

Regd. No. B. 5681

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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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Office : Servants of India Society, Poona

Annual  
Subscription : Rs. 5  
Per issue : annas 8  
including postage

No. 54

March 1954

## All-India Civil Liberties Conference 24th AND 25th APRIL

It was at first intended to hold the next session of the All-India Civil Liberties Conference at Cuttack towards the end of February, which was the time suggested by the President-elect, Shri Jayaprakash Narayan. But the organizers of the Conference felt that this would not enable them to make the necessary preparations in time. It has therefore been finally decided now, with the consent of the President, to hold the session on 24th and 25th April.

All those who are interested in civil liberties are earnestly requested to enrol themselves as delegates. Necessary information on this subject can be had from Shri Shyam Sundar Misra (Servants of India Society Buxibazar, Cuttack, Orissa).

## ARTICLE

### Legislation by Ordinance

Immediately on the reassembling of the House of the People for the budget session, some prominent members of Parliament raised a debate on the way in which the Government of India had exercised, during the interval between the last two legislative sessions, the ordinance-making power which the Constitution has conferred on the executive when the legislature is not sitting. During this interval of but six weeks seven ordinances were issued, a pretty high record : two of the ordinances imposed taxation, and a third not only extended the life of the Press Act by two years but made important changes in its provisions. Naturally enough, this alarmed the House, and strong and cogent criticism was levelled against the Government for what appeared like a too facile use of legislative functions by the executive. From the statement made by the Finance Minister it would seem that the cause of the ordinances concerning taxation was merely due to administrative delays in getting legislative measures prepared in time for the consideration of the House which has the power of the purse. But the ordinance concerning the Press Act—a much more serious matter—appeared to lack all justification. The Home Minister tried to defend himself by the

plea that he had already given notice to the House that because there would be no time for a bill to be passed an ordinance would have to be issued. But while making this plea he was countered by the Speaker who brought it to the notice of the Home Minister that whatever bill the latter had contemplated had not even been recommended for priority to the Business Advisory Committee. Deprived of this defense, the Home Minister frankly declared that he was unable to understand what all this pother was about, avowing himself to be unrepentant—"absolutely unrepentant" and said, "the heavens have not fallen" because of the press ordinance. The light-hearted manner in which he spoke about the executive's power of making laws during recesses shows that he is unaware of even the elementary principle that the power was meant to be exercised only when circumstances arising suddenly between sessions plainly made it necessary to take immediate action which could not possibly have been anticipated while the legislature was sitting. If the ordinances were merely due to bad legislative planning, even that would give rise to much disquiet. But here, at least in one case, the use of this extraordinary power was due to sheer lack of knowledge that legislation by ordinance could be justifiably resorted to only in emergencies and that such a power must not be invoked, as was forcibly put by a Congress member, Pandit Thakurdas Bhargava, "for routine work."

But when such abuse of the ordinance-making power has been clearly established, people may well turn their thoughts on the necessity or propriety of conferring this power on the executive at all. We should first notice in this connexion that such a power is non-existent in any of the Constitutions of the self-governing members of the Commonwealth : Canada, Australia or the Union of South Africa. What happens in these countries, when an emergent situation arises necessitating legislation after the legislature has adjourned, is that the legislature is called together at once for the necessary sanction of those measures : the executive does not arrogate to itself legislative functions which do not belong to it. Our Republican Constitution, however, provides for this, contrary to the traditions followed in democracies. This Constitution to a large extent blindly follows the Government of India Act, 1935, and it reproduces in this

particular matter the provisions of that Act almost word for word. The framers of the Constitution did not even pause to consider that what was perhaps good enough for our country when it was under foreign domination would be wholly anomalous after it had risen to the stature of full-fledged self-government, and even independence. The result is that the executive, both at the Centre and in the States, enjoys untrammelled power to have ordinances promulgated, whether in fact the situation is or is not such as to necessitate or justify the ordinances. The President and the Governors are the sole judges of the emergency which the executive may plead. They are to be "satisfied that circumstances exist which render it necessary (for the executive) to take immediate action." Theirs is subjective satisfaction of the kind we are familiar with in preventive detention; the courts cannot inquire whether good grounds exist for the satisfaction; and though the satisfaction is nominally that of the President and the Governors, it is really that of the executive; the executive determines what laws it shall have.

How carefully democratic countries guard against the executive assuming legislative functions even for a brief interval is shown by the English and French practice in these matters. Britain's Emergency Powers Act of 1920 confers extraordinary powers upon the executive to take immediate action in emergencies threatening, e. g., "to deprive the community . . . of the essentials of life." On such an emergency arising regulations for securing these essentials may be issued by an Order in Council. But the Act provides that if Parliament is not in session when emergency is proclaimed, it must be summoned within a week. Regulations issued can remain in operation for only one week without regular legislative sanction. The law concerning declaration of the state of siege in France, which confers extraordinary powers upon the executive, provides that the Chamber of Deputies must be convoked within two days after inauguration of the state of siege. The stringency of these provisions results from a recognition of the wide latitude that would otherwise be left for misuse by the executive of the power that may be conceded to the executive to take prompt action in dire emergencies. It is contended, we know, that in a country of the size of India reassembly of Parliament within a very few days after an emergency has arisen is not easily practicable. But Canada, for instance, is also a vast country and yet its Constitution is devoid of the ordinance-making power such as our Constitution provides. In any case, whatever justification there may be for such provision in the Constitution regarding the Central Government, there is none for the State Governments being allowed to issue ordinances when the legislatures are not in session. These legislatures can be immediately summoned and left to exercise the functions which belong to them. There is no need for the executive to trespass on the legislative field.

A number of constitutional amendments are now in contemplation. Among these an amendment abolishing the provision empowering the Governors to issue ordinances

surely deserves to be included. But there is little chance of this happening.

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## NOTES

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### A Code Of Fair Procedure

#### For Legislative Investigating Committees

The mischief that Congressional committees are doing by prying into the association which even eminent persons are supposed to maintain with subversives and smearing them in the process, while abusing the rights of witnesses, is well known. Because the proceedings of these committees are not criminal trials, they are not subject to several of the procedural safeguards of prosecutions in the Sixth Amendment. But there is no reason whatever why even legislative investigations should not give effect to the fair trial principles of this Amendment in committee hearings, and the need is very urgently felt that Congress should work out rules of decent procedure for investigating committees.

