

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## SECOND CASE BEFORE HUMAN RIGHTS COURT COMPLAINT ABOUT VIOLATION OF FREEDOM OF EXPRESSION

In our last issue we referred to the first human rights case which has come before the European Court of Human Rights; that was about unlawful detention. The second case which the Court will consider involves alleged violation of the right to Freedom of Expression.

M. Raymond de Becker, a Belgian subject, was convicted by the Belgian courts of collaboration during the Nazi occupation. He first brought his case before the Commission of Human Rights in 1956. The Commission ruled in 1958 that M. de Becker's application was admissible inasmuch as it alleged that certain provisions of the Belgian Penal Code were not in conformity with European convention of Human Rights. And the Commission has now decided to refer the case, because of its essentially legal character, to the Court of Human Rights whose jurisdiction Belgium has accepted rather than to the Committee of Ministers.

Under an article of the Belgian Code a person condemned, as M. de Becker was, to a penalty exceeding deprivation of liberty for five years, as a result of conviction for an offence against the external security of the state in war time is automatically deprived permanently of the right to take part in any form in:

The production, administration or circulation of a newspaper or any other publication;

The management or exploitation of any cultural, philanthropic or sporting exhibition, or any public amusement;

The management or any other branch in a business connected with the theatre, cinema, or radio productions.

The question for consideration before the Human Rights Court is whether the above provision does not contravene Art. 10 of the European Convention of Human Rights guaranteeing the right of Freedom of Expression, which is as under:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and

ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### Canadian Bill of Rights

Mr. Diefenbaker, Prime Minister of Canada, on 1st July introduced in the Canadian Commons a Bill of Rights asserting the individual's right to life, liberty, security of person, enjoyment of property and the protection of law without discrimination as to race, national origin, colour, religion or sex. The Premier said the bill would deny any future Parliament, however powerful, recourse to the Courts in respect of the violation of any of these human rights.

In Commonwealth countries generally Parliaments are supposed to be sovereign and no constitutional limitations on legislative power are recognized. But Canada, the oldest member of the Commonwealth, has found, as the "Guardian" puts it, that "the lack of restraint on Parliaments and on Governments, which is basic to the British Constitution, has been abused", and that it is not altogether safe to rely on the good sense of Parliament not to adopt legislation interfering with fundamental freedoms. The present Bill would allow the courts to review all arbitrary legislation and action.

## Detention to Prevent Subversion

### Law Enacted in Malaya

India will no longer be the only country in the free world whose Constitution provides, on a law to that effect being passed, for detention without trial even in times in which no emergency has been proclaimed. Malaya has now followed suit. Its Constitution, adopted by the Federal Parliament some three years ago on the recommendation of the Reid Commission, had originally provided that the Government could assume extraordinary powers like those of detention only when the country was threatened by war, external aggression or internal disturbances as testified by the issue of a proclamation of emergency by the Head of State. The menace offered by the Communist rebels to the existence of the State has now been brought under control and the 12-year-old emergency is officially to come to an end at the close of this month. But the Government is of the opinion that it must continue to have powers of detention even after the emergency has ended in order to enable it to prevent subversion, and it has therefore brought about, in the teeth of the opposition of all the Opposition parties, an alteration of the Constitution ( vide p. vi : 84 of the BULLETIN ), authorizing the exercise of special powers against seditionists or persons attempting " to excite disaffection against the Head of State or any Government in the Federation, or to promote feelings of ill-will and hostility between different races or classes of the population likely to cause violence. "

After the amendment of the Constitution was effected, a Public Security Bill was passed by the Federa-

tion of Malaya's House of Representatives on 22nd June which gives power to the Government to order the detention of persons under certain conditions. The bill besides contains some military provisions intended to deal with the armed communists of whom it is believed some 600 are yet to be found along the Siamese border. Under these provisions the Government can declare certain areas to be border security areas and establish a border security council which is to take the place of the Emergency Operations Council in those areas and to direct over-all policy under the chairmanship of the Prime Minister. In these security areas death penalty can be imposed for the illegal possession of arms. But apart from these military measures the bill provides for preventive detention, with which we are here chiefly concerned. The detention clauses are not limited in their application to the border areas, but all Malaya is covered by them. The responsible Minister may detain a person up to two years if the Head of State has been satisfied that this is necessary in the interest of the security of the State. As the Head of State acts on the advice of the Government, the Cabinet is in effect the final authority on detention. An advisory board is to be constituted to consider cases of detention and make recommendations on them to the Head of State. A noteworthy provision in this respect is that the detention cases must be reviewed by the advisory board " not less than once in six months. " It is matter of some satisfaction that in Malaya power to detain can be brought into use only when national security is endangered and not, as in India, when a mere threat to public order is apprehended.

## FORCIBLE REPRESSION OF A MOVEMENT

The present Punjab Government seems to be an adept at forcibly putting down a mass movement which it has made up its mind is hurtful to the interests of the State without the least regard to the civil liberties of the citizens, and the Central Government, instead of checking the State Government, gives its countenance to the repressive measures, showing that, like the State Government, it too is anxious to bring about results without being too squeamish about the means employed.

