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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## PROPOSALS FOR CURTAILING INDIVIDUAL LIBERTY

### CONGRESS CONTEMPLATES CONSTITUTIONAL AMENDMENTS

The Congress High Command is contemplating large-scale changes in the Constitution, and all the changes it has in view in regard to the Fundamental Rights Part of our Charter (with which alone the BULLETIN is concerned) are reactionary, and some of them dangerously so. At its meeting on 22nd May, the Working Committee gave its general approval to the recommendations which a sub-committee specially appointed for the purpose made to that body. The All-India Congress Committee, scheduled to meet in Ajmer towards the end of this month, will finalise the amendments proposed and send them in due course to the State Governments for an expression of their opinions. In the light of the opinions that will be received, the Government of India will embody its proposals in the form of an amending Bill, which it is expected will come up before Parliament either at the end of the winter session in November this year or at an early stage in the budget session next year.

### 1—A Further Curb on Freedom of Expression

Of the amendments recommended for adoption by the sub-committee by far the most objectionable in its far-reaching effect is the one relating to Art. 19(2), which specifies the restrictions that may validly be imposed upon Freedom of Speech and Expression guaranteed under Art. 19(1) (a). The scope of such restrictions has already been enormously widened by the Constitution (First Amendment) Act, 1951. Art. 19(2), as it was originally shaped by the Constituent Assembly, permitted the right to free speech and free press to be restricted only when the security of the State was in danger of being undermined by any misuse of the right. This was in all respects a proper constitutional provision: it meant, in effect, the application in India of the "clear and present danger" doctrine evolved by the Supreme Court of the United States; which in its turn meant that nothing less than an imminent threat to the very existence of the community would justify any legislative restriction of a right, so essential in a democracy. But the Provisional Parliament emasculated the Article in 1951 by adding, inter alia,

"public order" as a basis of restriction. The addition of this expression, which has a much wider connotation and is therefore very elusive in its scope, has made it possible for the legislatures to pass laws narrowly restricting the scope of lawful speech.

Such is the position of Art. 19(2) at present. It is unsatisfactory in the extreme. An amendment is urgently required to cancel all the additional restrictions that it now sanctions and to restore the Article to the form it originally assumed in the Constitution. But the Congress Party proposes to amend it by introducing one further restriction. The effect of the amendment, if passed, would be to ban all speech and writing which may be deemed by the authorities to be "objectionable in public interest." It is easy to see how wide a scope it leaves to the legislative branch of the Government to put stringent curbs on all expression of opinion which it may consider to be undesirable. It would be no exaggeration to say that the amendment will in effect place the basic right of Freedom of Expression entirely at the disposition of the legislatures, depriving it of all constitutional protection.

The reason for bringing forward this most dangerous proposal is stated to be that the Congress Party feels that the yellow press is not effectively checked under the Constitution at present. The Press Act of 1951, which itself could be validly passed only because Art. 19(2) had been amended a short while earlier, makes specific provision against scurrilous writing and gives effect to the provision by means of unheard of penalties, viz., demand and forfeiture of security. It is not known that this provision has proved infructuous and requires to be further strengthened. We for our part would oppose even a mere tightening of the Press Act which indeed deserves to be repealed in toto. But for the life of us we cannot understand why the Constitution itself requires to be tampered with in order that scurrilous writing may be adequately dealt with. It is impossible to conceive of any law, such as the Congress fancies, which cannot be enacted within the ambit of Art. 19(2) in the form in which it stands amended at present. The sub-committee which has made the proposal for

amendment says that the Congress may await publication of the Press Commission's report. It seems to be confident that the Press Commission will record its opinion that the Press Act, extraordinarily stringent as it is in the judgment of the whole press and all forward-looking people, is not stringent enough to control scurrilous writing. Be that as it may, the Commission cannot possibly recommend that the addition of a further restriction such as the sub-committee of the Congress Working Committee has proposed, for the simple reason that that question was never before it. We do not expect therefore that the Press Commission's report will contain any expression of opinion on this proposal. It would still be unsafe to infer from this that the Congress will not press on with the proposal, and we should be on our guard against it. If it is adopted, it will certainly put an end to such freedom of expression as survives at present.

## 2.—Nationalization of Industries

Another amendment which the Congress sub-committee has recommended for adoption relates to Art. 31 of the Constitution. This Article was already amended in 1951 so as to enable the various State Governments to carry out large-scale plans for the abolition of zamindari and similar systems of land-holding without being required to pay "reasonable" compensation for the landed estates compulsorily acquired. The amendment, now contemplated, would authorize the States to take over property of industrial concerns in a similar manner. The amount of compensation liable to be paid on the acquisition of such property would, as a result of the amendment, be incapable of being challenged, on the ground of inadequacy, in any court of law. The reason that is advanced for making this proposal is that, without such an amendment, the process of nationalization of industries cannot make much advance. It is said that the State Governments will, even after the amendment is passed, offer compensation in the shape of rehabilitation grants to the owners of industries selected for nationalization, but the phraseology of the amendment that is suggested by the Congress sub-committee is such as would leave the owners of industries that would come to be nationalized without any remedy if the Governments concerned paid them purely nominal compensation, for the essence of the amendment is that it leaves the determination of the quantum of compensation solely to the discretion of the Executive,

This is certainly a very far-reaching amendment, and the opinion to be expressed on it will turn on one's social philosophy, which goes far beyond the limited sphere with which alone the BULLETIN is concerned. But, whether one places greater emphasis on private enterprise than on state enterprise as a means of advancing the economic condition of the country or vice versa, one must admit, whatever one's general outlook on the subject, that the proposed amendment in regard to industrial concerns, taken

together with the amendment already made in Art. 31 with regard to landed estates, has the effect of withdrawing all constitutional protection from the rights of private property. The States may in fact give a fair amount of compensation to industries taken over for nationalization, but the important point is that if they do not, the industries concerned are without any remedy. Just as we say that Art. 19 (2) in its present form virtually puts an end to free speech in the sense of a constitutional right, although the Government may not in fact go to the full extent in imposing restrictions allowable under the Article, so we have to say that under Art. 31 as it would become after the amendment private property will cease to be a constitutional right, however leniently such property may in practice be dealt with. The Socialist Party in this country, unlike Socialist parties elsewhere, is for expropriation of both landed estates and industrial concerns; that is to say, it is for the State taking over these estates and concerns without paying any compensation. It is at war with the Congress because under Art. 31-A the Government does pay some compensation. Similarly, we suppose the Party will quarrel with the Government if it makes rehabilitation grants, or in fact any compensation, to the owners of industries the State takes over. But, even so, the Party will plead with the Government, we presume, that it should get Art. 31 repealed altogether, instead of tinkering with it as it has been doing. It would be more honest, the Party will say, to repeal the Article and thus openly declare that private property will receive no constitutional protection than to keep the Article in such a form as to make payment of even nominal compensation allowable under the Constitution. For the amendment now proposed would make almost wholesale expropriation possible, provided only that it is not called by that ugly name.