While no move has so far been made by Congress in this direction, it is heartening to note that, at the instance of Governor Dewey, a committee is now engaged in formulating for New York state a code of fair procedure which investigating committees should follow in future. Before this committee the President of the New York State Bar Association's civil rights committee placed certain suggestions calculated to protect witnesses appearing at legislative inquiries. Briefly, he suggested that the code should require investigating committees

To state the scope of their investigations clearly in advance, and elicit only relevant evidence.

To give witnesses the right to advice of counsel at both public and private hearings.

To let witnesses make explanatory statements for the record on any matter about which they have been questioned.

To provide witnesses with transcripts of their testimony, except where national security forbids.

To permit any person defamed at a public hearing to file a sworn statement for the record, testify in person, cross-examine his accusers, and subpoena witnesses in his defense. There would be a one-hour limit on cross-examinations.

To withhold any public derogatory statement against anyone until the person commented on has been given a reasonable opportunity to be heard.

To prevent committee members and employees from speaking or writing about their committee for pay during its existence, or while they are connected with it.

Approving this plan, the American Civil Liberties Union and the American Jewish Congress proposed inclusion therein of a provision for enforcement. This would empower the rules committee of the legislature to

investigate complaints of abuses by legislative investigating committees and recommend penalties to the legislature. It would empower the courts to deal with violations of fair procedure by executive investigating agencies.

#### End to Segregation in Schools on Military Posts

Within the last ten years racial segregation in the U.S. armed services has been brought virtually to an end. As a further step in this direction President Eisenhower after taking office issued an order that no segregation be observed in any of the schools for children of the military personnel which were being run wholly with federal funds. The President said he did not see how any American could legally, logically or morally justify discrimination in the use of federal funds.

But this order did not affect schools operated by state or local agencies at the 21 military bases in the South with funds provided in part by the federal Government, and on these posts separate schools are maintained for Negro and white children. Now, however, this loophole is going to be plugged. For, last month, the Secretary of Defence ordered the Army, Navy and Air Force forbidding these services to open any new segregated school and requiring them to end existing school segregation by 1st September next year. The schools on the military reservations in which segregation is now to cease are managed by local agencies with money provided by the federal Government. If these agencies are unwilling to end segregation or are unable to do so because the states in which they are located have laws of compulsory segregation, the federal Government will take over and operate the schools on an unsegregated basis.

This step has been warmly welcomed by all progressive minds. The "New York Times" writes:

This order... sustains the obvious principle that the federal Government cannot recognize classes of citizenship. Whatever the local custom, tradition or sentiments may be, the whole country, North and South, is equally bound, in the words of the Fourteenth Amendment, to provide "to any person within its jurisdiction the equal protection of the laws."

The question as to whether it is wise to try to change people's habits by law is not involved here; nor is the more practical question as to whether such changes ought to take place all at once or by degrees. The Federal Government isn't changing. In Secretary Wilson's order it is recognizing its own constitutional and moral inability to distinguish among its citizens on grounds of race or religion. Morally and constitutionally, in these United States, "all God's children got wings."

#### The Negro's Status

##### ADVANCE MADE TOWARDS EQUALITY

Mr. Chester Bowles, former American ambassador in India, has stated that in all Asian countries he was told

that if America wanted to win the respect and friendship of the awakening nations of Asia, the United States "must make dramatic progress in the next few years in establishing full equality for American Negroes." Mr. Bowles himself agrees that it is necessary, if the U. S. is to be true to her responsibilities of leadership, give full freedom to the fifteen million coloured people, and that this must be accomplished very soon. For, he says, "the struggle for the very survival of the free way of doing things requires America to show that democratic methods can solve deep-rooted injustices quickly and peacefully."

However, for a proper perspective on this subject he has thus summarised in the "New York Times" of 7th February, the advances that the Negro has so far made, though full equality is still ahead. He says:

The poll tax has been eliminated in all but five states, and in these remaining states an increasing number of Negroes are paying the tax in order to cast their vote.

Direct attempts to disfranchise Negroes both in general elections and in party primaries have been struck down again and again by the Supreme Court.

In 1948, only 750,000 Negroes were registered to vote in Southern states. In 1953, this figure increased to 1,300,000, and it is believed that 3,000,000 will be registered by 1956.

In the last few years the courts have also refused to enforce restrictive racial agreements in housing, prohibited segregation in interstate travel and upheld an old law outlawing discrimination in restaurants in the District of Columbia.

The American Negro has made similar progress in improving his economic position. In 1951, our Negro citizens were spending \$15 billions annually, which is more than the national income of Canada. Between 1940 and 1950, the average income of Negroes tripled, while that of white citizens increased only one and one-half times.

This adds up to an impressive record. It is doubtful whether any country in the last decade has made as much progress in eliminating such a serious blight on its democracy as has America. Yet no thoughtful person can deny that we have a long way to go before our democracy can be said to belong fully to all of its citizens.

#### Illegal Police Entry

##### FEDERAL PROSECUTION URGED BY SUPREME COURT

One Patrick E. Irvine, a California gambler, was convicted on charges of horse race book-making and related offences against California's anti-gambling laws and sentenced to a year and six months in prison. An appeal was filed against the conviction on the ground of illegal entry by the police into the defendant's home.

The conviction was upheld by the Supreme Court on 8th February by a 5 to 4 vote, Justices Black, Douglas, Burton and Frankfurter ruling that the conviction be set aside because of the methods used by the police to obtain it. In sustaining the conviction, however, Chief Justice Warren and Justice Jackson took the unusual step of suggesting that the federal Attorney General consider prosecuting the police officers involved for depriving Irvine of rights and privileges guaranteed by the Fourth Amendment to the federal Constitution, which gives citizens the rights to be secure in their homes against unreasonable searches.

The police actions that aroused the judicial ire were described by Justice Jackson as "serious." They involved these things :

Getting a locksmith to make a key to Irvine's front door while he and his wife were away, and using the key two days later to enter the house to instal a micro-phone in the hall.

Boring a hole in the roof through which wires were strung to transmit to a neighbouring garage the sounds that the micro-phone picked up. Policemen were posted in the garage to listen.

\* Entering the home surreptitiously on two subsequent occasions, once moving the micro-phone to Irvine's bedroom and again to a closet.

After the recommendation for a federal prosecution was received it was said at the Justice Department that the Federal Bureau of Investigation had been directed to make a complete investigation. This would determine whether any of the police actions had violated federal civil rights laws.

#### No " Guilt by Association "

Civil servants are being screened for their loyalty to the fundamentals of the American Government, and over 2,000 persons were removed from service in the last year as "security risks." The President is being pressed to say how many of them were ousted from jobs because of their Communist activities and how many for other reasons, e. g., drunkenness, gossiping and sexual deviation. The information supplied is that the first category of personnel is very small ( 355 ), not all of them proved subversives. But even before the screening started, Gen. Eisenhower said recently at a press conference that though he was determined to deny employment to security risks, he did not want guilt by association used against innocent persons.

