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[ A MONTHLY REVIEW ]

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## NIGERIA LAUNCHED INTO INDEPENDENT STATEHOOD

### 1.—THE MINORITIES PROBLEM

The federal elections that were held last month in Nigeria, the largest of the United Kingdom dependencies, remind us of the fact that the election represents the penultimate stage in the country's progress towards complete independence as a full member of the Commonwealth. On 1st October 1954 the Federation of Nigeria was established and on this very date this year it is due to attain sovereign nationhood; and when this most populous colony is elevated to Commonwealth status under a constitution which has been hammered out by its own leaders in co-operation with the British Government, the number of people in the remaining British colonies will be reduced by half, for Nigeria's 35 million population accounts for nearly half the entire population of the British colonial territories.

The Nigerians' struggle for freedom has never been very hard in the sense that they had to encounter much opposition from the British Government on account of its unwillingness to part with power. On the other hand, the difficulties such as they experienced arose from the innumerable diversities of race, religion and language giving rise to rivalries and mistrust among different groups. Thus, Nigeria's real political problem was not an external problem, but rather one of establishing a modus vivendi between the three administrative Regions—Northern, Eastern and Western—into which the country is divided and the minorities in each of them which were apprehensive of the domination that would be exerted on them when British protection and guidance were withdrawn after independence. When Nigeria came under British administration towards the close of the last century, Britain first tried to administer the country under a unitary form of government, but it was found that local nationalism was much too strong to make any such rigid control from the centre likely to be an acceptable means of constitutional development. Therefore, emphasis has since been placed upon developing Regional governments within a loose kind of federation in which they could be federated as equals, and while this development is taking place African leaders also have come to realise the imperative necessity of the country retaining

its unity as a Federation amid all the internal pressures of Regional politics. Eastern and Western Nigeria have had internal self-government since 1957 and the grant of regional self-government to Northern Nigeria was deferred, at her own request, till March of last year. The central Federal Government is responsible only for certain defined subjects, and the Regional Governments are left free to deal with all other matters, residual powers lying with them.

All the stages in Nigeria's advance towards self-government have been determined at a series of constitutional conferences with local leaders and with their full consent. And of all the problems that were considered at these conferences the most taxing was the problem of allaying the fears of the minority racial group in each Region—and the group is as large as one-third—lest when full independence comes it will be subordinated to a dominant two-thirds majority of that Region. Since this problem will continue to be Independent Nigeria's problem too, we may consider it here in some detail. The very size of the Northern Region, which forms about three-quarters of the total area and has 52 per cent. of the total population of Nigeria, creates special problems of its own. The character of the inhabitants of this Region, which is deep in the interior of the country, also presents special problems. Three-fifths of the population are Moslems under the dominant influence of the emirs. "The rule of the emirs has for the past 130 years or so been strict and autocratic, with religious direction inextricably intertwined with secular government." On the other hand, the Eastern and Western Regions, lying on the coast, had contacts with the outside world three centuries before the Northern Region and have accordingly made more rapid progress. Thus, not only are the Hausa and Fulani tribes of the North mistrusted by the more sophisticated Yorubas of the West and the Ibos of the East but are regarded by the latter as far more backward.

But latterly some progress has been made in reducing the authority of the emirs. In the sphere of local government, the traditional rule by the emirs and the district and village heads has been gradually giving way to a more democratic system of government; since 1954 native

authority councils have had their membership broadened and been made more representative through elections. Similarly, it has been recognized by the Regional Government that its criminal code must be brought into closer accord with modern democratic practice. A committee of jurists has recommended, and the Government has accepted the recommendation, that Islamic law should, in the main, be assigned to the province of personal affairs, affecting such matters as marriage and divorce, and that, in place of the existing criminal law, the penal code of the Sudan (in which religious law has been separated from secular law) should be adopted. The plan most favoured by the minorities for the safeguarding of their interests in the central sphere is the creation of new Regions from amongst themselves in order to provide fresh self-governing units within the Federation. A Minorities Commission, under Sir Henry Willink (Master of Magdalene College, Cambridge, and just appointed Chairman of the Commission on the Police in England) considered this suggestion and turned it down, thinking that the minorities' best hope of security lay in the need

for federal leaders and parties to woo votes among them. The Commission recommended, and the constitutional conference in London in 1958 agreed to the recommendation (though it is in opposition to the general line of thinking in England), that safeguards for fundamental rights should be introduced in Nigeria's Constitution, and that after independence amendment of this entrenched provision of the Federal Constitution should require at least a two-thirds majority of all members in each House of the Federal Legislature and the concurrence of each House in at least two of the self-governing Regions. Agreement was also reached on the question of Native Courts; it was decided that the appointment and dismissal of judges in these customary courts should be divorced, as far as possible, from political and executive control. In order to ensure a strong federal government, it was also agreed that in certain prescribed emergencies, the Federal Legislature should be empowered to make laws for the peace, order and good government of any Region even if, in normal circumstances, such legislation would be ultra vires of the Federation.

