation of the law. The prosecution resulted in his conviction and sentence of a fine. On appeal the highest court of the state (New Hampshire) ruled that the ordinance "made it obligatory" upon the city to grant the license, and that, consequently, the city council's officials "arbitrarily and unreasonably" refused to grant it. Though the denial of the permit was thus held wrongful, the court still affirmed the conviction and sentence, saying that the proper remedy for Poulos was not to take the law into his own hands but to mandamus the city council after it had unlawfully refused him a permit.

The defendant then appealed to the U. S. Supreme Court challenging the validity of his conviction and claiming

that after a license for which he had duly applied had been wrongfully refused, he was free to speak without a license and that he was not required to go to court for a mandamus against the city council. For his right to preach might be postponed until the case, possibly after years, reached the court for final adjudication of his constitutional rights. The Court (27th April 1953) did not accept these arguments, saying :

To allow applicants to proceed without the required permits to run businesses, erect structures, purchase firearms, transport or store explosives or inflammatory products, hold public meetings without prior safety arrangements or take other unauthorized action is apt to cause breaches of the peace or create public dangers. The valid requirements of license are for the good of the applicants and the public. It would be unreal to say that such official failures to act in accordance with state law (as in denial of a license which should have been granted), redressable by state judicial procedures, are state acts violative of the Federal Constitution. Delay is unfortunate, but the expense and annoyance of litigation is a price citizens must pay for life in an orderly society where the rights of the First Amendment have a real and abiding meaning.

From this reasoning Justices Black and Douglas dissented, holding that Poulos had in the circumstances the constitutional right to defy the law. Mr. Black said :

I do not challenge the Court's argument that New Hampshire could prosecute a man who refused to follow the letter of the law to procure a license to "run businesses," "erect structures," "purchase firearms," "store explosives," or, I may add, to run a pawnshop. But the First Amendment affords freedom of speech a special protection.

Mr. Douglas elaborated the argument thus :

When a legislature undertakes to proscribe the exercise of a citizen's constitutional right to free speech, it acts lawlessly; and the citizen can take matters in his own hands and proceed on the basis that such a law is no law at all. See *De Gonge v. Oregon*, 299 U. S. 353 (1937).

The reason is the preferred position granted freedom of speech, freedom of press, freedom of assembly, and freedom of religion by the First Amendment. The command of the First Amendment (made applicable to the states by the Fourteenth) is that there shall be no law which abridges those civil rights. The matter is beyond the power of the legislature to regulate, control, or condition. The case is therefore quite different from a legislative programme in the field of business, labour, housing and the like, where regulation is permissible and the claim of unconstitutionality usually can be determined only by the manner or degree of application of the statute to an aggrieved person.

If the citizen can flout the legislature when it undertakes to tamper with his First Amendment rights, I fail to see why he may not flout the official or agency who administers a licensing law designed to regulate the exercise of the right of free speech. Defiance of a statute is hardly less harmful to an orderly society than defiance of an administrative order.

Thereafter Mr. Justice Douglas cites a very pertinent passage from the opinion of Mr. Justice Roberts in *Cantwell v. Connecticut*, 310 U. S. 296 (1940). This case, also affecting a Jehovah's Witness, concerned a statute forbidding anyone to solicit subscription for a cause which has not been previously approved by the secretary of the Public Welfare Council. The state in question had sought to defend the statute on the ground that if the licensing officer acted capriciously his action would be subject to correction by a court. The Supreme Court, however, held that the fact that judicial relief was available would not save the statute in any event. Mr. Justice Roberts, speaking for a unanimous Court, said :

The availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial trial is as obnoxious to the Constitution as one providing for like restraint by administrative action.

On the analogy of this pronouncement Mr. Justice Douglas argued :

There is no free speech in the sense of the Constitution when permission must be obtained from an official before a speech can be made. That is a previous restraint condemned by history and at war with the First Amendment.

Discrimination against Negroes in Jury Service

James Avery, a Negro, was tried for rape in a court of Georgia and convicted and sentenced to death. He appealed against the conviction on the ground that the jury which convicted him had been selected by a means repugnant to the equal protection clause of the Fourteenth Amendment.

In Georgia the Jury Commissioners select a number of persons from tax returns for jury service. From this list a judge draws some names, from which to make up the panel in each criminal case. The drawings are made from a box containing white and coloured slips differentiated according to racial lines, white for white jurors and yellow for coloured. In this particular case sixty names were drawn from the box, and from these the final selection was to be made. But all the sixty slips were white, and the jury that came to be empanelled was thus all-white, although the county in which Avery was tried has a Negro population of 25 per cent. and the list of prospective jurors contained 5 per cent. Negro names.