It is not within our province to discuss the economic policy that the State should pursue. But it may still be permissible to say that all free countries recognise the right to private property along with other individual rights and seek to prevent concentration of wealth and means of production and consequent exploitation, which of course is a wholly worthy and necessary objective, by less drastic methods, usually by adopting a carefully devised system of taxation and by putting into operation a national insurance scheme; for they realise that incentives to the exercise of initiative and enterprise must be maintained in order to achieve the maximization of production, which is the goal that every country sets before itself. Wholesale expropriation is the method that is possible only in a totalitarian State. Even in the China of Mao Tse Tung, the Constitution now drafted declares in Art. 10 that "the State protects the ownership of means of production and other property by capitalists." It says:

The policy of the State towards capitalist industry and commerce is to use, restrict and transform.

Through control by State administrative organs, leadership by the State-owned economy and supervision by the workers, the State uses the

positive qualities of capitalist industry and commerce which are beneficial to the national welfare and the people's livelihood, and restricts the negative qualities of capitalist industries and commerce which are not beneficial to the national welfare and the people's livelihood.

Britain will probably be regarded by many as the best example of how to reconcile the rights of private ownership with the overriding claims of a Welfare State. When the Labour Government nationalized one industry after another, it paid to the owners of these industries compensation equal in amount to the market value of the industries taken over. Socialisation will succeed in the long run if a proper balance is maintained between the rights of individuals and the requirements of the community. But whatever the economic policy may be, if the aim is to extinguish private property, it is best to say so and delete Art. 31 from the Constitution altogether.

### 3.—Writs of High Courts

A third amendment to which it is necessary to take exception seeks to curtail the jurisdiction of the High Courts in the matter of issuing writs of mandamus, certiorari, etc., in appropriate cases, by deleting the words "and for any other purpose" from Article 226. The effect of the amendment will be that while the High Courts would retain the power of issuing such writs for the purpose of Part III of the Constitution, they will cease to have it in every other sphere. The words now proposed to be omitted were deliberately introduced into the Article by the framers of the Constitution and their introduction was hailed everywhere as necessary for the proper enforcement of the processes of law. It is a necessary safeguard against a possible abuse of its power by the Executive, when by the very process of expansion of the functions of govern-

ment, which is inevitable in the circumstances of to-day, the Executive takes upon itself to regulate the private life of citizens in various ways. While the action taken by the Executive on any particular occasion may not be in direct violation of the rights guaranteed in Part III, it may still be in opposition to the underlying spirit of that Part and should therefore be liable to be scrutinized and quashed by the judiciary if found in effect to deny the due protection of law to citizens in any individual cases.

### 4.—Disciplinary Action against Civil Servants

It is also proposed to deprive members of the Civil Service, either in the Union or the States, of the protection which the Constitution now affords them from injustice resulting from any extreme disciplinary action to be taken against them. Article 311 (2), as it now stands, provides that a Government servant shall not be dismissed "until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." A dismissal is at present thus a justiciable matter. The amendment which is now contemplated proposes that orders of dismissal would be incapable of being challenged in a court of law. It is said that this alteration of the constitutional provision is intended to check corruption among members of the Civil Service. While the intention is laudable, the manner in which effect is sought to be given to it is far from justifiable. The Government is not taking vigorous steps to root out corruption in other quarters. While this inaction is to be condemned, it would still be unsafe to vest in the Government such a wide power, unfettered by any judicial scrutiny, in regard to civil servants. To do so would surely result in serious injustice being caused to individual members of the Civil Service.

## PUBLIC SCHOOL SEGREGATION ABROGATED

### "SEPARATE BUT EQUAL" DOCTRINE OVERTHROWN

#### A History-Making Decision

In the five cases (vide p. ii : 208) challenging the constitutionality of racial segregation in public schools, the U. S. Supreme Court on 17th May unanimously held such segregation unconstitutional, whether practised under the state or federal laws. The Negroes, in their briefs and arguments presented to the Court, had advanced two main theses: (1) that segregation, of itself, i. e., irrespective of whether in segregated schools equal facilities were provided or not, contravened the Fourteenth Amendment, adopted in 1868, which was intended to wipe out the last vestige of inequality between the races; and (2) that segregation had an adverse psychological effect on pupils of

the coloured race and was detrimental to the educational system as a whole.

The Court upheld both of these major premises, and adoption of them involved the rejection of the "separate but equal" doctrine laid down in 1896 in the famous case of *Plessey v. Ferguson* concerning railroad transportation. The Court had then held that segregation did not violate the equal protection clause of the Fourteenth Amendment provided equal public facilities were made available to both Negroes and whites. Now, however, the Court upset that ruling, or rather held that the doctrine of "separate but equal" facilities was inapplicable in public education. Thus the Court in effect

adopted the reasoning of the sole dissent in that case of Justice Harlan, who had said:

Our Constitution is colour-blind and neither knows nor tolerates classes among citizens. . . . The arbitrary separation of citizens on the basis of race . . . is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution.

Forty-eight years after that case was decided these words have become by the decision in the instant cases the law of the land. For the Court overturned the majority opinion in the Plessy case in forthright terms. Stating the question raised by this case, the Court said:

We cannot turn the clock back (to the nineteenth century standards and conditions). We must consider public education in the light of . . . its present place in American life. . . . To-day it is a principal instrument in awakening the child to cultural values . . . in helping him to adjust normally.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though physical facilities and other "tangible" factors (buildings, curricula, qualifications and salaries of teachers, etc.) may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

Referring to the effect of school segregation upon Negroes, the Court said:

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds unlikely to be ever undone.

To-day, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic state.

It is the very foundation of good citizenship.

In these days it is doubtful that any child may reasonably be expected to succeed in life if is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, must be made available to all on equal terms.

Adopting the language of a Kansas court, the Supreme Court said:

Segregation with the sanction of the law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.

In the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The Court, therefore, concluded that the plaintiffs and others similarly-situated "are by reason of the segregation complained of deprived of the equal protection of the laws

guaranteed by the Fourteenth Amendment," which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

This ruling applies to the four state cases that came before the Court from South Carolina, Virginia, Kansas and Delaware. And the Kansas case is particularly remarkable because the aggrieved Negro parents conceded that in that state school facilities and services for both races were substantially equal, and thus put their claim squarely on the basis that segregation per se was unconstitutional. The ruling thus requires all states to change over from a segregated to an integrated school system. Such states are 21: in 17 segregation is mandatory, and in 4 there are permissive statutes. It would be incumbent upon all these states, whether segregation therein is required by local law or whether it is merely permitted thereby to desegregate their schools.

The District of Columbia case was brought by the Court, by another ruling, under the Fifth Amendment which provides that "no person shall be deprived of life, liberty or property without due process of law." The Fourteenth Amendment could not apply to segregated schools in this District, because here schools have been segregated since Civil War days under laws passed by Congress. The Court said:

In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the federal Government.

We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.