## ANGLO-INDIAN SCHOOLS IN BOMBAY

### Government's Order Declared Unconstitutional A WRIT OF MANDAMUS ISSUED AGAINST THE STATE

The order issued by the State of Bombay on 6th January, prohibiting English medium schools from

admitting pupils of non-Anglo-Indian communities of Asiatic descent was held by Chief Justice Chagla and Justice Dixit at the Bombay High Court on 15th February to be invalid on the ground that it contravened Arts. 29 (2) and 337 of the Constitution of India. Their Lordships therefore issued a writ in the nature of mandamus preventing it from enforcing this order.

This ruling was given while allowing with costs three petitions challenging the validity of the order—one filed by the Bombay Education Society which runs the Barnes High School ( an Anglo-Indian school with English as the medium of instruction ) and which thus was required to limit admission of students to children belonging to Anglo-Indian and European communities, and the two others were filed by Major Jose L. J. Pinto and Dr. Mahadev E. Gujar who had applied for admission into the school respectively for their daughter and son. Major Pinto claimed that the mother-tongue of his daughter was English ( though the claim was rejected by the Government ) and Dr. Gujar simply sought admission for his son into the school because he thought that, for the future prospects of the child, the latter should be given instruction through the medium of English. But the authorities of the Barnes High School were compelled by the Government's circular to refuse admission to both.

Their Lordships said, the ban was clear and categorical. The ban was against non-Anglo-Indians and the ban was in respect of study through the medium of English. It was significant to note, they said, that the ban was only against Anglo-Indian schools, and not against any other schools with regard to any other language.

Advancement of Hindi and of education through the medium of the mother-tongue were cited by the Government as among the grounds in justification of its order. Testing these grounds, Their Lordships said that the circular would be satisfied if the Barnes School tomorrow were to open a Tamil class for Indian students, whether their mother tongue was Tamil, Gujarati or Marathi. ( Prior to the impugned order Government had issued a circular advising Anglo-Indian schools to open standards using Hindi or an Indian language. )

Their Lordships found it difficult to understand how the cause of Hindi would be advanced by the Government's order, as there was no obligation upon a child to go to a school teaching through the medium of Hindi. It could go to any school so long as it did not teach through the medium of English.

Even with regard to the medium of instruction, Their Lordships did not see anything whatsoever in the order which advanced the cause of education through the medium of the mother-tongue, because it did not ban the child from learning through any language, whether it was the mother-tongue or not. Only the child must keep away from the contamination of English. The compulsion under the order is, " Don't learn through the medium of English. "

Their Lordships thought that there was considerable force in the contention raised on behalf of the petitioners that the circular was aimed at the destruction of English, and that Government had issued the order owing to considerable misapprehension as to the place of English under the Constitution. To remove this misapprehension, they had to consider the various Articles of the Constitution. They referred to the provisions of Articles 343 to 348 and stated English was the official language of the Union and the language for communication between the States and the Union. It might be said that English was a foreign language and was brought in by foreigners. In a sense it might be so, but it had been recognised by the Constitution and as such was entitled to protection as any other language. Therefore, they had to consider whether it was constitutional to make any distinction between the English language and the other Indian languages.

The Declaration of Human Rights, to which India was a signatory, had emphasized the parent's right to decide what education the child should receive and this right of the parent was given priority over the right of the State to control public education. Their Lordships said :

It is open to the State to maintain such educational institutions as it thinks proper. It is also open to the State to aid the educational institutions out of its funds. Once a school has been recognised a child cannot be prevented from joining the school. Once a school receives grants from the State, a citizen cannot be prevented from joining that school. A citizen has a right to receive education from any school in the State. The educational institutions cannot restrict admission to a particular caste, creed or race. A State cannot tell a citizen, "You go to this school or that school."

Dr. Gujar's son and Maj. Pinto's daughter were denied admission to the school at Deolali because they were not Anglo-Indians. Even if it were to be said that they were not admitted in the school on the ground that they did not speak the English language, or they did not belong to the linguistic group whose language was English, even so it offended against Article 29 (3) of the Constitution which stated that

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Their Lordships referred to a parallel case decided by the Madras High Court. A girl in that case was denied admission to a college on the ground that she was a Brahmin. The position of Dr. Gujar's son and Maj. Pinto's daughter was identical.

Their Lordships stated that the petitioners, as citizens of India, had a right to have their children admitted to the school which was aided by State funds.

Having dealt with the right of the citizen, Their Lordships turned to the right of the school to admit non-

Anglo-Indian pupils. The school at Deolali was administered and maintained by an Anglo-Indian organisation for Anglo-Indians, recognised under the Constitution as a racial minority.

Articles 29 and 30 dealt with the cultural and educational rights of minorities and Article 29 (1) provided that any section of citizens residing in India, having a distinct language, script or culture shall have the right to conserve the same. The Anglo-Indians being a racial minority, also possessed a distinct language, the English language, and had a right to conserve it. Further, under Art. 30 the minorities had a right to establish and administer their own institutions. Those institutions must be of their own choice, as they would not be under the impugned order.

Article 337 provided the aid that Anglo-Indian institutions would receive for the first 10 years of implementation of the Constitution, the aid decreasing gradually after every three years and ceasing at the end of the tenth year. This was being given to the Anglo-Indian institutions under a very important proviso, viz., that they would not be entitled to receive the aid unless 40 per cent. of its annual admissions were reserved for those other than Anglo-Indians. The Constitution, therefore, prohibited an Anglo-Indian school from being run only for the benefit of that community. The object was to fit the Anglo-Indian community into the national pattern by the end of the aided 10-year period and to see that the institutions did not become communal. In other words, the State was asking the Anglo-Indian schools to disregard the most important provision of Article 337 on which its right to receive State aid was based.

Their Lordships declared that Major Pinto and Dr. Gujar had the right to get their children admitted into the Barnes High School, and that there was nothing to prevent the school from admitting the children.

Leave was granted to the Government to make an appeal against this decision to the Supreme Court.

