

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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

No. 88

January 1957

THE PRESS COUNCIL BILL

INDEPENDENCE BEING SACRIFICED FOR SUPPOSED EFFECTIVENESS

The Union Government's Bill for the establishment of a Press Council has passed the Rajya Sabha, the near-unanimous demand for its reference to a select committee in view of the radical changes required therein being turned down. Unless the Bill passes the Lok Sabha in its very brief session in March next, it will lapse. We for our part shall not regret this. For, though we are all in favour of a self-regulatory organization of the press on the lines of the United Kingdom's Press Council which is a voluntary institution free from all entanglements with the Government, we are firmly opposed to a statutory body closely linked with the State—financed by the State and working within the ambit of rules framed by the State.

One serious defect in the composition of the Council has been removed on the motion of Dr. Kunzru :— the Chairman will not be appointed, as the Bill had proposed, by the President of India, who can only act on the advice of the Union Ministry, but jointly by the Chief Justice of India, Chairman of the Rajya Sabha and the Speaker of the Lok Sabha. This is a great improvement, for the Chairman of the Council will no longer be a nominee of the Government as would have been the case if the original proposal had been retained. Dr. Kunzru made it clear that the representative of the Rajya Sabha who is to take part in the choice of the head of the Council should not be the Vice-President of India, who is a political official, but the Chairman of the Rajya Sabha. By the same token, however, the committee to appoint 19 members to represent the editorial and managerial sections of the press and two members to represent "education" and "culture" should not have included the Vice-President of India; but the Bill provides for his inclusion.

Criticism was focussed in the Rajya Sabha on those provisions in the Bill which provide for a sort of judicial inquiry into the complaints received, giving to the Council the power of "summoning and enforcing the attendance of persons and examining them on oath" and "requiring the discovery and production of documents." The latter provision, it was felt, would compel the disclosure of the names of those who write in the press, which would be contrary to

the universally established practice followed by the press of keeping the source of information confidential. The Minister in charge first tried to meet this valid objection by saying that since the Council was to consist predominantly, though not exclusively (as is the case with the Press Council of the United Kingdom), of pressmen, compulsory disclosure of the sources of information would not in fact take place. But later he had to admit that such disclosure might in certain cases be required. The provision is intended to implement the recommendation of the Press Commission in this respect, and the Commission certainly contemplated a journalist being compelled to disclose his source of information. For, in its report, the Commission has said :

Normally anonymity is to be respected. But when questions are considered by the Press Council involving the fixing of responsibility, journalistic privilege may be waived.

Again,

Confidence shall always be respected and professional secrecy preserved, but it shall not be regarded as breach of it if a source of information is disclosed in matters coming before the Press Council or before courts of law. However, the Minister refused to delete these provisions vesting in the Council this and the other powers which courts wield in judicial inquiries.

The British Press Council, not being a statutory body, has no such statutory powers; nor does it feel the need for them. Our Press Commission thought that without these powers the Council to be created would be largely ineffective. It therefore recommended that it should be given specific "legal authority" to make inquiries and be empowered to ensure the appearance before it of persons against whom complainants might be made. Want of such power it believed had "undoubtedly handicapped (the British Press Council) in the exercise of its authority over the press" and, in support of this opinion which it must be stated is not shared at all by that Council, cited the instance of the complaint against the editor of the "Daily Sketch," Mr. Gunn, who on the advice of his solicitors did not

respond to the Council's invitation to answer queries regarding the unauthorized change he made in the criticism of a film in the columns of his paper. But there is nothing to show that the Council felt debarred on account of Mr. Gunn's refusal to be present at the inquiry to issue a public reprimand. The Council passed the following resolution on this affair at its meeting on 4th May 1954 :

This Council deploras the action of Mr. Herbert Gunn, as Editor of the Daily Sketch, in printing under the name of Mr. Tom Hopkinson an article of film criticism, the text of which, altered without Mr. Hopkinson's knowledge, misrepresents his opinion of a film. The Council notes the statement by Mr. Gunn that he gave orders that Mr. Hopkinson's name should be taken off the notice, and that owing to a misunderstanding this was not done. But the Council deploras the fact that Mr. Gunn offered only a private apology and did not print a public apology.