There is a due process clause in the Fourteenth Amendment also, but the Court did not think it necessary to decide whether, in the state cases, racial segregation violated it. It pointed out that "equal protection" and "due process" were not always interchangeable phrases and said:

Liberty under law extends to the full range of conduct which an individual is free to pursue, and it cannot be restricted except for a proper governmental objective.

Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the due-process clause.

This epoch-making decision will affect some two and a half million Negro children now enrolled in separate elementary and secondary schools, the number of white children in states practising segregation being about nine million. There will have to be racially integrated schools for all of them hereafter.

Although the Court has ruled out racial segregation in public schools as unconstitutional, it withheld the issuing of a final decree, because it recognized that segregation was entrenched in law for so many decades in southern states and cut so deep into social customs and personal prejudices that desegregation which would now become necessary throughout the United States would necessarily take some time to come into effect; and that plans would have to be carefully made for the vast administrative adjustments that would be required to complete the process of integration. The Court has therefore set the cases down for reargument in the next term which commences in October. It has invited Attorneys General of states with segregation laws to submit proposals as to time and terms about implementation of the anti-segregation decision. After discussions with them the mechanics for the necessary adaptations and transitions will be determined. The detailed application of the Court's findings has thus been deferred, and it may perhaps take a considerable time in devising the modus operandi. But this cannot be objected to, for it is not very easy to reach conclusions on the means to give effect to the decision that will be effective and yet will not produce public disobedience or disorder.

Mainly because the states have been given breathing time to devise the mechanics of desegregation, the hostility of some of the states to integration which was so loudly expressed before the ban was pronounced has subsided to a certain extent, giving cause for hope that the change will come about smoothly. In so far as the District of Columbia is concerned, which is under the federal government, President Eisenhower is urging the local authorities to bring about the abolition of segregation as soon as possible. And he wishes the national capital to blaze the trail in this matter. In Washington the problem of doing away with racial discrimination has large dimensions, for here Negro students in public schools outnumber whites—about 64,000 to about 40,000. The superintendent of schools for the District of Columbia has submitted a scheme under which complete desegregation will come into effect by September next year. It is to be hoped, in the large interest of the civilized world, that the Supreme Court's momentous decision will be implemented without causing disorder.

This is the most important victory that the Negroes have won in the Supreme Court. Their earlier gains may be thus listed: 1. The "grandfather clause" (a voting-qualification device employed by southern states to restrict Negro suffrage) was declared unconstitutional (1915); 2. all-white primary elections (rendering the final elections a meaningless formality) were overruled (1927); 3. conviction of a Negro was overturned on the ground that Negroes had been barred from jury service at his trial (1940); 4. Jim Crow practices on interstate buses were barred (1946); 5. racial restrictive covenants forbidding the sale of property to Negroes was declared unenforceable through the machinery of courts (1948); 6. segrega-

tion in railway dining cars was barred (1950); 7. segregated state graduate schools were declared illegal even if they provided "equal" facilities on the ground that they could not offer the students equal professional contacts and prestige, thus acknowledging that inequality was inherent in segregation (1950).

#### IN THE WAKE OF Anti-Segregation Decision

A week after its unanimous ruling that racial segregation in public schools is unconstitutional, the Supreme Court rendered half a dozen decisions outlawing segregation. Three of them affected higher education and three involved other issues of race relations.

The supreme court of Florida had refused to order four Negroes to be admitted as graduate students to the University of Florida. A circuit court in New Orleans had similarly refused a Negro admission to the Louisiana State University. The federal Supreme Court, however, told the state courts to reconsider the cases with the aid of its anti-segregation decision on public schools. On the other hand, the New Orleans circuit court had ordered the management of the all-white Hardin Junior College at Vichita Falls, Texas, to admit six Negro students, on the ground that though there were two good Negro colleges in the state, they were outside the Vichita Falls district and that it would be more costly and less convenient for the six Negroes to attend the distant colleges and the Negroes could not therefore be barred from the all-white college. The Supreme Court refused to review this decision.

It is generally anticipated that though the Supreme Court's decision of a week earlier applied directly only to elementary and high schools, the Court would extend its ruling to all institutions of higher education supported with public funds if segregation per se were challenged in these institutions instead of on the ground that they offered unequal educational opportunities (on which ground the Supreme Court has recently granted relief at college and university levels).

The three other decisions on other matters also upheld the anti-segregation policy. In one case the Housing Authority of San Francisco had brought into effect racial segregation in public low-rent housing projects, and the California state courts had ruled on petitions filed before them that the segregation policy violated the Constitution's guarantee of equal protection of the laws. The Housing Authority had appealed to the Supreme Court against the decision. The Supreme Court rejected the appeal.

It also let stand a decision that the City of Houston, Texas, must allow Negroes to use municipal golf courses reserved for white players. It also told a circuit court to re-examine its refusal to order a Negro in Louisville, Kentucky, to be admitted to performances presented in an amphitheatre in a public park on the ground that under the Louisville park system the particular park was reserved for white persons.

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## COMMENTS

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### Kashmir's Bill of Rights

#### Reactionary Changes

The Presidential order, issued on 14th May with the concurrence of the Government of Jammu and Kashmir, specifies which provisions of the Indian Constitution the State accepts as applicable to it, and subject to what exceptions and modifications. Among the provisions so agreed to are those concerning Fundamental Rights, but the modifications therein which Kashmir insists on are all of a retrograde character. India can, however, make no complaint about this, since she has already accepted the fact that Kashmir's accession to India is limited to defence, foreign affairs and communications. This special position accorded to Kashmir absolves that State from the requirement of respecting any of the Fundamental Rights embodied in the Constitution of India. If Kashmir, therefore, agrees to any of the rights, with whatever limitations, it is to be regarded as a concession, for which India must be thankful, instead of making any grouse about the rights being narrowed down in scope so far as citizens of the State are concerned.

We have already pointed out that Kashmir has chosen to water down and in fact to nullify the "Right to Freedom", which consists of the right to freedom of expression and several other rights enumerated in Art. 19(1). Exercise of these rights may, according to the Indian Constitution, be subjected to certain "reasonable" restrictions, the determination as to the reasonableness thereof being left to the judiciary. Kashmir, however, has changed this. It insists that the expression "reasonable restrictions" shall be construed as meaning such restrictions as the appropriate legislature (i. e., the legislature of Kashmir) deems reasonable. This change gives the final power of determining whether any restrictions that may be imposed are reasonable or otherwise to the legislature instead of the judiciary. The judiciary will thus have no competence to pass on the legislature's view of reasonableness, and all the rights mentioned in Art. 19 will therefore become non-justiciable, which again would mean that they will cease to be Fundamental Rights, the essence of which is that the judiciary must be their custodian and protector in the last instance. We must add, however (which we could not point out in previous issues because the press reports did not make it clear), that this provision giving power to the Kashmir legislature to determine the reasonableness of the restrictions imposed will be in force for five years.