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## THIRD DEGREE PRACTICES

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### Man-Handling by the Police

#### HIGH COURT CONDEMNS THE PRACTICE AS "A SERIOUS OFFENCE"

It would appear that in a complaint of theft in August 1952 in Patankudi Appa Rama Kamate, a head constable of Nipani police station in Belgaum, proceeded to the village and returned to the police station the same night with Joti Rama Rajgire and Laxman Savant in his custody. Two village sanadis (Vithu Rama Hardikar and Babu Appanna Berad) also accompanied the constable in escorting the suspects. Joti and Laxman were subjected to interrogation, and as they denied any knowledge of the theft, Kamate (according to the prosecution story) gave a blow to Laxman who, being an old man of 60, fainted.

and fell. He was thereafter let off. Joti, it was stated, was subjected to torture, and as he was collapsing, he was taken to a doctor who advised Kamate and the two sanadis to remove him immediately to a hospital. Joti was taken away and he was never seen afterwards. Kamate and the sanadis were also missing and they returned only on 5th October 1952.

There was press agitation about the affair, and Government ordered an inquiry, as a result of which a prosecution was started. The jury held Kamate and another head constable, Shidram Basvanappa Hugar, guilty under sec. 331, I. P. C, read with sec. 34, but the Sessions Judge held the verdict to be perverse as being against the trend of his charge and, acquitting the accused, referred the case to the High Court. Government also filed an appeal against the order of acquittal passed by the Sessions Judge, and both the appeal and the reference were heard in the High Court.

Gajendragadkar and Vyas JJ. on 26th February found all the four accused guilty of the charge of causing grievous hurt to Joti and sentenced Kamate and Hugar to five and four years' term in prison and the two sanadis to three years' imprisonment. In passing the sentence, Their Lordships said:

If police officers arrest a citizen in the course of investigating a criminal offence and take him to a police lock-up and beat him, that must be regarded as a very serious offence committed by them.

In the present case on the evidence which we have believed, merciless beating appears to have been given to Joti, and the subsequent conduct of the accused shows that they knew to what state beating had reduced him. Therefore, in our opinion, such gross misconduct on the part of the police officers in dealing with a defenceless prisoner must be sternly put down.

#### "Unwarranted Assault" by Policemen

On 23rd February the Presidency Magistrate, Dadar Court, Bombay condemned the "unwarranted assault" by policemen on two women, Mrs. Rosaline Fernandes and Miss Adeline D'Souza, who were charged with assaulting a public servant and aiding in the escape of an arrested person.

The prosecution case was that on March 29, 1953, the Prohibition Police had raided a building near Portuguese Church, Dadar, as they suspected clandestine business in liquor. They had caught hold of a person who was in possession of a liquor bottle. Thereafter, the two accused and two other women caught hold of the constable.

Later, a person snatched a lathi from a havildar and tried to assault him. The lathi blow fell, however, on the first accused.

The contention of the accused was that the police had filed the case to spite them, as they had already lodged a complaint against two havildars for assault.

The accused further stated that they suspected foul play as a havildar had a liquor bottle. The first accused, therefore, told the police to get an officer and panchas and then conduct a search of the house. Thereupon, it was stated, a havildar caught hold of her hand and assaulted her. She had been detained in hospital for four days.

The Magistrate ordered the acquittal of the accused and, in delivering judgment, said:

It appears that the object of the constables was to plant a bottle of liquor in the room of the accused and involve her in a false case, and thereafter extort money.

Instead of putting up the constables on a charge sheet two innocent women were involved in the case, the Magistrate observed. It was a discredit to the police to have to put up "innocent and frail" women on a charge sheet. It was worse for them to have followed up these false charges by tendering a false witness and then persisting in the prosecution. The Magistrate added:

Perhaps the limbs of the law thought that officers and constables of the Prohibition Department deserved special protection even against crimes committed by themselves. Otherwise there was no sense in putting up two innocent women on a false charge-sheet.

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## SALARY OF CIVIL SERVANTS

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### Suit Maintainable in India

#### RULE OF ENGLISH LAW DID NOT APPLY

The Constitution Bench of the Supreme Court held on 11th February that a suit for arrears of salary by a civil servant was maintainable in a civil court.

This decision of the Court was given in the appeal preferred by the State of Bihar against the order of the Patna High Court directing the State Government to pay arrears of salary to Abdul Majid, a sub-inspector of police who had been dismissed and after a period reinstated from the date of dismissal to the date of his reinstatement.

In dismissing the appeal, the Chief Justice Mr. Mehr Chand Mahajan, who delivered the judgment of the Court, held that the rule of English law that a civil servant could not maintain a suit against the Crown for recovery of arrears of salary did not prevail in this country and had been negatived by the provisions of the statute law in India. He said:

The Code of Civil Procedure from 1859 right up to 1908 has prescribed the procedure for all kinds of suits and the sections and the provisions of Order XXI substantially stand the same as they were in 1859 and those provisions have received recognition in all the Government of India Acts that have been passed since the year 1858. The salary of its civil servants in the hands of the Crown has been made subject to the writ of civil court. It can be seized in execution of a

decree attached. It is thus difficult to see on what grounds the claim that the Crown cannot be sued for arrears of salary directly by the civil servant, though his creditor can take it, can be based or sustained. What could be claimed in England by a petition of right can be claimed in this country by ordinary process.

The Chief Justice rejected the contention of the Solicitor-General that the suit could not be maintained in a civil court as "without substance."

Referring to the contention that when the statute said that office was to be held at the "pleasure" of the Crown no rules or regulations could alter it, the Chief Justice said, the true scope and effect of this expression was that even if a special contract had been made with the civil servant, he was liable to be dismissed without notice and there was no right of action for wrongful dismissal.

This rule of English law, the Chief Justice said, had not been fully adopted in section 240 of the Government of India Act which itself placed restrictions and limitations on the exercise of that pleasure and those restrictions must be given effect to. It followed, therefore, that whenever there was a breach of restrictions imposed by the statute by the Government or the Crown, the matter was justiciable and the party aggrieved was entitled to suitable relief at the hands of the court. The Chief Justice said:

To the extent that the rule that Government servants hold office during pleasure has been departed from by the statute, Government servants are entitled to relief like any other person under the ordinary law, and that relief, therefore, must be regulated by the Code of Civil Procedure.

#### FACTS OF THE CASE

The facts leading to the appeal were that a sub-inspector of police in Bihar, Abdul Majid, was found guilty of cowardice and of not preparing search lists and was punished by demotion for 10 years. On appeal the Deputy Inspector General of Police held that he was guilty of cowardice but acquitted him of the other charge. The police official was subsequently dismissed from service in July, 1940.

The sub-inspector later filed a suit before an Additional Subordinate Judge against the State of Bihar for a declaration that his dismissal order was illegal and void and that he should be regarded as continuing in service. He also claimed Rs. 4,241 from July 30, 1940, up to the date of the suit as arrears of salary.