Master Tara Singh, leader of the Akali Dal, had planned to send out jathas from Amritsar from 29th May onwards in order to convince the rulers of the necessity of carving out a separate State for the Punjabi-speaking people. The Government of the Punjab, wanting to nip this Punjabi Suba movement in the bud, started on 25th May making mass arrests of prominent figures in the Akali Dal all over the districts. Master Tara Singh was held in detention under the Preventive Detention Act but hundreds of others were taken into custody under the preventive sections of the Criminal Procedure Code —

some of them were asked to furnish securities of Rs. 50,000, with two sureties for a like amount to keep the peace for a year. The Punjabi Suba movement might be as undesirable as the Punjab Government considers it to be. We are not concerned with the merits of the movement; we are only concerned with the way in which even undesirable movements can be dealt with. Is it open to any Government, when a movement takes the form of a mass agitation, to round up all the important promoters of it and put them in jail ( and also gag the organs of the press advocating it )? The Punjab Government apparently thinks — and so it must be inferred the Central Government — it might well adopt such repressive measures, provided they can be effective in scotching the movement.

In the Government's press communique explaining the reasons which led it to adopt these measures greatest stress is laid on the communal tension which the Punjabi Suba movement would cause between Hindus and Sikhs. Unfortunately in the Punjab there is hardly any agitation

which does not sharply divide the communities. The recent movement for giving Hindi its "rightful place" in the Punjab was also dubbed as communal in character, and it was communal in the sense that most of the Hindus were on one side of the controversy and most of the Sikhs on the other. But who can help such divisions? They are inherent in the very nature of the question to be solved. The Regional Formula evolved by the Government, to which the Punjabi Suba proposal is put forward as a rival, might be a better solution of the problem than that propounded by Master Tara Singh, but it was frankly based on communal considerations; it could not but be so based because the whole problem was to discover how best to adjust the rival claims of the two communities. It may be that Masterji is pressing the Punjabi Suba proposal because the State that will be thus created will comprise 55 per cent. Sikhs and 45 per cent. Hindus; and the agitation is certainly communal in that sense. But it is less communal than the Hindi Raksha agitation because to the latter the whole Sikh community was opposed, whereas to the first only the non-Akali section of the community and the Hindus are opposed. It can be no fault of anybody if a proposal in these conditions takes on a communal complexion, and a proposal cannot be condemned merely because it is based on communal considerations. If the considerations that prompt it are unfair or unjust to any community, then the proposal certainly deserves disapprobation; but even so, the right way to deal with it is not to repress the movement.

Disorder of course has to be sternly repressed, but in the case of the Punjabi Suba movement it is prematurely assumed to be violent in character. The Punjab Government did on 25th May what the Kenya Government started doing on 8th July against the suspected recrudescence of Mau Mau revolt. Official information was that, at several places in Kikuyuland, oath-taking ceremonies were taking place which were clearly reminiscent of the Mau Mau-type of subversive activities and a police force of 500 at the stroke of midnight that day launched an extensive operation in rounding up Africans who were suspected to be connected with them. The Kenya Government was doubtful of the existence of these activities, but knew that if they did exist they were violent and must be repressed. The Punjab Government on the other hand knew that earnest preparations were being made everywhere in the State for the embarking of the Punjabi Suba movement and appears to have had no doubt that that the movement was violent. It does not seem to have made an effort before launching on a campaign of repression to satisfy itself either that the movement was intended to be violent, or would be so undisciplined and disorganized as to erupt into violence as it proceeded along its course. The Government's press communique no doubt refers to an apprehension on the part of the authorities of the outbreak of violence, but the communique itself

shows that what determined the Government to adopt repressive measures was the fear not of disorder so much as of a general unsettling effect that the movement would produce everywhere in the State—and such an effect every large-scale movement conducted vigorously would necessarily have to a certain extent.

What will be conceded as a scrupulously fair account of the routine followed by the Akalis in dispatching jathas from the Golden Temple was thus given in a dispatch dated 10th June to the "Statesman" and it shows that every precaution was taken by the organizers of the movement to conduct it not only non-violently but unprovocatively.

The volunteers of the day are selected by organizers of the agitation from a reserve pool which rarely falls below about 700 men, "all of them clamouring for the distinction". The number to be offered is fixed well in advance though sometimes it is changed, as yesterday, when all the 12 members of a newly arrived family, including women and children insisted on joining the prescribed jatha of 15. After being dressed and robed as appropriately as resources allow the volunteers are fed at a common feast in the cool recesses of the marble-built Akal Takht, an intricate place partly underground and partly above which is difficult for unwanted eyes to pry into.

Just before sunset the volunteers are lined up beneath the spacious marble balcony of the Takht in the presence of a large congregation, which on days like today might exceed a few thousand. The physically infirm or the frail of heart are invited to withdraw, but, of course, no one does. A collective oath is then administered to the volunteers, binding on them non-violence and patience. Hour-long lectures are delivered here and again at the still larger Diwan which is held each evening at the Manji Sahib and at which frequent pleas are made for Hindu-Sikh amity and the peaceful conduct of the agitation. From the Manji Sahib the volunteers are sent off to the police shouting four prescribed slogans: "Zindabad" for Punjabi Subha, Hindu-Sikh unity, Free India and Master Tara Singh.

The last act is almost comically brief and is something of an anti-climax. In batches of four (so as not to violate the ban on the assembly of five persons or more) the volunteers hurriedly traverse a no man's land about a 100 yards in length which is kept scrupulously free of crowds by the organizers of the agitation to separate people inside the temple from the police waiting in the bazar with their vans. First a wooden barrier and then a steel gate, both erected by the temple management, ensure that no unauthorized person or over-zealous slogan-raiser accompanies the volunteers. The latter walk straight into the vans and are driven off.