The judge who had made the drawings denied that he had practised discrimination.

But the Supreme Court of the United States, when the case came before it on a writ of certiorari, "made an independent analysis" of the situation and reversed Avery's conviction (25th May 1953) on the ground that the equal protection clause has for seventy years been interpreted to require it, "no matter how strong the evidence of petitioner's guilt." The Court held that the very mechanism for jury selection used here provided opportunities for working of a discriminatory system and constituted prima facie evidence of discrimination. Further, "there was testimony from a recent member of the County Board of Jury Commissioners that the use of these white and yellow slips was designed for the purpose of racial discrimination, and it has not been shown that they could serve any other purpose."

The state argued that even if a prima facie case had been established, no particular act of discrimination on the part of any official had been proved, as the petitioner had to prove in order to obtain the benefit of the equal protection clause. The Court said, citing *Norris v. Alabama* (1935), *Hill v. Texas* (1942) and *Patton v. Mississippi* (1947):

When a prima facie case of discrimination is presented, the burden falls, forthwith, upon the state to overcome it. The state failed to meet the test.

Justice Frankfurter, in a concurring judgment, observed:

The mind of justice not merely its eyes, would have to be blind to attribute such an occurrence (*viz.*, that there was not a single Negro in the panel) to mere fortuity.

Inquiry about Wire-Tapping

The practice of intercepting telephone messages and using the evidence thus obtained in criminal law courts is a practice which, if unrestrained by stringent safeguards, is fraught with dangerous consequences. What the law on this subject is, as interpreted by the United States Supreme Court, we propose to state in detail in the near future in an article which will be the concluding portion of our two articles on "Searches and Seizures," *vide pp. ii:250 and ii:265.*

A Judiciary Committee of the U. S. House of Representatives is at present having hearings on legislation to legalise wire-tapping. The American Civil Liberties Union, appearing before the Committee in May, expressed the Union's continued opposition to all wire-tapping, but pleaded that if Congress disagreed, it should at least adopt certain safeguards. The Union urged that all wire-taps should be prohibited except on special authorization by Federal judges upon sworn statements of fact demonstrating a reasonable basis for belief of actual treason, sabotage or kidnapping, to which

crimes alone wire-tapping, if allowed at all, should be restricted.

The Loyalty Oath of Pennsylvania CONSTITUTIONALITY OF THE ACT UPHeld RELUCTANTLY

Three judges of a Philadelphia court unanimously upheld the constitutionality of Pennsylvania's Pechan Loyalty Act on May 4th, but said they did so reluctantly.

In a decision written by Judge Curtis Bok, the court said it had upheld the law only because the Supreme Court had declared similar laws valid in other states. The ruling came in the case of Mrs. Marie Fitzgerald, who was dismissed as a nurse at Philadelphia's General Hospital for refusing to sign the oath. The Philadelphia Branch of the American Civil Liberties Union supported her appeal, contending that the act infringed on her constitutional rights.

In agreeing with her contention that the law was so broad that its "rationale ceases when applied to non-sensitive positions," Judge Bok wrote:

The loyalty or disloyalty of a ditchdigger or leaf raker would be so irrelevant to the safety of the state as to render the entire loyalty system not only absurd, but oppressive.

Segregation On Railways

HELD ILLEGAL EVEN WITH EQUAL ACCOMMODATION

The Southern Pacific Company forced some Negroes — Claudia E. Whitmore, Carrie Williams, James Martin and Mae E. Duport — to ride in a car set apart for Negroes. These persons thereupon brought suit against the company in the Municipal Court of Los Angeles, and in ruling against the company Judge Green declared:

The basic violation charged here is a denial of equal treatment. This comprehends, in the broader sense, every factor, physical, psychological or otherwise, that such denial may conceivably produce.

In our mind, and to our way of thinking upon existing law in this state, the full and equal provisions of civil rights are not all satisfied by separate and otherwise equal accommodations. . . . Anything short of a full measure of equality, upon exactly the same conditions and restrictions applicable alike to all other passengers, regardless of race, creed and colour, is an illegal denial of equality.

In this case the American Civil Liberties Union of California had entered as a "friend of the court" to support the plaintiffs' challenge to segregation.