Similarly, the provision regarding preventive detention that Kashmir State agrees to is unsatisfactory, inasmuch as it gives power to the Kashmir legislature to determine whether any law relating to preventive detention should or should not provide any safeguards for personal freedom. The Indian Constitution in Art. 22 provides for detention without trial even in peace time, unlike the U. S. A. Con-

stitution which expressly forbids it. But, while permitting preventive detention, the Article also purports to give some measure of protection against the arbitrary exercise of the power to detain. For instance, it provides, in the case of a person to be detained for more than three months, that every such detainee's case be referred to an Advisory Board, whose opinion has to be accepted if it be favourable to the detainee (cl. 4), and in the alternative Parliament has to prescribe by law the circumstances under which a person can be detained for more than three months without being placed before an Advisory Board, etc. (cl. 7). These checks on the power of the Executive cannot be got over by any State by making a law which does not provide for such safeguards. Art. 22 has deprived State legislatures of the power of passing a law devoid of these safeguards. But the President's order, now issued, removes the safeguards of clauses 4 and 7 and allows the legislature of Kashmir State to pass a law permitting preventive detention even for a period longer than three months under any circumstances which the legislature deems to be expedient. Thus the Kashmir legislature will enjoy almost unlimited power to authorize detention, the Constitution of the State imposing no kind of check on it. And, it should be remembered, exercise of this power to permit detention without providing any kind of safeguards is not limited in duration, as in the case of Art. 19, to five years from now, which evidently the Kashmir Government regards as a critical period. But the power is intended to remain in operation indefinitely, in fact for all time, so far as the Kashmir Constitution is concerned.

In addition to this, the order of the President concedes to the legislature of Kashmir power (exercise of which, however, is limited in duration to five years) to pass a law of preventive detention, which, though inconsistent with the Fundamental Rights Part of the Indian Constitution, is not to be held void on that account. After five years such a law will be capable of being held void to the extent of any inconsistency "except as respects things done before the expiration" of the period of five years. In this connection it may be noted that the Kashmir legislature, has already passed legislation under which the Government will be absolved from the duty of referring cases of persons detained for security reasons (such as that of Sheikh Abdullah) to an Advisory Board for five years.

#### Sheikh Abdullah's Detention

The Kashmir Government has taken power by law to keep Sheikh Abdullah in detention for five years, without even placing him before an Advisory Board. This does not mean of course that he will necessarily be detained so long: if the Government is so pleased, it may bring him to trial or set him at liberty much earlier. Till now one could only speculate about the Government's intention in the matter, but now things are becoming clearer.

When the Sheikh was placed under detention, Mr. Nehru held out a vague hope that the detention would last

but a short time. Now he is not so optimistic. In answer to the protest made by Dr. Lanka Sundaram in the House of the People, the Premier could only say that Abdullah would not be held in detention "indefinitely." Here of course he is quite right: time will surely arrive one day when Sheikh Abdullah would be restored to freedom. But it does not appear that that day will dawn soon.

For the Prime Minister of Kashmir, who was responsible for the detention of Sheikh Abdullah, told his associates in the National Conference of Kashmir on 21st May that Abdullah "would not be released until the Kashmir question was finally settled," and that his earlier release "would create complications." This statement gives a very ominous complexion to the matter. It was the belief of many that though the Kashmir Government had thought fit to detain Sheikh Abdullah for the present, it would in any case see the wisdom of setting him free, at any rate, before a plebiscite is held in the State to decide the State's future.

From Bakshi Ghulam Mohammed's statement, however, it is now apparent that this is not to take place. A more unjust situation it is difficult to contemplate. The Bakshi might well believe that the Sheikh had chosen a wrong path and that if he succeeded in his plans, Kashmir would meet with disaster. But when the Kashmir issue is to be settled by a plebiscite, and both the India and Kashmir Governments have agreed to settle it that way, does it not necessarily imply that they have undertaken to give a free vote to the people of Kashmir, whether the vote turns out to be in favour of what the present Kashmir Government considers to be a wrong way or a right way?

To keep Sheikh Abdulla in detention for a long time, before the plebiscite is held, is to make him and people of his way of thinking in Kashmir take part in a handicap race when time comes to hold the plebiscite. But to keep the Sheikh behind iron bars till after the race is run is nothing short of depriving the so-called plebiscite of all its meaning. The injustice involved in this course is too gross for at any rate Mr. Nehru to put up with, and we do not believe that he has divested himself of all power to redress the injustice if he has a will to do so.

Indian sentiment will of course be heavily on the side of maintaining Kashmir's present link with India, though the special position accorded to the State makes the link very weak in all conscience. But we have solemnly agreed to settle the issue, not as Indian sentiment would have it, but as Kashmir people after mature consideration would like it. And the Kashmir people cannot in reality decide the matter if the leading proponent of one of the two rival views is deprived of all opportunity of raising his voice in its favour. For the Indian Government to acquiesce in Sheikh Abdullah's detention till after the plebiscite is held is really to go back on its decision to let the matter be decided by a fair and free plebiscite. It is thus a matter not only of civil liberties, but of our good faith too.

### Ban on Public Meetings in the Punjab

#### A CONVENTION DEMANDS WITHDRAWAL OF SEC. 144.

On 30th May a convention attended by about 60 delegates belonging to all non-Congress parties in the Punjab condemned the imposition of a ban on public meetings, processions and demonstrations in the State under sec. 144, Cr. P. C., and put forward a demand for the immediate withdrawal of the section. The resolution passed at this influentially attended convention charged that the administration of the section was discriminatory, the aim of the Government in the continued promulgation of the section being "to stifle all criticism and suppress the freedom of expression of the people of all parties and classes except the ruling party." The resolution said: "While the common people are denied the right to ventilate their grievances and propagate their views on different issues facing the people of the Punjab, the leaders of the party in power get all the facilities to propagate their view. As Government's spokesmen they make use of official functions and carry on Congress party propaganda. They also get easy permission to hold public meetings, while other parties are refused permission."

The "Tribune," the leading paper in the State, commenting on the convention, points out that the organizers of the convention should at the same time realise that speeches made at public meetings do not always appeal to reason and that the danger of a breach of peace is not always absent. But it adds:

We are not suggesting for a moment that the restrictions which the State Government imposes on freedom of expression are always warranted. . . . Unfortunately, while the Opposition parties are apt to stress the need for individual freedom, the Government is apt to emphasize the claims of public order. This is, broadly speaking, true of all Governments. This is particularly true of the Governments, State and Central, in this country.

The bureaucratic tradition—the legacy from the British—is still very strong. Criticism is resented and opposition is equated with hostility and even treason. The magistracy accustomed to old ways easily succumbs to the temptation of repressing manifestations of popular feelings. The Opposition parties have overstated their case, but there is no denying the fact that the magistracy frequently abuses authority and invokes repressive powers at times without any kind of justification.