Good humour on both sides keeps tempers from rising. Through gaps in the steel gates the policemen

outside and the agitators inside who recognize each other shake hands or exchange a greeting.

In the temple itself, whenever plain clothes men are spotted (and their intense indifference keeps giving them away), they are pointed out with laughter but without malice and they in turn show no resentment.

A jathedar here distributes "objectionable literature" to the police or there helps out a police reporter whose shorthand is not too good.

What happened in Delhi on 12th June seems to be quite exceptional. There the Akali demonstrators decided to defy the Government's order prohibiting the procession. The police made lathi-charges and used tear-gas. Infuriated by the first lathi-charge in front of the Town Hall the agitators hurled stone and soda-water bottles at the police station, which is next-door to the Sisganj Gurdwara, the focus of their campaign. This resulted almost in a pitched battle between the police and the Akalis. But, normally, all the morchas so far taken out have been peaceful. And the question before public workers is whether a Government can just try and put down by sheer force of its weight any agitation, however wrong-headed it might be. Mr. Nehru apparently believes that it can. At a press conference he answered the question thus: "If there was a big challenge to the authorities naturally they wanted to prevent that challenge and arrest persons who were considered leaders or organizers". The answer would be quite right if and only if the Government were faced with something like a crisis threatening almost the existence of the State. But the Punjab Government was faced with nothing even remotely resembling such a crisis, and the stern measures of repression it has brought into force call for condemnation at the hands of all who have a feeling for civil liberty.

### Suppression of Newspapers

Besides detention, the other weapon which in the Punjab the State Government employs to crush any mass movement it does not like is the special Press Act which vests it with discretionary authority of the widest amplitude to suppress any newspaper which it thinks is likely to foment the movement. This has once again been shown to be true in the case of the Akali Dal's Punjabi Suba movement. Simultaneously with the swoop which the Kairon Government started in arresting Master Tara Singh under the Preventive Detention Act, it also proceeded to silence a number of newspapers, and as the arrests were not confined to the promoters of the movement but included in their sweep men like Dr. Kali Charan Sharma, leader of the Maha Punjab Front which is totally opposed to Master Tara Singh's movement, so the Government's gagging orders too were not limited to the Akali Dal's newspapers but were made applicable to

some other newspapers belonging to the Opposition parties and known to propagate views inimical to those of the Akali Dal.

On 25th May the Government sealed the offices of the two major newspapers of the Akali Dal, the "Prabhat" and the "Akali," and at the same time imposed a ban on these two and other three newspapers — "Pratap," "Vir Pratap" and "Hind Samachar," prohibiting them from publishing for two months any news or comment relating to the Punjabi Subha movement. The last three are conducted by the supporters of Hindi. A few days later, i. e., on 6th June, the Punjab Government invoked the Press Act to place a similar ban on the "Akali Patrika," the organ of the Giani Kartar Singh group of Sikhs. On 1st June the Government sealed the Gurdwara Printing Press of the S. G. P. C. at Amritsar, but this action was taken under sec. 145 of the Criminal Procedure Code on the basis of a warrant issued by the City Magistrate. The press is being run primarily for the publication of religious literature, including the Granth Sahib, and occasionally it prints posters of the Akali Dal and some other organizations. The Government was not content with closing down the press; it went further. When it put a gag on the Akali Dal's newspapers it also arrested 12 journalists working on their staff, who it is said were in no way connected with Master Tara Singh or the Akali Dal or the Punjabi Suba movement.

The Kairon Government, it will be seen, was not less prompt in its attack on press freedom than in its attack on personal freedom, and we for our part appreciate the Government's inclusion in its banning order, if such an order has to be issued, organs of the public press which resisted as well as those which supported the Akali Dal's call for the establishment of a Punjabi-speaking State. In fact it was the Government's moral and legal duty to extend its ban in this way, and one would really have expected that the ban was so wide as to bring within its net the Congress organs too. For the banning order requires a paper to exclude from its columns all news or comment, whether it is in favour of or against the Punjabi Suba movement, and the order is predicated on the belief, not at all ill-founded, that whether what a paper prints about the movement is favourable to it or otherwise, it helps to keep up public feelings in an agitated state and, the movement being communal, to lead to further communal disharmony; and since what the situation requires, in the eyes of the Government, is to put an end to communal tension, the result can be completely achieved only by blacking out all news or discussion about the movement. The Government is quite logical in this and, pursuing the same reasoning, it should have put under arrest all Congress leaders also who are carrying on a propaganda that the movement is suicidal, simultaneously with throwing into jail Akali Dal leaders in whose judgment the movement is the only salvation for the Punjab. In

this view of the matter Sardar Partap Singh Kairon would be the first to qualify for imprisonment along with Master Tara Singh.