The State contested the claim and pleaded that the plaintiff held his service at the pleasure of the Crown and could not call in question the grounds or the reasons which led to his dismissal, and that in any case he had been reinstated in service from July 30, 1940, and the order of dismissal, therefore, was no longer operative, and the suit had thus become infructuous.

The suit was dismissed on the finding that the Government having reinstated the police official he had no cause of action.

As regards arrears of salary, it was held that the claim to it could only be made according to the procedure prescribed under Rule 95 of the Bihar and Orissa Code. This decision was confirmed by the Additional District Judge.

On further appeal, the Patna High Court reversed these decisions and decreed the claim for arrears of salary of Rs. 3,099-12-0. It was held that Rule 95 of the Bihar Service Code had no application because the police official had never been dismissed within the meaning of that rule.

Agreeing with the decision of the High Court the Chief Justice, Mr. Mahajan said the provisions of Rule 95 of the Bihar and Orissa Service Code enabled an appellate or revising authority when making an order of reinstatement to grant the relief mentioned in the rule. Obviously these provisions had no application to the situation that arose in the present case. The Chief Justice added:

The respondent here was dismissed by the D. I. G. of Police, though he was appointed by the Inspector General of Police. This was clearly contrary to the provisions of Section 240 (3) of the Government of India Act, 1935, which provides that no person shall be dismissed from the service of His Majesty by an authority subordinate to that by which he was appointed.

But, nevertheless, the appeal preferred by him to the Inspector-General of Police was rejected and his petition to the Government of the State met with the same fate, so that he was never reinstated by the order of any revising or appellate authority. It was only after the present suit was filed that the Government reinstated him. This was no proceeding in revision or appeal. In these circumstances the enabling provisions of Rule 95 had no application whatsoever to the case of the plaintiff.

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## THE PRESS ACT, 1931

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### Two Sections Held Void

In the house of Ram Shankar Tewari of Azamgarh some cyclostyled leaflets were recovered on 11th June, 1950, when the house was searched in execution of a search warrant issued by the district magistrate of Azamgarh. The leaflets contained the constitution of the U. P. Khet Mazdoor Union; some were entitled "Conspiracy of Britain and America to start World War III;" and some others contained Communist propaganda. The name of the printer was not printed on any of them. Tewari was convicted of the offence of having unauthorized news sheets in his possession under secs. 15 and 18 of the Indian Press (Emergency Powers) Act, 1931. The conviction was challenged on the ground that the Act was unconstitutional and became void on the passing of the Constitution.



Mr. Justice Desai and Mr. Justice Nasirullah Beg of the Allahabad High Court on 11th February last acquitted Tewari and set aside his sentence, holding that the 1931 Act had become void on 26th January 1950, as infringing the provisions of Arts. 19 (1) (a) and 14 and not being saved by the provisions in Art. 19 (2), either before or after the Article was amended, and therefore the applicant's act did not constitute an offence on 11th June 1950; and that even if the impugned sections of the law were valid by virtue of the amendment of Art. 19 (2) in 1951, the applicant could not be convicted for doing an act before the Article was amended.

Sec. 15 of the Act empowers magistrates to authorize "any person by name to publish a news sheet" with conditions if thought necessary. Any news sheet not so authorized under the section is an unauthorized news-sheet, and sec. 18 prescribes a penalty for distributing or keeping for distribution any such unauthorized news sheet.

Their Lordships said that whatever might have been the object behind the Act, the matters to which it related were printing and publishing of newspapers and news sheets and keeping printing presses. It might be that better control of the Press was essential for controlling acts which undermined the security of State, but that did not mean that the Act related to such matters. The fact that the legislature could not control objectionable news sheets unless it also controlled harmless ones did not change the nature of the matters to which it related. It might have been absurd to say that section 15 should have required a permit for the publishing of news sheets, which had a tendency to undermine the security, etc., of the State, but the fact remained that the Act dealt with the publication of news sheets regardless of their contents.

Their Lordships were, therefore, of the opinion that the impugned provisions of the Act were not a law relating to any matter which undermined the security or tended to overthrow the State. The effect of the above finding was that the impugned sections became void on January 26, 1950.

Their Lordships added that though section 15 became void on January 26, 1950, news sheets remained unauthorized news sheets. The passing of the Constitution made only section 15 void; it did not have the effect of undoing anything that had been done under it. But as section 18 also became void with section 15, possession of unauthorized news sheets was not an offence after January 26, 1950, and applicant could not be punished. If news sheets were published after January 26, 1950, then they did not even become unauthorized news sheets and even if section 18 remained intact applicant committed no offence. The result was that the act committed by applicant on June 11, 1950, was not an offence.

Leave to appeal to the Supreme Court was granted by Their Lordships under Article 132 (1) of the Constitution as the case involved a substantial question of law as to the interpretation of the Constitution.

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## INFLUX FROM PAKISTAN

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### Sec. 7 of the Control Act Declared Void

The Constitution Bench of the Supreme Court by a majority decision on 15th February held section 7 of the Influx from Pakistan Control Act of 1949 to be void under Article 13 (1) in so far as it infringed the right of an Indian citizen under Article 19 (1) (e) of Constitution.

This decision of the Court was given on a number of appeals raising a common question of the constitutional validity of section 7 of the Act which empowered the Central Government to issue orders directing the removal from India of any person committing an offence under the Influx from Pakistan Control Act.

Mr. Justice Ghulam Hasan gave the majority judgment with which the Chief Justice, Mr. Justice Vivian Bose and Mr. Justice T. L. Venkatrama Aiyer agreed, while Mr. Justice Sudhi Ranjan Das gave a dissenting note.

The majority judgment took two Bombay petitions filed by Ebrahim Mavat and Ali Mohammad against the decisions of the Bombay High Court as leading cases which governed other appeals.

Though both these appeals were different in facts, they proceeded upon the common assertion that the appellants were citizens of the Indian Republic. The status of the appellants as Indian citizens in all the other cases had not been investigated and determined by any of the lower courts.

The majority decision which held section 7 to be void directed the four criminal appeals to go back to the High Courts for a finding upon the question whether they were citizens of India.

The Act in question which was published in the Gazette of India on April 23, 1949, after receiving the assent of the Governor-General, was intitled to "control the admission into and regulate the movements in India of persons from Pakistan."

The majority judgment said that the use of the word "person" in section 7, read with the title and preamble of the Act "leave no doubt that the Act applied to citizens and non-citizens alike."