## 2.—THE FEDERAL ELECTIONS

In spite of these constitutional arrangements, however, the election has shown that in the thinking of Nigerians there are gaps between tribe and nationhood and that there is little prospect of the gaps being bridged soon. The broad conclusion to be drawn from the result of the election is that the voting has on the whole followed tribal lines. The ruling party of the Northern Region, the Northern People's Congress (NPC), a party that confines its electoral appeal to the North, has won an overwhelmingly large number of seats. This is surprising in view of the fact that though this Region is the largest in extent, the franchise in that Region was limited to the males, but in the other two Regions women paying an annual rate of £1 were admitted to the vote. Most of the seats won by the Action Group, the majority party in the Western Region, are in the Yoruba areas of that Region. The same is the case with the National Council of Nigeria and the Cameroons (NCNC), which is the majority party in the Eastern Region; it took most of its seats in the Ibo-speaking areas of that Region and the non-Yoruba areas of the Western Region. It should be noted that both NCNC, which has a long-standing alliance with the Northern Elements Progressive Union (an Opposition Party working in the minority area of the "Middle Belt" of the Northern Region) and the Action Group sought the support of minority elements in the Northern Region, and the Action Group had announced its intention to contest every Northern seat, putting itself forward as the champion of the commoners against the alleged aristocratic tendencies of NPC. Thus

loyalty to tribe and Region was generally the most dominant factor in the election, which shows that the creation of truly national parties, cutting across racial and regional frontiers, will take some time in coming about.

It is well that NNC, having failed to win an absolute majority of seats in the Federal Legislature, has to form a coalition with another party in order that the government will be stable. If the Fulani-Hausa aristocracy, which, as the "Guardian" says, "was the least body of opinion in the country to express interest in the idea of independence," was in a position to dominate the Ibos and Yorubas in the neighbouring Regions it would have been a bad day for Nigeria, for everybody would have thought that it was not on a democracy that Britain was engaged in devolving its power. Bur Alhaji Abubakar Tafewa Balewa, the outgoing Premier, has asked NCNC leader, Dr. Nnamdi Azikiwe, to join him in forming a coalition government. This is a good choice, for Dr. Azikiwe is remembered with gratitude in the country as an architect of Nigerian independence for twenty years or more. This coalition gives to the new government a prestige which it would otherwise have lacked. Both Alhaji Abubakar and Dr. Azikiwe have proved themselves to be men of tact and they could be trusted to lead the new independent State in its early years with wisdom, so that Nigeria may play a significant part in the movement now in its swing to free the whole of Africa from the rule of non-Africans. In the ultimate interests of democracy it is also good that the coalition government will have to face a strong Opposition from the Action Group.

## SELF-GOVERNMENT FOR TANGANYIKA

### ESTABLISHMENT OF DEMOCRACY IN A PLURAL SOCIETY

The harmony of purpose and interest among all parties constitutes the foundation of a Tanganyikan nation in which the inhabitants of all races who have made Tanganyika their home will enjoy equal rights and privileges and have equal opportunities.—Report of the U. N. Trusteeship Council, Close on the heels of Nigeria, Tanganyika, which after Nigeria is the largest of the territories for which the

United Kingdom Government is still responsible, will march next year to self-government. Formerly German East Africa, this country has been under British administration since 1920, first under a mandate from the League of Nations and now under the Trusteeship system of the United Nations. The peaceful winning of self-rule by such vast countries which were subject to foreign control are always events of great historical importance. But in

a sense Tanganyika's constitutional advance is an even greater epoch-making event than Nigeria's independence. For though, as we have seen, even in the case of Nigeria the greatest obstacle to that country's political progress was the existence of many racial minority groups whose interests were often mutually conflicting, these were all African minorities (the non-African population there is only about 15,000), and to bring about a reconciliation between such minorities in a purely African territory is relatively much easier than to effect such a reconciliation in a multi-racial territory like Tanganyika, where, superimposed on the diversities of racial groups among the original inhabitants of the country, there are long-established immigrant minorities who, because most of the material progress made so far is due to them, must be admitted to have a moral right to be there and to be allowed to play a full part in the future development and government of the country in which they live—provided of course they do so in a spirit of genuine partnership with the Africans divorced altogether from all notions of domination over the indigenous people. In Tanganyika in a population of 8,800,000 there are 75,000 Asians and 25,000 people of European descent (half of them British). And Tanganyika is the first such multi-racial country where the United Kingdom Government has succeeded in promoting a multi-racial form of government based on full economic and political co-operation of all the important ingredients of the population. The attempt here is to unite all people in a patriotism based not on race but on loyalty to their common country.