To laymen like us, this attempt on the part of Government to enforce silence on the Press, initially only for a period of two months but subsequently for similar other periods each of two months if the movement does not collapse in the meanwhile, appears as an intolerable affront to civil liberties; we in our innocence had thought that even if the Supreme Court was helpless to afford any redress in cases of detention it would find it possible to give relief when freedom of the press was infringed upon in such an outrageous manner. It is true that the Article in the Constitution relating to this freedom is wholly unsatisfactory; even so, we had thought that the Court could and would still find means to void the Punjab Press Act which is of such unheard-of severity. But it is not so; the benign Court finds no constitutional weakness in an Act which places press freedom at the mercy of the Executive Government. Its judgment means in effect that the press can live in the Punjab only on the State Government's sufferance; and the press of other States is not unaffected by the Punjab Government's action under the Act either, since the Government can ban the entry of outside newspapers into its territory. All this may be very unfortunate, but apparently it is perfectly legal. The Act has for its object the checking of movements likely to create communal disharmony, but there can hardly be any movement in the State which cannot be so described. According to the Supreme Court, it must be left to the discretion of the Government to determine when communal peace is likely to be disturbed and when therefore it would be legitimate to bring the wide powers conferred by the Act into exercise; the exercise of these powers cannot be subjected to any outside review. The Court would presumably have seen some constitutional blemish in the Act if some limit, temporary though it might be, was not set on its duration and if it had prohibited total publication of news and comments on all subjects whatever. But the limitation of the operation of the Act's provisions to two months at a time and the restriction of the ban on discussion to only one subject—though that subject might then be the only one which newspapers might like to discuss—are provisions which, in the eyes of the Supreme Court, save the Act from unconstitutionality. And these so-called safeguards in the Act do not embarrass Sardar Partap Singh Kairon in the least. He is quite content if he is left free to control the Press at his discretion only for a time and in reference to any particular movement provided the time and movement are of his choice.

Although Sardar Kairon was commendably impartial in imposing a ban on non-Akali as well as Akali papers, on the ground that what he wanted to achieve was not to

control opinion but to prevent any further communal estrangement, he later withdrew the ban from all the four non-Akali papers. This was done on the recommendation of the local Press Advisory Committee, who apparently thought that while a gag might well be applied to papers supporting a movement which the Government wished to try and bring to an end, papers which actually opposed the movement should be looked upon with friendly eyes by Government and should be free from the gag. That is not however the kind of discrimination which the Act allows. Yet the Government accepted the committee's recommendation and removed the non-Akali papers from the Act's clutches.

The All-India Newspaper Editors Conference, which may be expected to be the sentinel of press freedom, does not seem to be unduly worried about the Punjab's Press Act, for we have not seen it entering any protest. But the Indian Federation of Working Journalists, influenced mainly by the arrest of 12 members of the staff of two Akali newspapers, has raised its voice against this action of the Government. The Federation's Working Committee passed the following resolution:

The Federation is distressed to learn that 12 working journalists and press workers attached to two daily newspapers were arrested at Jullundur on May 25 last while they were engaged in their duties.

The Federation wishes to state that the existence of a Press Advisory Committee in Punjab did not restrain the State Government from resorting to arbitrary action against newspapers despite the fact that editors of at least three of these were members of the Press Advisory Committee.

The Federation reiterates its considered view that the system of Press advising is an anachronism in democratic India and calls upon members of the Punjab Press Advisory Committee to withdraw from that body and be not a party to the enforcement of the arbitrary powers assumed by the Government to impose fetters of an extraordinary nature on the Press.

But, on the whole, there is so little public resentment shown against this most drastic Press Act ever known that there is little hope of its ever being removed from the statute book so long as the Congress remains in power. And the Punjab Government is in the grip of such a passion of repression that it would rather have the provisions of the Act tightened up. For, at the third Punjab State Congress Kisan Conference held at Samana, eighteen miles from Patiala, a resolution was passed, in the presence of the Chief Minister and the Congress President, saying that the existing Press Act was defective and should be modified so that effective action could be taken against writings which fanned communalism among sister communities. One would like to know, as a matter of curiosity, what further powers it was at all possible for

a Press Law to confer on the Government. We had thought that repression had reached its high-water mark in the Punjab Act and it was not possible to improve upon it.

We would only like to repeat here that the Central Government is morally as responsible for this draconian

legislation as the Punjab Government itself. For the Central Government has given a distinct pledge that it would not allow any State to pass a Press Law which is more severe than Rajaji's Press Act. But the Government obviously now finds it expedient to forget the pledge.

## KARNAL MURDER CASE AND PUNJAB'S POLICE ADMINISTRATION

A special bench of the Punjab High Court on 20th May dismissed the appeal filed by the Punjab Government against the judgment of Mr. S. D. Singh, special Additional Sessions Judge, acquitting Mr. D. S. Grewal, former Superintendent of Police, and nine others in what is known as the Karnal triple murder case.

Grewal and the other respondents had been charged with the murder of Hazara Singh and Piara Singh, two bad characters of Karnal, and Gian Singh, on the night of July 14, 1957.

The prosecution case was that the respondents entered into a conspiracy to murder Hazara Singh, Piara Singh and Giyan Singh, and in pursuance of that conspiracy two of them, namely Sadhu Singh and Balwant Singh, abducted their victims from Shahabad in a truck which was driven along the Grand Trunk Road on the night of July 14 for a distance of 25 miles to the spot of occurrence and then all the ten persons, as members of an unlawful assembly, murdered the three men by intentionally firing at them with rifles and revolvers while tying the deceased round a dhak tree in the jungle nearby.

Respondents were further charged with fabricating false evidence, both before and after the murder, in order to provide presumptive proof of their innocence and with having in their possession unlicensed arms. Deceased Hazara Singh and Piara Singh, who were brothers, had, by their criminal activities, earned the displeasure of the local police at Karnal and because they could not be brought to book in a legitimate way by the due process of law and chastised for their offences, Grewal, respondent, who assumed charge of the office of Superintendent of Police, Karnal, on June 8, 1957, decided to kill them and make it appear that they had met their death in an armed encounter with the police in the course of which the police had, in self-defence, fired shots at the two bad characters.