Racial Segregation in Public Places

WITHOUT PROVIDING EQUAL FACILITIES

The South African Minister of Justice, Mr. Swart, on 6th August introduced in Parliament legislation which will enable the authorities to enforce racial segregation

in all public places without necessarily providing equal facilities for different races.

Hitherto segregation in public places could be applied only if all races affected received equal treatment. (See the case reported at p. ii:282 of the BULLETIN.)

Last year, Indians in Natal brought a test case before courts on this issue and won it. Instead of using the bathing beach on Durban coast set aside for Indians, they bathed off the beach reserved for whites. They were prosecuted but won the case because the court held that equal facilities were not provided for Indians on the beach designated for them.

If the bill now introduced by the Minister of Justice becomes law, the position on the Durban beaches will be that different races will be forced to use beaches set aside exclusively for them and equal facilities need not be provided on these separate beaches. Durban Indians will have to accept the beach allocated to them by the Durban City Council.

HABEAS CORPUS PETITIONS

Detention after Prosecution

MADE FOR A COLLATERAL PURPOSE

Ishar Singh was arrested in April 1951 in connection with murder and dacoity, for which he was prosecuted separately. He was acquitted of the offence of murder in August 1951 and was discharged of offences under secs. 435 and 450, I. P. C., in November 1951. And while the third case against him under secs. 396 and 397 was still pending and while he was in judicial lock-up, the district magistrate made an order for his detention under sec. 3 of the Preventive Detention Act. The order was challenged in a habeas corpus petition on the ground, first, that the district magistrate had no power to make an order of detention against a person while his prosecution was still pending, and, secondly, that the order was not bona fide.

On 28th March 1952 Mr. Teja Singh, Chief Justice of the Pepsu High Court, allowed the petition and ordered that the petitioner be released forthwith. His Lordship saw no force in the first ground on which the legality of the detention order was challenged. He held that it did not depend on any rule of law as to "whether detention of a person and prosecution started against him can be simultaneously made," and that there would be no objection to detention in such circumstances provided the detention was bona fide. But he held that in this case it was not bona fide.

Of the four acts done by the detenu that were advanced as reasons for his detention one was not specific and of the remaining three two were, His Lordship said, "fairly old: one (of these acts) was alleged to have taken place about two years before the date of the detention order." Why he was not detained earlier if it was necessary to detain him had not been explained. "It cannot even be urged

that the petitioner indulged in any kind of (prejudicial) activity after his arrest in April 1951 for the simple reason that he has all along been detained in Jail since then."

(If the district magistrate had to spend several months in making up his mind about detention) I cannot understand why he could not wait some time more and defer action till the other cases against the petitioner were decided, particularly so because if he was convicted in any of the cases and sentenced to a term of imprisonment, there would have been no necessity to detain him at least till he came out after serving the term of imprisonment.

It need not be emphasized that action under sec. 3, Detention Act, is a preventive action and it can be taken only with a view to preventing the person concerned for doing something prejudicial to public order, etc., as mentioned in the section and is not punitive in nature.

Taking into consideration all the circumstances and facts of the present case I am not satisfied that the petitioner was detained in accordance with the provisions of sec. 3, but the likelihood is that the object was to punish him for his previous acts or to prejudice his defence in the cases that were still pending against him. This means that the order was made for a collateral purpose and cannot, therefore, be maintained.

Ground Vague

Mr. Rajpal Arjunsingh Wallia, a member of the General Kamgar Union (Red Flag), Bombay, was detained on 2nd July. The grounds of detention served on him stated that he addressed a meeting of the Pioneer Rubber Mills Factory Workers some of whom had gone on strike, deterred "the loyal workers" from attending work, and exhorted them to commit acts of violence, besides committing some acts of violence himself. He filed a habeas corpus petition in the Supreme Court, and the Vacation Bench of the Court on 10th August ordered his release, holding that one of the grounds of detention was vague.

COMMENTS

Human Rights Commission

The Commission on Human Rights which met in Geneva in April and May, charged with the task of completing the two Covenants on which it has been engaged for the last four years, was unable to finish its job and was compelled to submit the draft of the Covenants in their unfinished form to the Ecosoc. And even the work which the Commission did was unsatisfactory in respect of dealing with violations, by the member States, of Covenants after they have been adopted by the U. N. Assembly. Access to the U. N. by individuals whose rights are violated was denied by the Commission, and the proposal that the enforcement agency to be set up be permitted to recommend action on its own initiative was also rejected.