Rapid political progress has been made under the regime of the present sympathetic and able Governor, Sir Richard Turnbull, but for a long time previously things moved, if at all, at a snail's pace. In 1926 a Legislative Council was first established, but it took nearly twenty years for a modicum of African members—unofficial but appointive—to be included in it; these Africans were at first only two among 29. It was decided in 1954 to establish a tri-racial Council, and the Council that was inaugurated in 1955 comprised—on the official side—9 official and 25 nominated non-official members who had accepted the Government Whip and—on the representative side—30 unofficials (10 Africans, 10 Asians and 10 Europeans) nominated by the Governor after consultation with the various local interests but not subject to the Government Whip. The practice also was then introduced of appointing to the Executive Council some non-officials from the Legislature. In September 1958 and February 1959 direct elections were first held in Tanganyika to elect the unofficial members of the Legislature on the representative side. These elections were held on a qualitative franchise on the basis of a common electoral roll, and the 30 unofficial members on the representative side were first elected. By this time the principle of parity of representation between races had been accepted as a rule of policy, and the mode of compulsory multiple voting was adopted to implement it. That is to say, each voter was required to vote for three candidates—an African, an Asian and a European. This system ensured the election of such candidates as had the support of all races. In the actual elections that followed this was amply illustrated. Of the 10 African seats 9

were won by Mr. Julius Nyerere and his Tanganyika African National Union (TANU). But, what is more, in the majority of constituencies such Asian and European candidates were elected as had backing from TANU.

On 15th December last the Governor announced a plan which, when carried into effect, will constitute a big step towards self-government. The plan contained three major changes. (1) The Executive Council, now called the Council of Ministers, will be reconstituted after the general elections in September next so that there will be on it a majority of elected members (instead of as at present a majority of public servants). This will mark the end of a wholly official executive government. (2) The Legislative Council will contain a substantial majority of elected members. In fact but for a few members chosen by the Governor for their specialised knowledge and experience (and their number will in any case be very small), all the rest—71—will be elected. Of the 71 it is planned that 50 will represent open seats; members of all communities will be at liberty to contest for them but most of them will naturally be Africans, the electorate being predominantly African. Eleven seats will be reserved for the Asian community and ten for the Europeans. If the open seats are filled by Africans there would be on the new Legislative Council five African members to one European and one Asian. Thus it will be seen that the principle of parity between the three races is now given up and in its place the Government has accepted the principle of African predominance. (3) The electorate will be very greatly increased. At the last election only about 60,000 people, half of them non-African, exercised the right of franchise. Under the new plan it is estimated that from 750,000 to a million people will have the right.

These are far-reaching reforms, and their introduction was greatly facilitated by the realistic and moderate attitude adopted towards them by Mr. Nyerere. The aim of his organization, TANU, is frankly independence, but in his first speech after taking his seat in the Legislative Council, he said their immediate demands were "semi-responsible government, with a majority of elected members in the Legislature and a majority of elected Ministers in the Executive." Mr. Nyerere said: "A measure of responsibility is being offered. We are taking it." Having in view this aspect of the matter the "Guardian" editorially wrote as follows in commenting upon the Government's plan: "Two things stand out from the new situation. One is that, when a country is changing as rapidly as Tanganyika, all constitutions are temporary, and likely to be revised after a few years. The second is that one may advance by a series of compromises quite as rapidly, and more equably, than by an occasional pitched battle." But the most important thing to note is that Mr. Nyerere's policy marked by a sense of responsibility springs from his wider concept of nationalism which gives recognition to the legitimate claims of immigrant communities and tries to harness the contribution that they have to make in building a common civilization and in rearing a multi-racial or non-racial government.

Cannot this path be treaded successfully in Kenya and Central Africa?

## CONSTITUTIONAL PROGRESS IN UGANDA

### NATIVE GOVERNMENT'S TRADITIONALISM OFFERS OBSTACLES

There is yet another type of dependent territory which the United Kingdom Government is anxious to emancipate from its shackles; the one belonging to this category, constitutional discussions in regard to which are now proceeding, is the Protectorate of Uganda in East Africa. It is a happy coincidence that at the time the problems of Nigeria and Tanganyika are being considered we have to consider that of Uganda too, so that the different kinds of difficulties which have to be surmounted in giving political freedom to these territories may become plain.