In order to achieve this aim an elaborate plan was prepared and a conspiracy embracing a large number of police officers was entered into. Two rifles and a pistol were placed alongside the dead bodies in order to give the appearance that these men were bearing firearms when they were shot. The order of the firing is alleged to have been given by Grewal and the remaining nine respondents stood in semicircle round the dhak tree and collectively shot their three victims, one by one.

A report of this occurrence was then drawn up and this report contained the story of an encounter in the course of which Hazara Singh, Piara Singh and Gian Singh had fired shots at the police party and had been fired at in return. On April 8, 1958, a formal report of the murder of the three deceased persons was registered at the Butana police station and in due course the ten respondents were sent up to stand their trial. At the trial the respondents pleaded not guilty.

Their defence was the story contained in the first report, which was lodged at the Butana police station on July 15, 1957, at the instance of Gurbachan Singh respondent. Grewal even denied his presence at the spot of the occurrence and stated that he came to know of the occurrence on the morning of the 15th when the special report about the incident was drawn up and sent on to the superior officers.

The trial judge accepted the encounter version put forward by the defence and acquitted all the accused. The State of Punjab, aggrieved by this order, went in appeal to the High Court. The High Court upheld the acquittal of the accused upon all the charges and dismissed the appeal of the State. The Court said that none of the six most important ingredients of the prosecution story regarding motive and manner of entering into a conspiracy to murder, abduction of the three deceased from Shahbad, planting of two rifles and one pistol on the bodies of the deceased, fabrication of the evidence by the accused in order to cover up their guilt, and medical evidence supported the story of deliberate murder in the manner alleged by the prosecution. The Court held that in the absence of clear proof the defence version of the encounter must be held to be proved.

The case has roused much interest throughout the country, and the reason for it is not the guilt or innocence of the accused, but the Judge's remarks about the Chief Minister's interest in the case and his strictures against high officials of the State Government, most of which the High Court retained and refused to expunge. These observations, as the "Tribune" says, "have alarming implications. The judgment has cast a reflection on high-ups in the State." The Central Government and the Congress High Command will have a tough job on their hands in cleansing the Augean stables of the Punjab.

The High Court found the judgment of the trial court to be a feat of industry and thoroughness. The Court said that this merited the highest praise. They, however, added that at times the Judge's enthusiasm carried him beyond the limits of restraint and balance. On the application by Sardar Asa Singh (then Secretary to the Chief Minister) and Chaudhry Ram Singh (Deputy Inspector-General of Police) that the lower court's observations against them be expunged, the High Court expunged one paragraph against Asa Singh and five of the 14 against Ch. Ram Singh. The portion relating to Asa Singh, which was expunged, said that if he had only acted like an officer and discharged his duty with a sense of responsibility, the whole tagedy would have been avoided.

About the protection asked for by the deceased and given by the Chief Minister, the Judge had said: "The Chief Minister did not realize the implications of the help that was being sought by Hazara Singh and Piara Singh, or maybe just to put them off, he asked his Secretary to convey the message to the S. P. that protection or legal protection may be afforded to them." The High Court retained this passage. Some other statements, which were retained, said: "If Asa Singh (who transmitted the Chief Minister's order giving protection) knew that Sardar Partap Singh Kairon was known to Piara Singh and Hazara Singh and was inclined to grant some favour and give them protection, he would not probably have the courage to refer the matter back to him," and that "Asa Singh did not probably understand the order of the Chief Minister or maybe, being informed by Grewal he had not the courage" to explain the implications to Mr. Kairon, "or may have thought" that if he got Hazara Singh arrested "he might thereby displease the Chief Minister," or (in another passage it was said) was afraid of inviting any possible wrath of the Chief Minister." The Court also described as justified and retained the remarks of the Sessions Judge that "Asa Singh has suppressed correct facts as the responsibility of not having got Hazara Singh and Piara Singh arrested at Chandigarh when he was asked to do so by D. S. Grewal, was likely to fall on his shoulders. He has given the facts a twist and Ch. Ram Singh, Bakshi Vishwa Mitter, DSP, Ch. Banar Singh and Inspector Gurcharan Singh have either played into his hands or have been persuaded to support his version, for reasons which remain to be disclosed or may be just to absolve him of blame and transfer it to the shoulders of Grewal".

Among the observations of the Sessions Judge about Ch. Ram Singh upheld by the High Court were these: that it was illogical that Ch. Ram Singh acted as a dummy spectator to all that was happening in Karnal district; that he would still be so callous in the discharge of his duties as to congratulate the police on the brutal killing of the deceased; that if Ch. Ram Singh could not realize the significance of all circumstances he should hardly justify his appointment as D. I. G.; that high police officers, including Ch. Ram Singh appeared to have be-

lieved that they would be pleasing the Chief Minister and thereby serving their own ends if they went out of their way to arrange false and fabricated evidence which might secure conviction of the accused, particularly Grewal.