Blaming the Congress for its studious abstention from Civil Liberties Unions, the paper says:

It should not be left to the Opposition parties to champion the cause of individual and group freedom. Unfortunately, the Congress organization has so completely merged its existence in the Government that very few Congressmen come forward these days to take up the cause of civil liberties. . . . There is a very great need for a powerful Civil Liberties Union



embracing all sections of society. It must be confessed that with the attainment of independence a kind of inertia has overtaken us in our political life. The will to resist tyranny and the determination to fight injustice everywhere and expose police excesses are not much in evidence. There is a tendency in many quarters to explain away aberrations of administration; it is becoming a fashion to be cynical about cases of corruption and injustice. We must all combine to fight the paralyzing effects of power.

### Free Speech

#### PROTECTING THE CITIZEN FROM HIS GOVERNMENT

In view of the further constitutional curb proposed to be imposed upon Free Speech by a Congress committee (see the first article in this issue), apparently in order to control slanderous writing, the following extracts from an amicus curiae brief submitted by the local branch of the American Civil Liberties Union in a case against the California Communist Party leaders under the Smith Act will be found most useful. The brief says about the First Amendment to the Constitution:

The Amendment was not intended to protect robbers, arsonists or slanderers, but the citizen from his government.

The values sought to be preserved by the draftsmen of the First Amendment were among those most cherished by the Society which wrote it. Many of us regard the Amendment as the single most important right on which the future of our country depends.

If one were asked to select the single principle of government or the single sentence in the Constitution which determines the American concept of government, few would hesitate to say "Free Speech" and its phrases in the First Amendment. Communication is the motive power and medium for political evolution. It is not too much to say that if every institution of government were erased, but Free Speech were left, the past could well re-enact itself, and Free Speech alone would be sufficient to re-create the American Republic; and if all else remained—elections, diplomats, courts, tax collections, and the President—but only Free Speech were gone, the society situated between the 20th and the 52nd parallel would not be the United States, but would be some monstrous recrudescence of a deservedly forgotten past.

#### Tampering with Educational Rights

After condemning in strong language the constitutional amendments proposed by a Congress sub-committee (with which we have dealt earlier in this issue), the Deccan Sabha also condemned, in a resolution passed on 30th June, the "general tendency of the Congress to override Fundamental Rights. The resolution says:

Still another amendment is threatened curtailing the right which managers of schools and students and their guardians now enjoy under the Constitution. Mr. S. N. Agarwal, a General Secretary of the Congress and the moving spirit in the sub-committee which has proposed the above amendments, has stated that the Working Committee would suggest a suitable amendment to the Constitution which would have the effect of nullifying the judgment of the Supreme Court about Anglo-Indian schools. This shows how the Congress Party is ever ready to alter the very Constitution and abridge civil rights guaranteed thereby if the Constitution is interpreted by the Courts to be in conflict with the policy followed by the Government, however contrary that policy may be to the spirit of the Constitution. This tendency of the Congress to override Fundamental Rights is even more to be deplored and condemned than the particular amendments which happen to be proposed at the moment and which have been considered seriatim above.

The Congress should realize that the very plenitude of power it enjoys imposes upon it the obligation to use that power with restraint.

## CONTEMPT OF COURT BY A STATE

#### The State Not Immune from Liability PATNA HIGH COURT'S DECISION

A title suit was filed by Rani Sohabati Kumari on 20th November 1950 praying for a permanent injunction to restrain the State of Bihar from issuing a notification under the Bihar Land Reforms Act for the purpose of taking possession of her landed estate, on the ground that the Act was unconstitutional. At the same time she applied for and was granted a temporary injunction, and the State was ordered not to interfere with her properties until the suit was finally disposed of.

In the meanwhile Art. 31 of the Constitution was amended and the Supreme Court held the amendment to be valid and constitutional. Relying on this judgment of the Supreme Court, the State of Bihar, on 17th May 1952, filed an application in the title suit, claiming that no substance was left any longer in the suit. This application was heard by a subordinate judge on 30th May 1952, and the order of the Court was to be delivered on 2nd June. But the State, without waiting for the order, issued on 19th May 1952, i. e., two days after making the application, issued a notification under the Act notifying therein that the estate belonging to the plaintiff had from that date passed to and vested in the State under the provisions of the Act.

This gave rise to a case against the State for contempt of court in that the State had disobeyed the temporary injunction granted under Order 39 of the Code of Civil



Procedure. The subordinate judge held the State of Bihar guilty of the offence of contempt of court of civil nature and directed, as provided by the Order, that its properties worth Rs. 5,000 be attached by way of punishment. [The Order also provides for a penalty of six months' detention in the civil prison.]

Against this order the State preferred an appeal to the High Court. On 30th June last the High Court sustained the subordinate judge and dismissed the State's appeal. The important legal point that arose for decision was whether the Government could be held liable for contempt of court. The Court decided that it could be Mr. Justice Khaleel Ahmed, who delivered the judgment of the Court, said :

It is true that the State is not a legal and juristic entity in the same sense as a corporation or a joint stock company, but it cannot be denied that in view of the law as it has developed and as it stands now in India, the State can sue and be sued at least in some appropriate cases, in the same way as any other corporate body or juristic person.

In my opinion in cases where suits are maintainable against the State, the State is a person within the meaning of Order 39 of the Code of Civil Procedure and as such open to the liabilities entailed by it.

Mr. Justice Ahmed said that there was no occasion for any hurry on the part of the State to issue the notification and get it published in the Gazette on May 21, 1952, without caring to wait for the order to be passed by the subordinate judge on June 2, 1952. This could not be said to have been done inadvertently or by mistake.

Mr. Justice Kamla Sahai held that Article 361 (1) of the Constitution of India provided for immunity of the President, a Governor or a Rajpramukh for official acts, but the second proviso of this Article made it clear that the right of any person to bring appropriate proceedings against the Government of India or the Government of a State was not restricted by this clause. Article 300 of the Constitution provided that the Government of a State might sue or be sued by the name of the Union of India or by the name of a State. No provision had been made in the Constitution or in any other enactment restricting the right of a person to make a prayer for injunction against a State in suitable cases. As the Government like any other corporation was incapable of acting for itself and had necessarily to act through its servants, the only action for disobedience of an order of injunction which could be taken against it was to order its property to be attached. The other alternative remedy of detention in civil prison could not apply to a corporation and it would not apply to a State. It was thus clear that the State was not immune from liability.

The appeal was dismissed with costs.

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## ABOLITION OF ZAMINDARI

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### Bombay Inams Abolition Act

HELD VALID BY HIGH COURT

The petition filed by Sardar G. N. Muzumdar in the Bombay High Court challenging the validity of the Bombay Personal Inams Abolition Act, 1953, was dismissed by Their Lordships the Chief Justice and Mr. Justice Dixit on 8th July, along with several other petitions of inamdars. The Act makes all holders of inam villages and lands, till then exempted from land revenue under the Summary Settlement Act of 1863, liable to the payment of land revenue.

In Their Lordships' opinion Art. 31 - A of the Constitution applied to the present legislation. They observed that the Article empowered the State to extinguish or modify any right in an estate. If the State did so, then it was not open to any person affected by the legislation to challenge it on the ground that any of his fundamental rights guaranteed under Part III of the Constitution had been abridged or taken away. Their Lordships said :

If there is any interest in land, whatever its nature, it would constitute "an estate" within the meaning of the word in the Bombay Land Revenue Code, and the whole object and intention of Art. 31-A is to provide for, if necessary (we might use that expression), expropriation of interest in land by the State.