Uganda like Tanganyika is a multi-racial State, in which a number of non-African races live with the indigenous African population. The total population is estimated to be 5,679,000, and the immigrant communities number 8,400 Europeans (chiefly missionaries, government officials and traders); 54,300 Indians and Goans; and 2,000 Arabs. But the existence of these non-indigenous communities is not the major difficulty in Uganda as it was in Tanganyika or as it is in Kenya and the Rhodesias. As Indians form the largest immigrant community in Uganda we may be glad that we are not being reviled by Africans in that country as a privileged community blocking Uganda's progress towards self-government. Indians are mostly traders and hardly have any connection with the land, and it is only those who settle on the land and have large resources at their command to exploit it that can make inflated demands in the share of government and can possibly compel the administration to grant them. But no immigrant community in Uganda is in such a position, though this does not mean that in any schemes for the liberalization of the constitution, their interests should not be heeded.

What constitutes the major obstacle in the path of Uganda's constitutional progress is the existence of traditional native authorities in various parts of the country. Ever since under Lord Lugard the country was placed under British protection in June 1894, the British administrators have to pay due deference to the wishes of these native kingdoms. The kingdom of Buganda is by far the largest of these, its population being a little less than one-fourth of the whole protectorate. As Uganda has since 1921 a legislative council (with equal official and unofficial representation) and an executive council (the ministerial system was introduced in August 1954, with six official ministers and five drawn from the public), the kingdom of Buganda too has its own independent units of administration: the Kabaka (i. e., the king, who is advised by a council of ministers, which again is supposed to be guided by the Great Lukiko (or Parliament)). And there are often complaints that the central government interferes too much with the Buganda government.

Thus in Uganda it is not a question merely of fostering a non-racial nationalism and dealing with its demands for greater freedom in a broad-minded way, but, on top of this, one of seeing that the demands of native kingdoms, and particularly the kingdom of Buganda, do not threaten the unity of the whole country. The Government has approved plans for the reform of the central legislature and is doing its best to put them into effect, but it has also to consider how best to counteract the separatist tendencies of Buganda and how to regulate the Kabaka's position. Seeing that the country is about to take a long step forward on the road to political freedom, naturally

the Kabaka and the Great Lukiko are anxious to retain and if possible improve the privileged position of Buganda, and it is obvious that unless some means is found to restrain these ambitions, Buganda will have a stranglehold on the future of the whole of the protectorate. When in 1955 the then Governor of Uganda announced that in 1961 direct elections on a common roll but on a qualified franchise would be introduced in the country—in Buganda as well as in the three provinces proper—for the election of members of the Legislative Council, Buganda's Lukiko seemed at first to agree to have Buganda's share of representation to the Council also to be elected by direct election, but later resisted the proposal on the excuse that it would prefer universal adult suffrage to a qualified franchise. Then in October 1957 the Government tabled a motion in the Legislative Council calling for approval of general elections on the basis of a common roll which would guarantee seats for the minorities and it was decided to proceed with the elections in October 1958. Again, the Lukiko played an obstructive part and decided that Buganda would not take part in the elections. In fact, in 1959 the Lukiko presented a memorandum asking that the British Government should terminate its protectorate over the country, and that Buganda should receive back its independence and sovereignty as soon as possible. Nationalist parties have grown up in Buganda as elsewhere, but they are as yet not powerful enough to restrain the growing ambitions of the Kabaka and his Lukiko.

A committee was appointed last year in order that it may have a comprehensive look at Uganda's constitutional future and recommended to Government what steps may be taken to lead the country towards self-government and at the same time preserve its unity. This committee, presided over by a European civilian (Mr. J. V. Wilde) and composed of a majority of African members, has now submitted its report. The Kabaka and the Lukiko boycotted the committee. The report proposes that general elections shall be held throughout the country in 1961 for a Uganda legislature of 76 seats on a common roll with a liberal franchise and no special provision for minority representation. From this legislature a responsible ministry should be formed, drawn either from a single party or a coalition of parties. If no such ministry could be formed, the legislature should be dissolved and fresh elections held. The basic assumption of the proposals is that strong political parties will emerge once they are offered the incentive of a real share in responsible government. Whether this will actually happen or not no one can tell. It may be that it will take long for responsible political parties to grow up, in which case responsible government will not function. But such a desperate remedy is suggested obviously as the only possible way in which Buganda's reactionary forces could be held in check. The committee insists that the Protectorate's constitution should be unitary. The Lukiko equally strongly insists upon a federal constitution if it cannot break away from the rest of Uganda altogether. If Buganda could be induced to remain part of an integrated Uganda, it could be given a greater share in the management of its own local affairs. But it is felt that to maintain the unity of the whole country is the only way in which the reactionary forces of Buganda could be rendered harmless.