The announcement made by the U. S. Secretary of State at the time the Commission began its session, to the effect that the Administration would not submit the Covenants to the Senate for ratification if they remained in their present extremely unsatisfactory form (vide pp. ii:256 and ii:260), had apparently two objects in view: 1. to goad member States to give to the Covenants a form which would make them really worthwhile, and 2. to impress upon the United Nations the urgent necessity for undertaking a more vigorous educational programme for world human rights. This latter proposal was warmly received by the non-governmental agencies "which have long urged such measures," as Mr. Roger Baldwin has said, "as more effective than legal Covenants."

The complaint in the U. S. Secretary's message about the interminable wrangling that goes on at the meetings of the Commission in respect of the contents of human rights has also found an echo elsewhere. The International League for the Rights of Man, realising that the Commission "has been bogged down in a drafting job unsuited to its character as a political body of instructed government delegations," has urged the Ecosoc, to which organization the Covenants are now referred, to withdraw the drafting from the Commission and entrust it to a group of appointed experts, and it is said this is the view of some members of the Commission itself. The necessity has been brought home to the League for attempting "the difficult task of transforming the Human Rights Commission itself into a body of experts from the present politically-chosen representatives of eighteen governments, broken up into conflicting blocs."

Thus, the Commission has made very little progress with the Covenants. The shape which the Covenants will finally take may be good, but we for our part shall not put much stock in that eventuality.

Monopoly of Advertising

Soon after the Supreme Court's decision in *Lorain Journal Co. v. United States* (vide p. ii:279 of the BULLETIN), in which it was held that the Sherman Anti-Trust Act was applicable to the corporation concerned, another case, *Times-Picayune Pub. Co. v. United States*, came before the Court for decision on 27th May 1953. The company published one morning and another evening paper, and it made a rule that advertisers desirous of purchasing space in its morning paper (the only morning paper in the city) must buy the same space in its evening paper, to the obvious disadvantage of the other evening paper published in the locality. The question was whether imposition of such a condition violated the prohibition in the Sherman Act against attempts to monopolize a part of inter-state commerce. The Court held, 5 to 4, that the publishing company had not acquired, in the particular circumstances, a "dominant position" in the advertising market by means of this practice, and the practice therefore could not be outlawed. The dissenting Justices were of the view that the complete monopoly of access to morning newspaper readers which the publishing company had used to restrain competition between its own evening paper and the other competing evening paper, and that that was enough to bring it within the scope of the Act. The curious may study the majority judgment for the great number of cases cited therein so that they may understand the principles that have been evolved in

the U. S. A. for applying the anti-monopoly Act to the press.

We shall be content here to emphasize the importance of ensuring that no unfair practices, like those followed by the Chief Minister of Bombay, are allowed to creep into advertising. Unfair competition in advertising is in its effects not quite like unfair competition in other trades. For, as the Supreme Court said in the instant case: "Advertising is the economic mainstay of the newspaper business. Generally, more than two-thirds of a newspaper's total revenues flow from the sale of advertising space." And because of this any injustice done in this business will be harmful to the freedom of the press which, the Court has again and again stated, is the life-breath of democracy. For instance, the Court said in *Grosjean v. American Press Co.*, 299 U. S. 238 (1936):

(The First Amendment) expresses one of those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions" (*Herbert v. Louisiana*). . . . The predominant purpose of the grant of immunity invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded as otherwise than with grave concern.

In the present case the Court reiterated this, saying:

A vigorous and dauntless press is a chief source feeding the flow of democratic expression and controversy which maintains the institutions of a free society. By interpreting to the citizen the policies of his government and vigilantly scrutinizing the official conduct of those who administer the state, an independent press stimulates free discussion and focuses public opinion on issues and officials as a potent check on arbitrary action or abuse. The press, in fact, [as was said by Judge Learned Hand in *United States v. Associated Press*, 52 F Supp. 362 (1945)] "serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colours as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."

All this has become commonplace in democratically governed countries, and our only excuse for giving these long quotations is that, because of the Press Commission's inquiry, it is likely to sink into the public mind. The Bombay State's policy in placing government advertisements does not affect merely the "Times of India" and other newspapers which the Chief Minister frowns upon but has the effect, if not the intent, of destroying the independence of the press and doing away with that "potent check on arbitrary action or abuse" by removing the

"vigilant scrutiny of official conduct" which the Court here speaks of.