Their Lordships held that the legislation could not be challenged on the ground that it affected fundamental rights and dismissed the petitions.

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## BOMBAY'S EDUCATION POLICY

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### Restrictions on Anglo-Indian Schools

GOVERNMENT'S APPEAL DISMISSED BY THE SUPREME COURT

The Constitution Bench of the Supreme Court on 26th May dismissed the appeal preferred by the Bombay Government against the Bombay High Court's decision of 15th February (vide pp. iii: 64-65 of the BULLETIN) in the case relating to Anglo-Indian schools. The Court held that the State Government's circular banning admission of non-Anglo-Indian students or students of Asian descent to Anglo-Indian schools was ultra vires as contravening Arts. 29 (2) and 337 of the Constitution. Mr. Justice S. R. Das delivered the judgment of the Court, which was unanimous.

### STUDENTS' RIGHT OF ADMISSION

Dealing with the argument of the Attorney-General that the order of the State Government denying non-Anglo-Indians admission into Anglo-Indian schools was based on the ground that such denial would promote the

advancement of the national language and facilitate the imparting of education through the medium of the pupil's mother-tongue, Mr. Justice Das said :

The object or motive attributed by the learned Attorney-General to the impugned order is undoubtedly a laudable one, but its validity has to be judged by the method of its operation and its effect on the Fundamental Right guaranteed by Article 29(2), which reads: "No citizen shall be denied admission to 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." The laudable object of the impugned order does not obviate the prohibition of Article 29(2) because the effect of the order involves an infringement of this Fundamental Right, and that effect is brought about by denying admission only on ground of language.

#### RIGHT OF ANGLO-INDIAN SCHOOLS

On the right of managers of Anglo-Indian schools the judgment said :

Where a minority like the Anglo-Indian community which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institutions of their choice under Article 30(1), surely then there must be implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents.

Such being the fundamental right, the police power of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it.

#### ART. 337

The judgment referred to the State grant to Anglo-Indian schools and said that the proviso to Article 337 did not impose any obligation on the Anglo-Indian community as a condition for receipt of the special grant other than that "at least 40% of the annual admissions should be made available to non-Anglo-Indian pupils."

The advice, tendered by Clause 7 of the impugned order, the judgment added, "will, if the same be followed, necessarily impose an additional burden on the Anglo-Indian schools to which they are not subjected by the Constitution itself."

Clause 7 of the order said: "With a view to facilitating the admission of pupils who under these orders are not intended to be educated through the medium of English, these schools are advised to open progressively divisions of standards using Hindi or an Indian language as the medium of instruction. Starting from Standard I

in 1954, the Government will be prepared to consider the payment of additional grants for this purpose."

In so far as Clause 5 of the impugned order enjoined that no primary or secondary school should admit to a class where English was used as the medium of instruction any pupil other than the children of Anglo-Indians, (the judgment said) it quite clearly prevented Anglo-Indian schools, including Barnes High School, from performing the constitutional obligations and exposed them to the risk of losing the special grant.

In the result the appeal was dismissed.

## EVASION OF INCOME TAX

### Part of 1947 Act Declared Ultra Vires.

#### AS CONTRAVENING PROVISIONS OF ART. 14

The Constitution Bench of the Supreme Court on 28th May unanimously held sec. 5(4) of the Taxation of Income (Investigation Act), 1947, to be void as being a piece of discriminatory legislation which offended against the provisions of Art. 14 of the Constitution.

Section 5(1) of the Act authorizes the Central Government to refer cases of taxation to the Investigation Commission for investigation or withdraw them before September 1, 1948. Section 5(4) provides that if, in the course of investigation of a case referred to it under section 5(1), the Commission has reasons to believe that "some person other than the person whose case is being investigated, has evaded the payment of tax, it may make a report to the Central Government with reasons, on which the Government must refer the case for investigation."

The decision of the Court was given on a petition filed by Suraj Mall Mohta and Co. Ltd. for the issue of a writ restraining the Commission from taking any action against the petitioner under the provisions of the Income-Tax Investigation Act on the ground that certain provisions of the Act were void under the Constitution.

The Central Government had made a reference, under the provisions of section 5(1) of the Act before September 1, 1948, of the case of Messrs. Jute and Gunny Brokers Ltd. to the Investigation Commission appointed under the Taxation of Income Act, 1947.

During the investigation of that and a number of other similar cases, it was stated the Commission discovered that the petitioner had made secret profits which had not been disclosed for taxation. On August 28, 1953, the Commission reported to the Central Government under the provisions of section 5(4) of the Act requesting that the case of the petitioner along with the cases of Suraj Mall Mohta and other members of his family might be referred to the Commission for investigation. The Central Government referred these cases to the Commission under section 5(4) of the impugned Act. The petitioner was called upon to furnish certain materials on September 15, 1953.

The Chief Justice who delivered the judgment of the Court pointed out first in the judgment that the scope of

sec. 5 (4) of the Act, inasmuch as it lacked the words "to a substantial extent" contained in sec. 5 (1), was wider than that of the latter, and that it was clear that section 5 (4) was not limited only to persons who made extraordinary profits and to a substantial extent evaded payment of taxation on income, but applied to all persons irrespective of whether the evaded profits were substantial or insubstantial.

That being the true scope or construction of section 5 (4), the Chief Justice said, it obviously dealt with the same class of persons who fell within the ambit of section 34 of the Indian Income-Tax Act.

The Solicitor-General, defending the Act, had contended that the Act was based on a broad and rational classification, and that it only dealt with a group of persons who had evaded income-tax, from the beginning of the war, up to September 1941, on profits reaped as a result of black-marketing activities helped by war controls. It was contended that this was a class by itself and needed special treatment and, therefore, the law did not offend against the equal protection of the laws clause of the Constitution.

Explaining the true scope of section 5 (4) of the impugned Act, the Chief Justice said the Act was not necessarily limited to profits made within any particular period but brought within its range all persons, whether traders, businessmen or professional people, who had at any time evaded payment of taxation. His Lordship said :

It is not possible to hold that all such persons who evade payment of income-tax and do not truly disclose all particulars of material facts necessary for their assessment and against whom a report is made under section 5 (4), by themselves, form a class distinct from those who evade payment of income-tax and come within the orbit of section 34 of the Indian Income-Tax Act.

It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances.

Conceding the right of the State to classify persons for purposes of legislation, His Lordship observed that the classification should be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and could not be made arbitrarily and without any substantial basis. He said :

We thus hold that both sec. 34 of the Indian Income-Tax Act and sec. 4(5) of the impugned Act deal with all persons who have similar characteristics and similar properties, the common characteristic being that they are persons who have not truly disclosed their income and have evaded payment of taxation on income.