## Ban on Horror Comics

### Voided by a State Supreme Court

A Los Angeles ordinance barring the sale of crime comic books to minors was recently voided by the Supreme Court of California on the ground that it infringed the free speech guarantee of the Constitution. The most notable feature of this unanimous decision is that it reaffirmed the principle that in free speech cases the "clear and present danger" rule must be applied. In nullifying the crime comics ordinance, the Court cited the decision in *Danskin v. San Diego School District*, 28 Cal. 2d 536 (1946), in which a regulation denying use of a school auditorium to a "subversive element" was held invalid because advocacy of the overthrow of the government by force or violence could not be held unlawful in the absence of clear and present danger. In the instant case the court said :

However reprehensible a legislative body may regard certain publications, it cannot forbid them if they present no "clear and present danger" that they will bring about a substantive evil that the legislative authority has a right to prevent.

Publications containing criminal news, accounts of criminal deeds, or pictures and stories of bloodshed, lust or crime are as much entitled to the protection of free speech as other literature.

Further, the county failed to show a close causal connection between the substantive evil—juvenile delinquency—and the circulation of crime books in general, or that crime comics will "injure the character of persons under the age of 18 years and inculcate in them a preference for crime."

The ordinance does not require that the drawings be lewd or depict brutality, sadism, gore or horror; nor does the ordinance limit its application to accounts which glorify crime.

Within the scope of the ordinance such publications as "Woody Woodpecker," "Bugs Bunny" and "Treasure Island" could be proscribed.

## COMMENTS

### Charter on Freedom of Information

#### India's Role in Restricting Freedom

The U. N. General Assembly's Social Committee has nearly finalized the preamble to the Charter on Freedom of Information. The preamble determines the content of the freedom, as the nineteen articles which will follow it are intended to implement the principles laid down in the preamble. This will be the first international charter of news media that has ever been drawn up. But the value of it has been greatly reduced by a provision qualifying freedom of information being written into the preamble, and we are very much grieved to have to record that India, along with other Afro-Asian countries (it always allies itself with these backward and dictatorial countries in the matter of civil liberties), sponsored this stultifying provision. The preamble provides that news must be "accurate, objective and comprehensive."

There can be no question that international reporting by newspapers should satisfy these tests, but the qualification implies that newspapers will not be free to publish

news about the affairs of a country which the Government of that country in its discretion considers to be distorted. By so declaring, it can black out all news which is unfavourable to it and ban all newspapers which are critical of its doings. As one delegate said, the provision would give an "excellent excuse for terroristic and dictatorial Governments" to justify censorship, for no news was "objective" in such regimes that did not reflect Government views. In fact, totalitarian countries do not stop at banning foreign newspapers but even go so far as to expel their correspondents, as for instance the Warsaw correspondent of the "New York Times" was recently expelled from Poland.

The United States delegate, speaking on the provision, said that freedom of information was recognized as a "cornerstone of liberty" in America. While acknowledging that abuses were possible in a genuinely free press, he observed that "some of the most vicious abuses" occurred in countries where all information media were rigidly controlled and where the "big lie" technique was official policy.

Great Britain and the United States, convinced that the so-called charter on freedom of information that will be adopted will be utterly valueless, have long ceased to take any interest in the matter, and in the voting on the above qualifying provision they abstained.

#### India's Vote on Hungary and Korea

Just as a matter of record it would be well to state that, as in the earlier stages of discussion, in the U. N. General Assembly itself India distinguished itself by abstaining from vote on the resolutions on Hungary and Korea. The former resolution deplores the "continued disregard" by the Soviet Union and Hungary of previous Assembly requests for the withdrawal of Soviet troops from Hungary, the observance of human rights and the holding of free elections in that country under U. N. auspices. The resolution also asked Sir Leslie Munro of New Zealand to "continue his efforts" to obtain compliance with Assembly appeals. The latter resolution called on the "Communist authorities concerned" to agree to the holding of free elections in Korea at an early date with the intention of bringing about by peaceful means a unified, independent and democratic Korea under a representative form of government.

India has so far not deviated from its policy even on a single occasion of not supporting by vote any request made by the U. N. to Communist countries, whether Russia or China, either to do something or to desist from doing something. Such requests are naturally sponsored by nations of the free world like the U. S. A. and the U. K. and that apparently is enough to decide India against the requests. We suppose it is only when Russia happens to ask China to vacate her aggression in Korea or China happens to ask Russia to vacate her aggression in Hungary that India will feel free to denounce Communist aggression. Till then its non-alignment policy keeps its mouth shut—in that particular direction.