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## COMMENTS

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### Restriction of Press Freedom U. N. CONVENTION CONDEMNED

In the January number of the BULLETIN, at p. vi: 39, we pointed out how the stipulation inserted in the preamble of the U. N. Convention on Freedom of Information that the news to be published must be "accurate, objective and comprehensive" would enable any country to black-out all such news about itself as it considers to be distorted. The feeling is widespread that this provision, instead of promoting freedom of information, is capable of abridging it to a large extent, and it has now been given authoritative expression by the Commonwealth Press Union. At a conference held in London a resolution was passed on 7th June expressing concern that the convention would have the effect of restricting the freedom of the press, because it "seeks to define and limit such freedom and to permit Governments to interpret the basis on which information shall be gathered and distributed."

It was explained that a similar U. N. convention was proposed some years ago and was strongly opposed by the Commonwealth Press Union as they considered that the document, which was originally intended to improve the international flow of news and information, had developed into an encouragement to Governments to enact press laws which would be dangerous to freedom of expression in all countries. The project was killed in 1952 but had now been resuscitated.

We must repeat that India is one of the countries which have sponsored the provision so inimical to the Freedom of the Press.

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### Acts of Genocide in Tibet

The legal inquiry committee on Tibet of the International Commission of Jurists has found that acts of genocide were committed in an attempt to destroy the Tibetan people as a religious group. The committee was set up in July, 1959, to examine accusations of genocide and violations of human rights.

Its report, which has been submitted to the commission, is expected to be published next month. The committee's chairman is Mr. Purshottam Trikanddas.

The committee did not find there was sufficient proof of the destruction of Tibetans as a race, nation or ethnical group as such by methods that could be regarded as genocide in international law. The evidence established four principal facts in relation to genocide:

- (a) That the Chinese would not permit adherence to and practice of Buddhism in Tibet;
- (b) that they had systematically set out to eradicate this religious belief in Tibet;



(c) that in pursuit of this design they had killed religious figures because their religious belief and practice was an encouragement and example to others ;

(d) that they had forcibly transferred large numbers of the Tibetan children to a Chinese materialistic environment in order to prevent them from having a religious upbringing.

The committee therefore found that genocide has been committed against this religious group by such methods.

In regard to human rights within the framework of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations, the committee found that the Chinese Communist authorities in Tibet had violated most of these rights, the most important being the right to life itself. The committee was satisfied that widespread killings had taken place which were unrelated to military action in suppression of the uprising.

Chinese accounts alleging the absence of human rights before the "peaceful liberation" and reforms were found to be distorted and exaggerated.

#### TIBET'S INDEPENDENCE

Regarding Tibet's status in international law, the committee found that although Tibet surrendered her "de facto" independence by signing in 1951 the "agreement on peaceful measures for the liberation of Tibet" with the Chinese Government, the repudiation of this agreement by Tibet in March, 1959, restored the nation to its status of "de facto" independence.

The committee also found that Tibet's repudiation of the agreement had been justified as undertakings given by the Chinese under the agreement had been violated by them.

### NOTES

#### Opening of White Highlands

##### GIVING EFFECT TO THE NEW LAND POLICY

The new policy of opening the Kenya Highlands, reserved till now for white occupation, to good farmers of all races, that was announced last October, is now being put into force. The Kenya Government has drawn up plans for dividing the land in the Highland areas that has been offered for sale into farms of 50 acres each for disposal on a non-racial basis. It would be "high-potential land capable of growing cash crops such as coffee or be capable of producing 12 bags of maize per acre or the equivalent in other cereals." Applicants for land would be scrutinized by the provincial administration and trained by the Agricultural Department, first at farm institutes and then on the farm itself. Britain would contribute £3½ million for the scheme and it was hoped to obtain another £1½ million through international finance channels. On this basis it is expected that about 50,000 acres could be bought each year on which 1,000 farmers could be established with their families. Besides this scheme for settling small farmers, it is also intended to sell larger farms to those who can buy and exploit them.

The scheme for multi-racial government which Mr. Mcleod has formulated with great vision for Kenya would be a mockery if the whites were allowed to retain the Highlands for their exclusive use, and the beginning now being made in admitting men of other races into this area

may be regarded as a guarantee of the British Government's determination to put an end eventually to all white privileges.

#### AUSTRALIAN BILL TO CONTROL Telephone Tapping

As in the United Kingdom, so in Australia there was till now no law prescribing the limits within which and the purposes for which telephone conversations could be intercepted. The director general of the security intelligence organization, set up by the Labour Government in 1949, could under ministerial directions intercept telephone messages when such a course was thought to be necessary or desirable. Now, a law is about to be passed which will give Australians the assurance that interception will be prohibited except in two closely defined situations.

The Postmaster General may tap messages in the course of performing his technical duties, for example, in order to investigate a complaint about someone using abusive, indecent or threatening language; and the director-general of the security intelligence organization may similarly tap messages whenever the Attorney General is satisfied that a particular telephone was being used or was likely to be used for espionage, sabotage or subversion.

Under the Bill, the Attorney General will take responsibility for each and every telephone interception by the security intelligence organization. But he has no initiative in the matter; he must await a request by the director general. The Attorney General's warrant is required for interception on a specific telephone, and the warrant can remain in force for a maximum period of six months. On urgent occasions, when the Attorney General is not available, the director-general can issue a warrant on his own responsibility, but only for a period of 48 hours, and only if the Attorney General had not refused a warrant for the same purpose within the preceding three months. The director-general cannot issue "successive warrants each of successive periods of 48 hours." To ensure further that warrants are not too freely sought, the Attorney General must be informed of the result of each interception. No telephonic interception will be permitted for police or customs purposes.