After examining fully the nature of the procedure prescribed under the impugned Act for discovering the concealed profits of taxation on their income, His Lordship came to the conclusion that it was substantially different

and more prejudicial to the assessee than the procedure prescribed in the Indian Income-Tax Act by section 34. Giving some instances where "substantial differences" were found between the procedures adopted under the Income-Tax Investigation Act and the Indian Income-Tax Act, the Chief Justice said that under the provisions of section 8 of the impugned Act the findings given by the Commission as to factum and extent of the evasion were final and conclusive. Thus persons against whom proceedings were taken under section 5 (4) were deprived of the rights of appeal, second appeal and revision conferred by sections 21, 32 and 33 of the Indian Income-Tax Act on assessee.

The judgment pointed out that under the provisions of section 34 of the Indian Income-Tax Act, investigation into escaped income or evaded income was limited to a maximum period of eight years [the period of limitation is four years for simple mistakes and eight in cases of suspected concealment], while under the provisions of section 5 (4) of the Income-Tax Investigation Act it was not limited to any period and this "certainly operates to the detriment of those dealt with under section 5 (4) of the impugned Act as against those under section 34 of the Indian Income-Tax Act."

Holding sub-section 4 of section 5 of the impugned Act void, the court directed the issue of appropriate writ against the Investigation Commission prohibiting it from taking any proceedings under the provisions of the impugned Act against the petitioner.

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## NOTES

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### Advance Made by the Negroes

#### In Education and other Facets of Life

The anti-segregation decision of the Supreme Court in regard to public schools is a landmark in the judicial history of the United States. The wall of separation has been breached, and it may be expected that it will soon disappear. President Abraham Lincoln on 1st January 1863 declared that all slaves were henceforth free. The ending of slavery was resented in the South, but the southern states recognized that the Negroes had to be given an education, and schools were set up for them, though on the pattern of separation. And by 1870, five years after the Civil war was over, 30 per cent. of the Negroes were literate.

The further advance made by them in education and other departments is thus officially described :

By 1950 Negro literacy was 94 per cent., as compared to 97.5 per cent. for the nation as a whole. In the South there were 2,500 high schools for Negroes. In the North, Negroes and whites attend school together. By 1950 there were 128,000 Negro students in colleges and universities, with 10,000 graduating annually. The elementary school enrolment for Negroes had risen to two-and-a-quarter million in 1950. Elementary

education, given free in all states, is compulsory for both Negro and white children.

Negro Professors are found not only in Negro universities in the South, but also on the faculties of many bi-racial and all-white colleges. Some 200 Negro Professors are now teaching mainly white students.

The result of this educational advance is that an ever increasing number of Negroes are being trained as technicians, teachers, lawyers, doctors and writers. There are outstanding Negroes in all the arts, and they have entered practically all of the professions. The number of Negro farm labourers declined from 36 per 100 in 1900 to 7 per 100 in 1950. Simultaneously the number of Negro industrial workers increased from 1 per 100 to 29 per 100.

Although he accounts for only 10 per cent. of the population, the American Negro now holds 11 per cent. of the industrial jobs. This is remarkable in that the Negro, by nature and early training, was inclined towards farming, not industry. To-day, a million-and-a-quarter Negroes belong to labour unions and many hold offices in predominantly white unions, even in the South. Under union contracts, Negroes receive equal pay for equal work with white men. There are more than 60,000 retail businesses owned by Negroes.

Better jobs have brought the Negro greater stability in the community. Today more than 35 per cent. of non-farm Negro families own their own homes. Among Negro farmers, nearly 200,000 own farms averaging 70 acres. Only 14 per cent. of Negroes fall into the lower income bracket of a thousand to 1,500 dollars annually, compared with 13 per cent. of white Americans in the same bracket.

Negroes own and publish 150 newspapers in the United States. They fully exercise the constitutional guarantee of freedom of the press by being unsparingly critical of racial proscription or any other facet of American life.

A decade ago, it was thought that integration of the races in the armed services would be impossible. To-day it is an accomplished fact. Negroes and whites serve together under both Negro and white officers. There are more than 3,000 Negro commissioned officers.

## A Bill to Control Red Unions

### If they affect Defence or Security of U. S.

Since prosecutions of Communist leaders under the Smith Act were started in the United States in 1948, over 100 such persons have been indicted, 67 have been convicted, and 14 are still on trial. And this process will perhaps be accelerated in the immediate future.

In the meanwhile, however, the Government is contemplating action against subversives in industries affecting defence facilities. A measure has been introduced in Congress for the purpose of outlawing

Communist-dominated unions or organizations that might affect the national security. Both the President and the Attorney General have however stressed, in connexion with the bill, the necessity of preserving "the traditional American conceptions of due process of law." The Attorney General has specifically stated that those to whom it would fall to administer the provisions of the bill after its passage into law "will be charged with the particular duty of safeguarding constitutional freedoms of all persons involved."

The attitude is best illustrated by what the proposed bill seeking to ban Red unions omits to do. It does not propose that membership in Communist-infiltrated organizations be made illegal, nor does it impose any sanction on members of such organizations. The procedure which the bill contemplates is as follows. When the Attorney General thinks that any organization is substantially directed, dominated or controlled by a Communist-action organization and is in position to affect adversely the national defence or security of the United States, he will file the case with the Subversives Activities Control Board, who will then be called upon to make an independent determination on these points. The Board will particularly determine: (1) the extent to which the organization was Communist-dominated and its funds and personnel were in fact used to further Communist-action objectives, and (2) the extent to which the organization was in a position to impair effective mobilization or use of economic resources or man-power in connection with defence or security of the United States.

The bill requires the Board to hold public hearings in order to arrive at a finding on these two points, and if its finding is favourable to the Government's case on both of them, then no employer would be required to bargain with the union, collective bargaining contracts would be nullified, employers would not be held to have committed an unfair practice if they discriminated against such a union's members, and the organization would be denied access to the National Labour Relations Board.

As the "New York Times" puts it, "These are drastic provisions aiming to make impotent unions adhering to Communist policies. While they go up to the threshold of outlawing such unions, they do not cross that line." For, even after the legislation is passed, Communist-controlled unions may still continue to exist. Nor can such unions be disestablished, as unions controlled by employers can be. In fact, the National Labour Relations Board has frequently ordered the disestablishment of company-dominated unions.

### Racial Discrimination in Jury Service

#### HELD UNCONSTITUTIONAL BY THE SUPREME COURT

A systematic exclusion of citizens of Mexican descent from jury service during the last twenty-five years came to light in the Supreme Court while reviewing a Texas case, and the Court on 4th May in a unanimous decision

set aside a conviction of an accused tried by a jury of such composition.

Pete Hernandez was tried for murder before a jury in Jackson County (Texas). Before the trial began his counsel challenged the jury panel on the ground that persons of Mexican descent were habitually excluded from service as jury commissioners and petit and grand jurors, though many citizens so qualified lived in the county. This, he argued, deprived the defendant of the equal protection of laws guaranteed by the Fourteenth Amendment. Hernandez, nevertheless, was tried and sentenced to life imprisonment. The Texas Court of Appeals both sustained the verdict and denied that the Fourteenth Amendment was involved in the case. The U. S. Supreme Court agreed to review that decision.