## SPECIAL TRIBUNALS

### West Bengal Act

#### HELD CONSTITUTIONAL BY THE SUPREME COURT

A member of parliament from West Bengal, Mr. Kangsari Halder, in an appeal to the Supreme Court,

challenged the legality of his trial for conspiracy to commit murder and arson under the West Bengal Tribunals of Criminal Jurisdiction Act, passed in 1952 in order to provide for the speedy trial of certain offences mentioned in the schedule to the Act in the interest of the security of the State and public peace.

Sec. 2 of the Act enables the Government to declare any area as a "disturbed area" for any period and sec.4 provides that all offences scheduled in the Act and committed in a "disturbed area" may be tried by special tribunals under the Act. The procedure prescribed for trials under the Act is materially different from the normal procedure for the trial of similar offences under the Code of Criminal Procedure. The trial is to be held without a jury even in jury cases, there are no committal proceedings and the Tribunals are to follow a warrant procedure even in cases instituted otherwise than on a police report.

The constitutionality of the Act was challenged on the ground that it was discriminatory and hence violated Art. 14 of the Constitution which guaranteed the equal protection of the law.

The Supreme Court on 18th December dismissed the appeal by a majority judgment, holding that the provisions of the Act were valid and did not offend the equal protection clause of the Constitution. In dealing with the appellant's argument that the Act was discriminatory, the Court observed that "it cannot be disputed that the procedure prescribed for trial before the Tribunals under the Act differs in some material particulars from the procedure prescribed by the Code, and the said difference can be treated as amounting to discrimination which is prejudicial to the accused." "The question still remains whether such discrimination violates the provisions of Art. 14."

After examining the effect of the earlier decisions of the Court on Art. 14. Mr. Justice Gajendragadkar observed that if the impugned legislation satisfied the test of reasonable classification based on an intelligible differentia and the further test of a reasonable relationship to the object and policy of the Act, then it cannot be said to contravene Art. 14. In the present case the Court held that both these tests were satisfied and hence the majority dismissed the appeal, with Mr. Justice Sarkar dissenting.

The Court directed that as the trials related to offences said to have been committed in West Bengal during the period of January 1, 1949, to March 31, 1950, the cases should be disposed of expeditiously.

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## HABEAS CORPUS

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### Detention Held Illegal

As a sequel to the agitation of the students and the closure of the Allahabad University on 13th December, several students of the University were arrested and detained in Naini Central Jail. Among these was Mr. Prabhakar Nath Dwivedi, President of the University Students' Union. He was arrested in the early hours of that day on a warrant issued by the City Magistrate who acted on a police report to the effect that owing to the closure of the University there was apprehension of a breach of the peace by him, and proceedings were started against him in the court of the City Magistrate under sec. 107 Cr. P. C. In the meanwhile Mr. Dwivedi was served

with a show-cause notice by the Proctor of the Allahabad University asking him to answer certain charges of indiscipline made against him in connection with the student agitation. He had been asked to send his explanation to the Proctor within three days of receiving the notice. Mr. Dwivedi had replied to the Proctor that he could not offer any explanation while he was in jail but would do so soon after his release.

Mr. Dwivedi filed a petition for the writ of habeas corpus in the Allahabad High Court challenging his detention. Mr. Justice Roy and Mr. Justice Uniyal on 23rd December allowed the petition and ordered the superintendent of the jail to release the petitioner. The first contention of the petitioner's counsel was that Art. 22 (2) of the Constitution required that the petitioner after his arrest should have been produced before the "court of a magistrate" and not merely before a magistrate, wherever he happened to be. In this case, it was said, the petitioner was produced after his arrest before Mr. J. P. Singhal, first class magistrate who happened to be on duty at the police kotwali, Allahabad, in the early hours of 13th December. Counsel said this did not comply with the requirements of Art. 22 (2) as the magistrate was not holding court in the kotwali at the time. Their Lordships did not accept this contention.

Their Lordships however upheld counsel's second contention viz., that the City Magistrate in whose court proceedings under sec. 107 Cr. P. C. were pending against the petitioner could not issue an order under sec. 117 (3) Cr. P. C., which could justify the detention of the petitioner in jail. The City Magistrate, Their Lordships held, had wrongly issued an order under this section demanding security and bail bonds from the petitioner before an inquiry against him under sec. 107 had begun in his court.

In the result the petition was allowed.

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## DRUGS ADVERTISEMENT ACT

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### Power to Prohibit Advertisements AND TO SEIZE GOODS

Messrs. Hamdard Dawakhana, Delhi, and some other firms, against which the Delhi State Government had taken action under the Drugs and Magic Remedies (Objectional Advertisement) Act enacted in 1954 to control the advertisement of drugs for certain diseases and to prohibit advertisements relating to remedies pretending to have magic qualities, challenged the validity of the Act before the Supreme Court.