#### Housing Victory for Negroes

##### DECISION OF THE SUPREME COURT OF NEW JERSEY

An important decision affecting the sale of private houses to Negroes was made recently by the New Jersey Supreme Court. It is the first of its kind and, the "Times" says, could prove an effective weapon against de facto segregation outside the South.

The decision concerns a new development by the Levitt corporation engaged in constructing single homes for middle class families. This work on a large scale is possible only because of the favourable mortgage terms given by the federal Public Housing Administration. But though publicly assisted, the corporation refuses to sell homes to Negroes.

Through PHA, the federal government makes loans and contributions towards the cost of local housing projects. When the necessary legislation was passed, amendments were moved to bar segregation in public housing, but the amendments were defeated, and PHA leaves decisions on segregation to local authorities. And though New Jersey, like some other States, has a law prohibiting discrimination in publicly assisted housing, the law was being cir-



cumvented in practice. The Supreme Court in the instant case ruled that housing constructed by a private corporation was "publicly assisted," and thus subject to the State's anti-discrimination laws, if there had been a prior commitment by PHA to provide mortgage loans to prospective purchasers.

An appeal against the decision has been preferred in the federal Supreme Court, and if affirmed it will help a number of middle class Negroes who, in spite of their economic, educational and professional accomplishments, are being denied access to decent housing in good neighborhoods.

### Compulsory Registration of Ex-Criminals

- VOIDED BY A STATE SUPREME COURT

The Supreme Court of California recently invalidated an ordinance of Los Angeles requiring all ex-criminals to register with police officials. There are some twenty-five municipalities in the state which have similar regulations under which those who are convicted of any crime have to get themselves registered, photographed and fingerprinted by the local police. All such felon statutes are now banned by the Court's decision, which indeed may set a precedent for the entire country.

The decision was rendered in a case in which one Mr. John Abbott, a conscientious objector, was convicted in 1943 for failure to remain in a public service camp and because of this conviction was forced under a Los Angeles ordinance to register. Mr. Abbott brought suit as a test of the validity of the registration ordinance. The State Supreme Court in a unanimous judgment held the ordinance invalid.

The Court noted that the State legislature had passed a law requiring only one class of offenders—sex offenders—to register, and held that the State legislature had "pre-empted" the field by this legislation and consequently cities are prohibited from adopting ordinances requiring the registration of other criminals. The Court also said that registration of ex-criminals was in conflict with the policy that "rehabilitation of criminals is of paramount consideration," and that, according to the literature on the subject, registration requirements are at variance with "moral and ethical concepts of decency and human dignity."

The last consideration was emphasized in its brief by the American Civil Liberties Union who had supported Mr. Abbott's suit. It was stressed by the Union that registration laws violate modern penal experience and interfere with the rehabilitation of ex-criminals. The Union asked: "Even if we hold to the retributive theory of justice, has not the person paid his debt to society when he has served his sentence and is discharged?"

### Privilege against Self-Incrimination

ASSERTION OF CLAIM FOLLOWED BY DISMISSAL

After the U. S. Supreme Court's judgment in *Slochower v. Board of Higher Education*, 350 U. S. 551 (1956), in which a summary dismissal of a public employee for his refusal to answer a congressional committee's questions about political associations was held by the Court to violate the due process of the Fourteenth Amendment, some senators made unsuccessful attempts to bring in legislation to overrule this decision. But, curiously enough, the Supreme Court itself has done the job for these senators, for in another recent case it seems to have very nearly reversed itself.

Mr. Thomas W. Nelson and Mr. Arthur Globe, Los Angeles County Social Workers, had invoked, like Professor Slochower in the earlier case, the Fifth Amendment's privilege against self-incrimination and refused to answer questions about alleged subversive associations before the House un-American Activities Committee and because of this they were removed from their positions. But in this case the Court, instead of holding that the fringes denied due process, ruled that refusal to answer questions on Fifth Amendment grounds was a legitimate basis for dismissal from public employment!

The New York City statute, under which action was taken against Professor Slochower, requires automatic discharge, without notice or hearing, of a municipal employee who asserts the privilege against self-incrimination and avoids answering questions put to him relating to his official conduct. "In practical effect the questions asked are taken as confessed and made the basis of the discharge." The claim of privilege is "converted" through the use of the statute "into a conclusive presumption of guilt." The Court held the ordinance unconstitutionally arbitrary.

The California ordinance is slightly different. Instead of specifying that employees who refuse to testify at hearings because of self-incrimination must be dismissed, the California law requires dismissal of any employees who decline to testify for any reason. And the Court found this to be without any constitutional defect. It said California had drawn no inference of guilt (as in the Slochower case) because Mr. Globe, a probationary employee, based his refusal to answer on the Fifth Amendment, but the State may "legitimately predicate discharge on refusal to give information touching on the field of security." Rejecting the argument that Mr. Globe's dismissal contravened the Slochower decision, the Court said:

This built-in inference of guilt, derived solely from a Fifth Amendment claim, we held to be arbitrary and unreasonable. But the test here, rather than being the invocation of any constitutional privilege, is the failure of the employee to answer. California has not predicated discharge on any "built-in" inference of guilt in its statute, but solely on employee's insubordination for failure to give information which we have held that the State has a legitimate interest in securing.