Chief Justice Warren found that while the law of Texas made no discrimination in selecting jurors, administrators of these laws in fact practised discrimination over a series of years. Exclusion from the county jurors of citizens of Mexican descent, he said, demonstrated deliberate discrimination and thus violated the equal protection clause of the Fourteenth Amendment. He rejected the argument put forward on behalf of Texas that only two classes of American citizens, white and Negro, were in the purview of the Fourteenth Amendment, and hence exclusion of citizens of Mexican descent, as in this instance, did not amount to violation of the Fourteenth Amendment. He said there was no warrant for this narrow interpretation, and pointed out that Texas courts themselves had held the equal protection clause was violated when Roman Catholics were systematically excluded from Texas juries. He conceded that the Fourteenth Amendment did not require "proportionate representation of all the component ethnic groups of the community on every jury." But the Sixth Amendment of the Constitution entitled Hernandez to trial by jury of qualified persons, regardless of national origin or descent, and this right was violated by exclusion of citizens of Mexican descent, which it must be presumed was not accidental but intentional. Chief Justice Warren said:

Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period. But it taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past twenty-five years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner. The judgment of conviction [of Hernandez] must be reversed.

#### Confession Obtained through a Psychiatrist

##### CONVICTION SET ASIDE BY THE SUPREME COURT

By a 5 to 3 decision the Supreme Court of the United States on 1st June reversed the conviction of Camilio

Weston Leyra, who was under sentence for the murder of his parents in 1950, on the ground that psychiatric techniques that were used in extracting a confession from him were opposed to the Constitution.

Previously, the New York Court of Appeals had quashed his conviction because the conviction was based upon a confession "obtained by mental coercion and promises of leniency in violation of the due process clause." Thereafter Leyra was tried again, and the second conviction was now set aside by the U. S. Supreme Court on an appeal preferred by the New York Civil Liberties Union.

During police questioning of Leyra, a doctor was summoned, ostensibly to treat the prisoner for sinus trouble. But in fact the doctor, who was a psychiatrist, worked on his mind and, by promising that he would not be charged with murder, got him to confess his crime. Justice Black, who delivered the Court's judgment, said:

Instead of giving [Leyra] the medical advice and treatment he expected, the psychiatrist by subtle and suggestive questions simply continued the police effort of past days and nights to induce [Leyra] to admit his guilt.

An already physically and emotionally exhausted suspect's ability to resist interrogation was broken into almost trance-like submission by use of the arts of a highly skilled psychiatrist.

Justice Black said that Leyra's answers in response to the doctor's long questioning for an hour and a half "indicate a mind dazed and bewildered," and the procedure adopted to bring about this result was "inconsistent with the due process of law as required by our Constitution."

#### Discrimination against a Negro Overruled

In a case of racial discrimination practised against a Negro, not by the management, but by a labour union itself, composed predominantly of whites, the high court of Connecticut gave relief by quashing the discriminatory order.

A Negro, Mansfield T. Tilley, sought admission to a union of electrical workers under the Fair Employment Practices Act of the state in order that he might secure employment as an electrician's apprentice. Mr. Tilley was fully qualified for membership of the Union, being a graduate of a public high school and being top man in his class in the Navy, where he studied to become an electrician. However, the union refused him admission.

Thereupon the state's Commission on Civil Rights considered the matter. At a hearing the union pleaded before the Commission that the total membership of the union decided who were to be accepted as members, that all new members were relatives of old members, that there were no Negro members, that some unions had found that Negroes were "irritating and not good mechanics," and

that the union of electrical workers (which had refused the application) desired to maintain strict standards.

The Commission ordered Mr. Tilley to be admitted into the union, but a Superior Court overruled the order. An appeal was filed against this decision by the Commission to the Supreme Court of the state, and this court upheld the original finding of the Commission, i. e., "that Tilley was excluded from membership because of his race, and therefore the union was in violation of the Connecticut Fair Employment Practices Act."

### Beating of Prisoners by a Prison Official

#### FEDERAL CIVIL RIGHTS v. "STATES' RIGHTS"

A prison guard of the state of Florida, L. P. Jones' was criminally prosecuted in a district court for inflicting punishment on prisoners with fists, feet and a rubber hose, and in the prosecution it was maintained that such "cruel and unusual punishment" was barred by the Eighth Amendment and was thus a violation of the federal Civil Rights Act. The district court, however, ruled that to apply the federal Civil Rights Act to an incident within a state prison would run counter to "states' rights."

The Civil Rights Section of the Justice Department appealed against the decision and the U. S. Court of Appeals reversed, holding that the beating of prisoners by a state prison official is a violation of the federal Civil Rights Act, and that federal law protects even convicts within a state prison from punishments declared unconstitutional by the Eighth Amendment.

This is regarded as a "ground-breaking decision," inasmuch as it is the first ruling to extend the protection of the Civil Rights Act to citizens of states.

### " Academic Due Process "

In order to put a stop to the threat of dismissal held out by the administrators of American schools and colleges against teachers suspected to have affiliations with the Communist Party or leanings towards Communists, a committee of the American Civil Liberties Union has evolved desirable procedures applicable within educational institutions. Its main point is that due process which is applied in judicial and legal matters generally should also be applied in inquiries about the teachers whose career and livelihood are placed in danger. The committee says:

The principle embodied in the legal concepts of confrontation should govern academic due process.

The teacher should be informed of all the charges and all the evidence against him; he should have full opportunity to deny, to refuse, and to rebut.

It is a fundamental principle of fairness that charges against a person are to be made the basis of action only when proved, and that the burden of proof rests upon those who bring them. Through the centuries, the courts have applied this principle in the formulation of legal due process, and it should operate with equal force in academic due process. The responsibility for applying this principle in the world of education rests primarily upon the governing board and administration of an institution. Plenitude of power imposes the obligation to keep every step in an academic freedom case totally untainted by the colour of prejudice.

It is the belief of the committee that many of the problems will be resolved by recourse to informal conciliation, making a formal hearing unnecessary. But when a regular hearing becomes necessary, it suggests that the hearing should take the following form:

The hearing committee should be a standing or special group of full-time teaching colleagues, democratically chosen by and representative of the teaching staff, and selected by pre-established rules. The administration should dissociate itself from those performing a judicial function at the hearing.

The teacher should have the right to be present and to be accompanied by his personal adviser or his counsel throughout the hearing.

Both the teacher and the administration should have the right to present and examine witnesses and to cross-examine witnesses.

The administration should make available to the teacher such authority as it may possess to require the presence of witnesses.

The principle of confrontation should apply throughout the hearing.

In the absence of a defect in procedure, the conclusions of the hearing committee should be taken as final by the administration and governing board in all matters relating to the teacher's competence and integrity.

But in the event of a finding unfavourable to a teacher, there should exist established procedures and channels for appeal, eventually leading to the ultimate authority responsible for the control of the institution.