Sec. 3 of the Act under sub-clause (d) prohibits advertisements calculated to lead to the use of any drug relating to venereal disease "or any other disease or condition which may be specified in the rules made under the Act." Rule 16 framed under this section empowers the Government to specify any disease to which the prohibitory provisions of the Act should apply.

Sec. 8 of the Act is designed to vest authority in the Government to seize articles which contravene the provisions of the Act. It states that "any person authorised by the State Government in this behalf may at any time seize . . . and detain any document, article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of this Act," and

further authorizes a court trying any case of contravention to order the forfeiture of such articles or documents.

Counsel appearing for the petitioners argued that the provisions of the Act were unconstitutional as imposing unreasonable restrictions on freedom of speech and expression guaranteed under cl. (a) and on the right to do business and hold property guaranteed under cl. (f) and (g) of Art. 19 (1) of the Constitution. In regard to the first point, it was said an advertisement is a vehicle by means of which the right to freedom of speech is exercised and the restrictions imposed by the Act are not within the scope of restrictions permitted under cl. 2 of Art. 19. And, in regard the second point, it was said: Sec. 3 of the Act surrenders to the executive authorities an unguided and uncanalized power to add to the diseases enumerated in sec. 3, and is hence unconstitutional: The power of confiscation under sec. 8 of the Act is violative of the rights of property under Art. 31 and the right not to be deprived of personal liberty except according to procedure established by law.

The petition was heard by a Constitution Bench of the Supreme Court, which on 18th December declared a portion of sec. 3 and the whole of sec. 8 of the Act ultra vires. The Court rejected the contention on the score of Art. 19 (1) (a). It observed:

It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution.

The present case, according to the Court, related to the right to do business. The Court also rejected the general argument that the restrictions were excessive or disproportionate and held that the validity of the provisions of the Act other than a portion of sec. 3 and sec. 8 could not be impugned.

With regard to sec. 3 (d) the Court agreed with the petitioners that the right given to the Government to notify any disease for the purposes of the Act was excessive and without any proper guidance as to its exercise. In the circumstances the Court held that that portion must be declared invalid. Similarly the Court held that sec. 8 did not provide any proper safeguards before goods and documents could be seized and hence it was ultra vires.

In the result the Court directed that the goods and documents seized by the respondents should be restored to the petitioners.

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## RIGHT OF GOVERNMENT SERVANTS

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### Dismissal of an I. C. S. Officer SUPREME COURT DISMISSES APPEAL

The Constitution Bench of the Supreme Court on 15th December dismissed an appeal preferred by Sardar Kapur Singh, a member of the Indian Civil Service since 1933, against a judgment of the Punjab High Court upholding the order of the President dismissing him from service.

Sardar Kapur Singh had been admitted into the Indian Civil Service by the Secretary of State and in 1949,

he was transferred to Hoshiarpur as Deputy Commissioner. On April 13, 1949, he was served with an order suspending him from service. On May 18, 1950, the Government of Punjab appointed a Commission of Inquiry under the Public Servants (Inquiries) Act 1950 to hold an inquiry against the appellant on 12 articles of charges. In its report the Commission gave adverse findings on several charges.

After consulting the Public Service Commission, the President dismissed the appellant by an order dated July 27, 1953. Sardar Kapur Singh filed a petition in the Punjab High Court challenging the legality of the order but the High Court dismissed the petition. The appellant then preferred an appeal to the Supreme Court from the order of the High Court.

It was argued by counsel for the appellant that the order of dismissal was void as the State Government had no power to proceed against a member of the Indian Civil Service, and that in any case proceedings against a Civil Servant could be taken only under the Civil Service Rules and not under the Public Servants (Inquiries) Act.

It was further submitted that the proceedings by the Commission were carried on in violation of the principles of natural justice, and the procedure offended the equal protection clause of the Constitution as it was less favourable than the one under the Civil Service Rules.

The Supreme Court held that it was open to the authorities to hold an inquiry under either of the two aforesaid provisions of law and discrimination is not practised merely because resort is had to one of two alternative sources of authority unless it is shown that the procedure adopted operated to the prejudice of the public servant. In the present case the inquiry proceedings under either regulation, according to the Court, were not very different and therefore the inquiry proceedings held by the respondents were not liable to be declared void.

The Supreme Court also rejected the contention that the failure to give an opportunity for an oral representation before taking the final action against the appellant was a violation of Art. 311. It held that the opportunity to make an oral representation was not a necessary postulate of an opportunity to show cause within the meaning of the said Article. As the grounds raised by the appellant were rejected the appeal was dismissed.