To Justice Brennan this appeared to be a distinction without a difference. In a dissenting judgment he showed that the issue involved in both cases was the same and said: "The thin patina of 'insubordination' that the statute encrusts on the exercise of the privilege does not change the matter." He added:

If it is unconstitutionally arbitrary for the State to treat every invocation of the privilege as conclusive on his fitness and can effect an automatic discharge, then the command of the State that no temporary employee shall claim the privilege under pain of automatic discharge must be an unconstitutionally arbitrary command.

Justice Black took a broader ground in his dissent, the ground, viz., of the California statute's inconsistency with the Federal Constitution. He said:

The Federal Constitution told Globe he could, without penalty, refuse to incriminate himself before any arm of the Federal Government; California, however, has deprived him of his job solely because

he exercised this federal constitutional privilege. In giving supremacy to the California law, I think the Court approves a plain violation of Art. 6 of the Constitution of the United States which makes that Constitution "the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding."

The basic purpose of the Bill of Rights was to protect individual liberty against governmental procedures that the Framers thought should not be used. That great purpose can be completely frustrated by holdings like this. I would hold that no State can put any kind of penalty on any person for claiming a privilege authorized by the Federal Constitution. The Court's holding to the contrary here does not bode well for individual liberty in America.

#### Writ of Habeas Corpus

One Mr. Calvin Sublett filed a petition for a writ of habeas corpus in the highest court of West Virginia, maintaining that he was being held in prison without lawful authority and in violation of due process of law under the Fourteenth Amendment. The court refused the writ without a hearing. Thereupon the U. S. Supreme Court, to which the matter came on certiorari, on 7th March held, in a per curiam opinion, that the facts alleged were such (they were not recited in the opinion) as to entitle the petitioner to a hearing and vacated the lower court's judgment. The opinion cited *Pennsylvania v. Claudy*, 350 U. S. 116 (1956), in which the defendant, after pleading guilty to burglary, forgery and other charges was convicted to long terms of imprisonment, but eight years thereafter he presented a habeas corpus petition challenging his conviction on the ground that his plea of guilty was due to coercion and threats by state officers. The state court dismissed the petition without a hearing, but the U. S. Supreme Court unanimously held that the allegations were such that the petitioner was entitled to a hearing. In particular, it was held that the petition for habeas corpus was not too late and that the petitioner could not be denied a hearing merely because the allegations of his petition were contradicted by the prosecuting officer. Justice Black who wrote the opinion said, referring to some previous decisions of the Court, "The sound premise upon which these holdings rested is that men incarcerated in flagrant violation of their constitutional rights have a remedy."

#### Deportability of Aliens

In the United States the Smith Act of 1950 provides for the deportation of aliens who at the time of entry into the United States, or thereafter, were members of or affiliated with the Communist Party. But the harshness of this provision was diminished to some extent by an Act passed in 1951, which exempts from the broad sweep of this membership provisions three classes of persons, one of which consists of those who joined the Party "for purposes of obtaining employment, food rations, or other essentials of living."

This amendment enabled the Supreme Court in *Rowoldt v. Perfetto* in 1957 to hold that Rowoldt,

though he was on his own admission a member of the Communist Party, was not liable to be deported because evidence showed that he had joined the Party only in order to fight for his daily needs; that his association with the Party might well have been "wholly devoid of any political implication;" and that this association was far from "the meaningful association required by the alleviating amendment of 1951."

A case similar to this one came up in the Supreme Court recently. Only in this case the alien, William Niukkanen, who had been ordered to be deported, had denied membership in the Communist Party, whereas Rowoldt had admitted it but had claimed that it was innocent. The district judge in a habeas corpus proceeding found that Niukkanen perjured himself in denying membership. And the judgment was affirmed by the Supreme Court in a per curiam opinion on 18th April last. Four Justices dissented on the ground that the case was on all fours with the Rowoldt case. The record shows, they said, that Niukkanen, was not conspiratorial or dangerous, and that he was only "caught up in a movement whose ideology he did not understand and whose leaders spoke in terms of bread for the hungry and jobs for the unemployed" — as was the case with Rowoldt. But the majority of five Justices supported the conclusion of the district judge, affirmed by the Court of Appeals, because "we cannot say that (these findings) were clearly erroneous."

#### Prohibition of Anonymous Handbills

##### DIFFERING VIEWS IN THE SUPREME COURT

On 7th March the U. S. Supreme Court, by a majority of 6 to 3, held void on its face a Los Angeles municipal ordinance making it a criminal offence to distribute handbills unless they had printed on them the names and addresses of persons who had prepared or sponsored them. It had been urged that the ordinance was aimed at the prevention of "fraud, deceit, false advertising, obscenity, and libel," but the ordinance was not in fact so limited in its application, but purported to bar all anonymous handbills. "It will not do for the State," as Justice Harlan said in a concurring opinion, "simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character." In his opinion, there was "no constitutionally acceptable justification for the deterrent effect on free speech which this all-embracing ordinance is likely to have." Justice Clarke, who wrote the dissenting minute, said that what was restricted in this case was not freedom of speech but freedom of anonymity, and "the Constitution says nothing about freedom of anonymous speech. . . All that Los Angeles requires is that one who exercises his right of free speech through writing or distributing handbills identify himself just as does one who speaks from the platform. The ordinance makes for the responsibility in writing that is present in public utterance. When and if the application of such an ordinance in a given case encroaches on First Amendment freedoms, then will be soon enough to strike that application down. But no such restraint has been shown here."