It was contended on behalf of the appellants that section 7 conferred upon the Central Government unfettered power to direct the removal from India not only of a person who had committed an offence punishable under section 5 of the Act but also one against whom a reasonable suspicion existed that he had committed such an offence. The judgment said:

That an Indian citizen visiting Pakistan for any purpose whatsoever and returning to India may be required to produce a permit or passport before he can be allowed to enter the country may be well regarded as a proper restriction upon entry but to say that if he



enters the country without a permit or on an invalidated permit or commits a breach of any of the conditions of the permit he may, on conviction for such an offence, be ordered to be removed from the country is tantamount to taking away the fundamental right guaranteed under Article 19 (e).

The Solicitor-General, defending the Act, argued that the provision must be viewed in the background of the events which took place at the time of the partition and the unsatisfactory relations existing between India and Pakistan up to the present day. The majority judgment said :

Even so, the penalty imposed upon a citizen by his own Government merely upon a breach of the permit regulations, however serious it may be, and more, upon a reasonable suspicion only by the executive authority of his having violated the conditions of the permit is utterly disproportionate to the gravity of the offence and is in our opinion indefensible.

A law which subjects a citizen to the extreme penalty of a virtual forfeiture of the citizenship upon conviction for a mere breach of the permit regulations or upon a reasonable suspicion of his having committed such a breach can hardly be justified upon the ground that it imposed a reasonable restriction upon the fundamental right to reside and settle in the country in the interests of the public. The Act purports to control admission into and regulate the movements in India of persons entering from Pakistan but section 7 oversteps the limits of control and regulation when it provides for removal of a citizen from his own country.

Referring to the view taken by the Bombay High Court that section 7 was consequential to section 3, the majority judgment said that this argument was "fallacious". "Assuming, however, that section 7 is consequential to section 3, it gives no opportunity to the aggrieved person to show cause against his removal."

The judgment said that the object of the Act was not to deport Indian nationals committing a breach of the permit or passport regulations and hence there was "no substance in the argument that section 7 was intended to achieve the objective of expelling Indian citizens, by and large, if they brought themselves within the mischief of section 3."

Mr. Justice Das in his dissenting note said :

Having regard to all the circumstances, the tension, bitterness and hatred between the two countries that were generated at the time of the partition and all of which must enter into the judicial verdict, the provisions of section 7 appear to me to have been eminently reasonable restrictions imposed in the interests of the general public upon the exercise, by Indian citizens coming from Pakistan without a permit, of the rights conferred by Article 19 (1) (d) and (e) of the Constitution.

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## MADRAS ELECTRICITY ACT

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### Held Void by the Supreme Court

The Constitution Bench of the Supreme Court on 10th February held the Madras Electricity Supply Undertakings (Acquisition) Act of 1949 to be void.

Allowing an appeal preferred by the Rajahmundry Electric Supply Co. Ltd. against a judgment of the Madras High Court, the Bench held that the Madras Legislature had no competency to enact the impugned Act.

The Madras High Court in dismissing an application filed by the appellant company under Article 226 of the Constitution, had held that, the legislation was with respect to electricity under Entry 31 of the Concurrent List in the Seventh Schedule to the Government of India Act, 1935, and was not a legislation with respect to corporations under Entry 33 in List I as contended by the appellant, and therefore the Madras Legislature was competent to enact it.

The writ application sought the quashing of an order of the Madras Government passed under section 4 (1) of the Act which declared that the undertaking of the appellant company should vest in Government from a specified date.

The appellant company was formed and registered under the Indian Companies Act in 1924 with the object of generating and supplying electrical energy to the public in Rajahmundry.

After analysing the various sections in the Act Mr. Justice Das who delivered the judgment said that the Act did not purport to make any provision for the granting of licences or maintenance of works for generating or transmitting energy or for supplying electrical energy as one would expect to find in a law dealing with electricity, nor did the Act purport to make any provision for the incorporation, regulation or winding up of trading corporations.

On the contrary, it is abundantly clear from the long title, the preamble and the sections that it is, in pith and substance, nothing but an Act to provide for the acquisition of electrical undertakings.

Section 299 (2) of the Government of India Act, 1935, provided that, neither the Federal nor a Provincial Legislature would have power to make any law authorizing the compulsory acquisition for public purposes of any land or any commercial or industrial undertaking or any interest in or in any company owning any commercial or industrial undertaking unless the law provided for the payment of compensation for the property acquired. Compulsory acquisition of property is undoubtedly an important sovereign right of the State, but this right has to be exercised under a law.

The legislative power of the State was distributed by sections 99 and 100 amongst the Federal Legisla-

ture and the Provincial Legislatures in the manner provided in the several lists set forth in the Seventh Schedule to the Act. Section 100 read with Entry 9 in List II authorised the Provincial Legislature to make a law with respect to compulsory acquisition of land. There was no entry in any of the three Lists relating to compulsory acquisition of any commercial or industrial undertaking, although section 299 (2) clearly contemplated authorizing compulsory acquisition for public purposes of a commercial or industrial undertaking. The acquisition of a commercial or industrial undertaking not being the subject-matter of any entry in any of the three legislative lists, neither the Federal Legislature nor the Provincial Legislatures could enact a law with respect to compulsory acquisition of a commercial or industrial undertaking. Under section 104, however, the Governor-General, in his individual discretion, could, by public notification, empower either the Federal Legislature or a Provincial Legislature to enact a law, with respect to any matter not enumerated in any of the lists in the Seventh Schedule to the Act.

It is, therefore, clear that although Parliament expressly entrusted the Provincial Legislatures with power to make a law with respect to compulsory acquisition of land, it did not straightaway grant any power, either to the Federal Legislature or the Provincial Legislatures, to make a law with respect to compulsory acquisition of a commercial or industrial undertaking but left it to the discretion of the Governor-General to empower either of the Legislatures to enact such a law. There is no suggestion that the Governor-General had, in exercise of his discretionary powers under section 104, authorized the Madras Legislature to enact the impugned Act and therefore, the Act was, prima facie, beyond the legislative competency of the Madras Legislature.

On the same grounds, the Constitution Bench dismissed an appeal preferred by the Madras State against another judgment of the Madras High Court which had acceded to the petitions filed under Article 226 of the Constitution by the Municipal Council of Madras and eight other local authorities on the ground that the Act offended Article 14 of the Constitution.

## BOMBAY PROHIBITION ACT

### Onus of Proof on Accused under Sec. 66-B

A majority decision of the Supreme Court on 19th February held that in a prosecution under section 66-B of the Bombay Prohibition Act, once the prosecution had discharged the onus which lay upon it to prove that the accused had consumed liquor, it would be for the accused to show that the liquor which was taken by him was in the nature of a medicinal preparation containing alcohol.