Breach of Legislative Privileges

Quite a spate of cases of breach of the legislatures' privileges has occurred recently. One such was against Mr. R. M. D. Chamarbaughwala, former editor of "Satya." He was admonished by the Mysore Legislative Council for having committed contempt by publishing an article which the House thought was an "affront to the House in its general tone and a reflection on the members of the House" and was directed to publish an apology on pain of forfeiture of press facilities to the paper. On the obvious effect which an unrestrained exercise of legislative privileges has in abridging the freedom of the press, the "Times of India" writes:

Three months ago the Parliamentary Press Gallery Association at New Delhi was moved to protest against the avalanche of breach of privilege motions launched against the Press. It characterised these onslaughts as "a symposium of intolerance" and declared that such motions are not seldom "based on flimsy grounds which can neither be substantiated by rules or conventions nor appeal to commonsense." Despite this, other State legislatures have subsequently proceeded against other newspapers on the all-pervasive ground of breach of privilege. It cannot be said of a single one of these assemblies that their reputation or prestige has been enhanced by these unilateral performances. Nor has the authority of the Governments, Central or State, been elevated by such tactics. There is, after all, a limit to political exhibitionism and sensitivity, and it is noticeable that the acute sensitivity of these Governments to public and Press criticism goes hand in hand with an obtuse insensitivity to public opinion.

The paper, then contrasts how our legislatures treat press comments as breach of privilege and how sparing the British Parliament is in holding the press guilty of contempt for comments exceedingly more ferocious, referring to the London "Times" case in 1887, which was cited by Mr. Naushir Bharucha in the minute of dissent appended by him as a member of the Privileges Committee of the Bombay Legislative Assembly and which we reproduced at p. 11272 of the BULLETIN. There is no doubt that our legislatures' hyper-sensitiveness is putting a severe curb on the freedom of the press.

Assault by the Police on Journalists

An incident such as has never occurred before in this country happened in Calcutta on 22nd July. An agitation has been going on in that city against enhancement of tram fare by the Tramway Company. In pursuance of this agitation a meeting was to take place in the maidan to protest against the increase in fare. Policemen were present in force on the spot to prevent the meeting being held as being in defiance of the prohibitory order under sec. 144, Cr. P. C. They charged the crowd which had collected for the meeting, and as it scattered they turned to the large number of pressmen, reporters and cameramen, who had gathered there to report the meeting. The representative of a Communist paper was arrested on the

charge that he was a demonstrator, and several other pressmen were beaten with fists and lathis. This unprovoked and, it is said, pre-meditated attack has sent a wave of indignation all over the country, the best expression of which is to be found in a statement by Mr. Kali C. Mukherjee, M. L. A., Secretary of the West Bengal Congress Parliamentary Party. He says:

I have been shocked to learn that the police forces of Calcutta have indiscriminately assaulted the newspaper reporters of all important dailies yesterday while they were on duty at a maidan meeting. Nowhere in a democratic country, neither even in the British regime in India nor during the worst days of the riots, such type of misdeeds were allowed to happen. The police have created a serious crisis in governing this State.

But as the West Bengal Government is having an inquiry made into this most unfortunate incident by a retired Judge of the Calcutta High Court, it would not be appropriate to comment on it.

Legislation to Outlaw Untouchability

Article 17 of the Constitution has outlawed untouchability. It declares:

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

But all the states have not yet passed legislation to give effect to the abolition of untouchability, and those which have passed it have framed laws differing in scope and content. It is, therefore, obviously necessary that there should be central legislation both for the sake of ensuring uniformity in the legislation of those states which have passed any laws and covering those states where there is no such law. This is the recommendation made in his report for 1952 by the Commissioner of Scheduled Castes and Tribes, Mr. L. M. Srikant, who, as a co-worker of the late Thakkar Bapa, a pioneer in this field, has done great work for the amelioration of the conditions of both the Scheduled Castes and Scheduled Tribes.

But Mr. Srikant fully realizes that, however comprehensive the laws may be, they by themselves will not abolish untouchability in actual practice, and that the laws must be backed by a strong public opinion which will not tolerate the treating of any human being as one whose touch will be a pollution. He says:

Legislative measures taken by the states for the removal of untouchability have not proved very effective. Where untouchability has not been made a cognisable offence, the reason for the ineffectual nature of legislation is obvious. But even where it is made cognisable, legislation has not been of any material help to those for whose benefit it was enacted. Being economically dependant upon non-Scheduled Castes, the Scheduled Castes have not the courage to break social barriers.

But he concludes this part of the report in altogether too optimistic a vein, saying:

The total eradication of untouchability will take a little time.