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## ESSENTIAL SUPPLIES ACT

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### Iron Control Order upheld by Supreme Court HIGH COURT'S JUDGEMENT REVERSED

It was alleged against Messrs. Bhanamal Gulzarimal, a private limited company at Delhi, that it had sold its old stock of steel for prices higher than those prescribed by the Iron and Steel Controller in a notification under the Iron and Steel (Control of Production and Distribution) Order, 1941, cl. 11-B of which empowers the Controller to fix maximum prices from time to time. Several criminal cases were instituted against the company, its three directors, general manager and two salesmen for contra-

vention of the above Order and the Essential Supplies (Temporary Powers) Act, 1946. The respondents filed petitions in the Punjab High Court challenging the validity of their prosecution and of the search warrants issued against them. The High Court allowed the petitions in the view that cl. 11-B of the Order which empowers the Controller to fix prices was unconstitutional as it violated the fundamental right of property and the freedom to carry on business. The Union of India preferred an appeal from this judgment to the Supreme Court.

The case of the respondents was that the power to fix prices which had been delegated to the Controller amounted to delegation of legislative power and hence it was illegal. It was further contended that the Controller had been given an arbitrary and uncanalized power and his order fixing prices placed an unreasonable restriction on the right of the respondents to carry on business and hold property, and deal in it.

The Supreme Court on 16th December declared the Iron Control Order and the Controller's notification fixing a schedule of prices to be valid. It observed that the respondents had challenged the validity of the Order but had not attacked the provisions of the Essential Supplies Act, under which the order was made. The Iron and Steel Order, 1941, according to the Court, presented a scheme for regulating business in iron and steel and gave the power of fixing prices to the Controller in furtherance of the scheme. In the opinion of the Court, cl. 11-B of the order vesting the Controller with these powers was an integral part of the scheme and was valid.

The Supreme Court also rejected the contention that the order fixing the prices contravened the Constitution or was in excess of the powers of the Controller. The Court accordingly allowed the appeal by the Union of India.

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## PREVENTION OF CORRUPTION ACT

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### Validity of Sec. 4 (1) of the Act

#### UPHELD BY THE SUPREME COURT

Sec. 4 (1) of the Prevention of Corruption Act provides that where a public servant has taken any gratification other than legal remuneration it shall be presumed, unless proved to the contrary, that such gratification was taken as a bribe. The question of the constitutional validity of this section and its construction was raised before the Supreme Court in an appeal filed by Mr. C. M. Emden, a foreman at the Alambagh Loco Shed.

Mr. Emden was prosecuted on a charge that he had demanded Rs. 400 from the contractor in order to allow him to carry on his work peacefully and convicted of taking illegal gratification. After the conviction was upheld by the High Court the accused preferred an appeal to the Supreme Court.

It was stated by counsel that Mr. Emden had been convicted on the basis of the presumption under sec. 4 (1)

of the Prevention of Corruption Act, but this provision was unconstitutional as it violated the guarantee of equal protection of law. Counsel further submitted that even if the provision was valid the presumption could only be raised if the prosecution established that the accused had taken gratification.

The Supreme Court rejected these contentions and held that sec. 4 (1) was valid as it was based on a reasonable classification, and was related to the object of checking corruption by public servants. The Court held that in the present case it had been established that the appellant acquired gratification other than legal remuneration and hence the presumption was correctly raised against him.

The appeal was accordingly dismissed by the Constitution Bench (15th December).

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## PRIVILEGES OF THE HEAD OF A STATE

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### Allegations against the Nizam

#### INQUIRY ORDER RESTORED BY THE SUPREME COURT

The order of the District Magistrate, Hyderabad City, directing the Commissioner of Police to make an inquiry into the report by Mr. B. G. Keskar, advocate, against the Nizam of Hyderabad alleging that 300 women, 100 men and a number of minor girls were detained as slaves at Raj Bhawan was restored by the Supreme Court on 15th December in the appeal filed by Mr. Keskar against the Nizam.

Mr. Keskar filed information in the Court of the District Magistrate, Hyderabad, alleging that the Nizam was guilty of purchasing slaves and other offences and that not less than 300 adult women, 100 adult men and several minor boys and girls were detained as slaves at Raj Bhawan. On these grave allegations the informant requested the magistrate to take cognizance of the case. The magistrate directed the Commissioner of Police to make an inquiry and submit a report.

The respondent preferred a revision to the High Court at Hyderabad and urged that no action could be taken against him as he was the Rajpramukh of the State. This petition was accepted by the High Court, and the appellant thereupon preferred an appeal to the Supreme Court.

The Supreme Court stated that since the filing of the appeal the Nizam had ceased to be Rajpramukh and the constitutional protection was no longer available. In the circumstances the Court stated that it had no option but to set aside the order of the High Court and remand the matter to the magistrate to proceed with the "information" filed by the appellant in accordance with law.