The decision was given on an appeal from a judgment of the Bombay High Court which, reversing an order of acquittal passed on B. K. Pesikaka by a Presidency Magistrate of Bombay, convicted the appellant of an offence under section 66-B of the Prohibition Act and sentenced him to one month's rigorous imprisonment and a fine of Rs. 500.

The point for decision was whether in a prosecution under section 66-B of the Prohibition Act for contravention of section 13-B, the prosecution had to "establish" not merely that liquor had been taken in some form but further, what was taken was not a medicinal preparation.

The Bombay High Court had held that once the prosecution had established that the accused had taken alcohol in some form, it was for him to establish that he

had taken a medicinal preparation, and that therefore the burden of proving it lay on him under section 106 of the Evidence Act.

The applicant before the Supreme Court contended that the decision of the High Court was opposed to the Supreme Court's decision in the State of Bombay v. F. Balsara case. He argued that the effect of the Supreme Court's declaration was to remove medicinal preparations from the purview of section 13-B and that as the offence itself consisted in consuming liquor which was not a medicinal preparation, the burden would lie on the prosecution to establish that what was consumed was prohibited liquor.

Mr. Justice Jagannatha Das and Mr. Justice Venkatarama Ayyar in separate judgments took the majority view and dismissed the appeal. The sentence of imprisonment on the appellant was reduced to the period already undergone.

Mr. Justice Bhagwati in his minority judgment allowed the appeal. He said that the Bombay Prohibition Act provided for punishment when an intoxicant was consumed, and unless and until the prosecution proved that the accused had contravened the enforceable provisions of the Act, he could not be held guilty. For the purposes of the present enquiry, the only provisions of the Act which he could be charged with having contravened was section 13 (b), the prohibition contained in which was, by reasons of the declaration made by this Court, enforceable only in regard to consumption or use of validly prohibited liquor, i. e. spirits of wine, methylated spirits, wine, beer, toddy and all non-medicinal and non-toilet preparations consisting of alcohol.

## MADRAS SALES TAX ACT

### Sec. 16-A Held Invalid by High Court

#### VALIDITY OF ASSESSMENT "NOT TO BE QUESTIONED"

A Division Bench of the Madras High Court, consisting of Their Lordships Govinda Menon and Basheer Ahmed Sayeed, JJ., delivered judgment on 16th February in a batch of criminal revision petitions, relating to assessment of sales tax, holding that "section 16-A of the Madras General Sales Tax Act is ultra vires of the Constitution and the relevant provision of the Criminal Procedure Code. Accordingly, Their Lordships set aside the conviction and sentence passed on the petitioners by the Additional First Class Magistrate of Salem for non-payment of sales tax.

[Section 16-A of the Madras General Sales Tax (Amendment) Act of 1947 states: "The validity of the assessment of any tax or of the levy of any fee or other amount made under this Act or the liability of any person to pay any tax, fee or other amount so assessed or levied, shall not be questioned in any criminal court, in any prosecution or other proceedings, whether under this Act or otherwise." ]

One of the petitioners in the batch of cases was a firm dealing in hides and skins in Salem. The Assistant Commercial Tax Officer laid a complaint against the firm under section 15 (b) of the Madras General Sales Tax Act alleging that the petitioner had paid a sales tax of Rs. 3,126-4, being the balance out of Rs. 5,519-13 assessed on the firm for the year 1950-51. They denied the offence and contended that the purchase of skins in the particular case was made in the course of export out of the territory of India, and so sales tax on that was against the provisions of Article 287 (1) (b) of the Constitution of India.

It was contended on behalf of the prosecution that though the purchases were made for export, it was not done in the course of export, because they sold it to some other firms in the country. It was further contended that under section 16-A of the Madras General Sales Tax (Amendment) Act, it was not open to the accused to question the validity of the assessment of any tax made under the Act in a criminal court.

The Magistrate found the petitioner guilty under section 15 (b) of the Act and convicted and sentenced him to a fine of Rs. 25. The parties in the other cases were also convicted of similar offences and sentenced to varying amounts of fine.

The present criminal revision petitions were filed against their convictions and sentences by the Magistrate.

Their Lordships allowed the revision petitions on the ground, among others, that section 16-A of the Madras General Sales Tax (Amendment) Act was ultra vires of the Constitution and the provisions of the Criminal Procedure Code.

## COMMENTS

### Freedom of Speech in Kashmir

#### Made Practically a Non-Justiciable Right

We would like to emphasize a point that we made in the last issue at p. iii: 56 about Kashmir's Fundamental Rights, viz., that while the Kashmir constitution has faithfully followed the Indian Constitution in denying in terms personal liberty to its citizens in the sense of "freedom from physical restraint except as a punishment for crime," it has departed from our Constitution in converting to all intents and purposes the right to free speech and all other rights enumerated in Art. 19 from justiciable into non-justiciable rights by making the legislature itself the judge of what the limits of the exercise of these rights shall be. While in regard to other fundamental rights the Kashmir constitution follows the American constitutional doctrine, in regard to these rights it follows the English doctrine of the supremacy of Parliament, which in effect means that no constitutional guarantee would be available for the rights.

These English and American doctrines were thus distinguished by the United States Supreme Court in *Hurtado v. California*, 110 U. S. 516 (1883):

(The Magna Carta did not limit the power of Parliament.) The actual and practical security for English liberty against legislative tyranny was the power of a free public opinion represented by the Commons. In this country (United States) written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Carta were incorporated into the Bill of Rights. They were limitations upon all the powers of government, legislative as well as executive, and judicial. . . . It is not every act, legislative in form, that is law. Law (according to the American conception) is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, "the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern

society, and thus excluding as not due process of law acts of attainder, bills of pains and penalties, acts of confiscation, acts of reversing judgments and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial and arbitrary exertions of power under the forms of legislation."

Thus it comes about that the fundamental right of free speech which the Kashmir constitution guarantees is not the right of freedom of speech for citizens, but the legislature's right to abridge citizens' right to speak freely!

#### Elimination of Urdu Sought

Just as the aim of the Bombay Government's educational policy is, as was contended in the Bombay High Court with apparent support from Their Lordships, the "destruction" of the English language in the State, so the aim of the U. P. Government's educational policy seems to be the elimination of Urdu in those areas where that language is current. Both the Governments profess to have adopted this policy out of their love for the national language, viz., Hindi, but both appear to us to be prompted by the desire to put down a language that they intensely dislike. English is the *bête noire* of the Bombay Government because it is the language introduced by the former rulers (and the Education Minister almost preens himself on his hyper-nationalistic attitude in this matter), and Urdu is the language the U. P. Government hates most, because it is supposed to be the language of the Moslems who as a body have gone out of India and carved out a State of their own.

The facts in regard to the suppression of Urdu in U.P. are these: although it is recognized everywhere that in the primary stage children should receive instruction in their mother-tongue, and such is the direction of the Union Government, the Education Department of U. P. made Hindi compulsory by an executive order in all primary schools, without regard for the needs of a very large proportion of people who speak Urdu at home. This order resulted in the expulsion of Urdu from all municipal schools. "About the same time the teaching of Urdu was discontinued in the schools under district boards. The net result of all this has been that children whose mother-tongue is Urdu are not allowed to receive their basic education in their mother-tongue and Urdu is thus expelled from the primary stages of all basic schools in this State."

This was the complaint that was lodged before the President of India by a distinguished deputation consisting of Hindu as well as Muslim leaders, and all known to be thorough-going nationalists and loyal to the national language, in a memorandum signed by over two million adults. The prayer contained in the memorandum was that the President direct the U. P. Government, under Art. 347 of the Constitution, to recognize Urdu as one of the regional languages of that State. This Article lays down

On demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desires the use of any language spoken by them to be recognized by the State, direct that such language shall also be officially recognized throughout the State or any part thereof for such purposes as he may specify.

The U. P. Government probably hopes that if Urdu is done away with in the primary classes, in a generation or so there would hardly be any Urdu-speaking persons left in the State, so that even the basis of applying Art. 347 in future would disappear altogether. Such linguistic aggression must therefore be nipped in the bud. Urdu is widely spoken in that State; to suppress it by force would

be sheer injustice to large sections of the people in a sphere which intimately touches their every-day life. It is also a very rich language opening out wide vistas of culture not easily accessible in Hindi literature. The language deserves to live for that reason. But we take higher ground in approaching this subject. The Government's policy should be, as is that of the Soviets, to preserve and promote every language that is spoken by the people in any area. This does not conflict with the policy of having a national language for federal uses. The national language can never take the place of regional languages.

Above all this must be hammered into the minds of the Education Ministers of Bombay and U. P.: that because Englishmen were foreigners, it does not follow that after their rule ceased English should be taboo as foreign if the language has merits of its own. Similarly, the advent of Urdu may be due to Moslem rule in India, but it need not on that account be killed by artificial means by those in power. Indeed, there is evidence to show that the growth of Urdu was not promoted by Moslem rulers; it is just as much a Hindu language as a Muslim language. There should be no prejudice against it as there should be none against English, and in any case no official measures should be countenanced calculated to make the cultures they represent inaccessible to Indian children.

#### Treaty-Making Powers of the U. S. President

##### ALL ATTEMPTS TO CURB THE POWERS DEFEATED

On 26th February the Senate after five weeks of debate defeated all plans to limit the power which the Constitution confers on the President with the consent of the Senate to enter into a treaty with foreign nations and which it confers on the President alone to make executive international agreements. The Bricker amendment with the dangerous "which clause" was first unceremoniously thrown out, and the milder substitutes which were thereafter proposed were later rejected, with the result that there is no longer, at any rate for the present, any threat to the President's necessary powers to conduct foreign relations in the normal way.

Our interest in this question arises from the fact that even under the less objectionable alternatives that were proposed the President would have felt greatly handicapped in undertaking commitments under the U. N. Charter and adhering to conventions originating in the United Nations. The latest of these alternatives was a proposal to amend Art. VI of the Constitution declaring that no provision of a treaty or other international agreements could be effective if it was in conflict with the Constitution. Such an amendment would have been altogether superfluous, since it is the settled constitutional law and practice that the Constitution is superior to all treaties or executive agreements. But, although the amendment would on the face of it have merely restated the existing position, there were potential dangers in adopting it. It was feared that the United States' adherence to the U. N., for example, could be challenged and conceivably held invalid by the courts if they found that the country's entry into that organization had involved any violation of the Constitution. And since it is the avowed aim of the isolationists who are behind the Bricker amendment to make it difficult for the President to pull his full weight in the United Nations, even this amendment was naturally regarded as "a new and 'back-door' method of getting the United States out of the United Nations." Fortunately all these attempts have failed.

#### S. Africa's Land Legislation

On 22nd February the Minister for Native Affairs in the Union Government of South Africa moved a bill, approved by the Nationalist party caucus, to amend the Native Land and Trust Act. It is feared that the bill, if it be passed into law, will have consequences like those that led to the Mau Mau rebellion in the crowded Kikuyu reserve of Kenya. The bill empowers the Minister to order the Natives out of the white farms if they are found to be in excess of the number permitted to the farmer. It should be remembered that more than one-third of the total Native population is working at present on white-owned farms because the native reserves are over-populated and approximately two-thirds of the Negro population have had to find a subsistence outside the reserves. It will thus be seen how far-reaching the effect of the new law will be.

Such efforts previously made had been blocked by a provision that the Ministry when driving out the Natives had to provide alternative accommodation and means of earning a living. But that provision of law will now be deleted, which means that the Minister will have authority at his discretion to make Negroes homeless without giving them either a place to live in or an occupation as a means of livelihood. The Natives thus forced out would be rendered thoroughly homeless, because they cannot possibly be forced back into the reserves. The Minister said blandly that he could provide work through the Native Labour Bureau. To this the reply of the Opposition is that this would in effect amount to forced labour, as the Negro, with the police driving him on with no chance to settle down, would have to go where the Native Labour Bureau chose to send him and accept the wages offered.

#### INDUSTRIAL APARTHEID

Legislation is also proposed which would empower the Minister of Labour to determine the categories of employment and occupations that would be permitted for various races. The Natives would thus be restricted, after the legislation is adopted, to certain occupations and certain levels of employment. This measure is going to be opposed by the United Party, whose leader, Mr. Strauss, declared that the economic integration of Negroes that had taken place during the last 300 years was to be welcomed and that the process of native African integration should continue.

Opportunity is similarly being taken, in amending the Suppression of Communism Act, to slip in a phrase "persons not citizens by birth," which would enable the Government to expel from South Africa any naturalized citizen who is deemed by the Minister of Justice to be a Communist. On such a declaration being made, it would become mandatory for the Governor General to oust the person so declared. There is no appeal to the courts. This would mean that the right of a person not born in South Africa to stay in the country would be dependent on the opinion of the Minister of Justice. Opposing this change, Mrs. Ballinger, President of the Liberal Party, well said in Parliament on 10th February that the day would come when the Nationalist Party would see to it that no immigrant could remain in South Africa who did not follow the Nationalist line.