The Council gives its complete support to the principle that a critic has the right to insist that where his name is to be published with an article no alterations, apart from those of normal sub-editing or those which are necessary to protect a newspaper against legal action under common law, should be made without the sanction of the critic or his agent. Furthermore, the Council does not support the view that if a critic's name is removed from his work, the editor is free to make use of that work in any way he pleases.

The Council cannot agree that it was proper for the Editor to have allowed his association with a film to affect his newspaper's judgment upon it.

In spite of what has been submitted by Mr. Gunn and on his behalf, the Council believes his actions in this case to have fallen below the best journalistic standards and to deserve professional censure.

The Council performed its function of passing judgment on Mr. Gunn's conduct and it was felt everywhere that the adverse judgment was wholly fair. This incident happened in the first year of the Council's existence, and the experience of the subsequent two years has not shown that want of legal power to require attendance has prevented the Council from discharging its duties in an adequate manner.

Our Press Commission also made much of the point that unless statutory protection was given to the Council against libel for the censure it might pass on pressmen, a threat of such action "would effectively prevent the Council from speaking its mind freely." That this fear is wholly groundless is shown by what the British Press Council says in its second annual report, viz. :

A suggestion is made occasionally that the Council is hampered by excessive fear of the libel law. This is not true. Members of the Council in their professional capacities have to deal with the danger of libel under far more exacting conditions than those under which

the Press Council has to work. They are accustomed to making vital decisions on news and policy when only a few minutes remain before edition time. The Press Council has time for adequate reflection. There has been no occasion on which it has toned down its judgments for publication because of any fear of the law. It has neither shirked the duty of investigation and rebuke when these were thought to be called for nor gone censoriously beyond the duties committed to it by representative organizations of the newspaper industry and profession.

The Press Commission had not before it this considered opinion of the United Kingdom's Press Council to guide it, but it was available to the Government of India, who slavishly followed the Commission's recommendations in drafting the Bill.

Why thrust on a Press Council, whose aim is to bring the moral influence of the press as a whole on those of its units which are apt to go astray statutory powers which no Press Council, aware of its responsibilities, would at all care to exercise? Support is often sought for conferment of statutory powers on the Press Council on the analogy of the Law Society and the Medical Association. The British Press Council had occasion in 1955 to show that in fact there is no analogy. It says :

Lord Selborne suggests that the Council should be armed with disciplinary powers analogous to those possessed by the Law Society and the British Medical Association. The trouble is, however, that conditions are in no respect analogous.

There is all the difference in the world between the open, universal profession of journalism and the closed, conformist professions of medicine and the law.

For a Press Council intended to award no punishment but only to pass professional judgment upon the conduct of newspapers, no statutory powers are required; its appeal always is and should be to the conscience of the press and it need not therefore resort to any legal powers. Although it is said in the statement of objects and reasons annexed to the Bill that "no disciplinary powers are given to the Council," and that "it can only express its disapprobation," the Minister concerned has made no secret of the fact that he feels that drastic disciplinary powers would have to be conferred on the Council in future in order to make it really effective. There were some members who expressed doubt whether mere moral pressure or censure would achieve the object which the Bill had in view and pleaded for the Council being armed with the power, for instance, of suspending the publication of newspapers falling below the standard which the Press Council would set. In answer to these criticisms the Minister said that this was but an experiment, and that he was not quite sure about the success of the experiment himself, and perhaps subsequently the Council would have to be made stronger by giving it powers of punishment. And he added that the experience

of the Press Council of Britain was not very happy. In this estimate of the work of the British Council the Minister is wholly misinformed. In its third annual report that Council addressed itself to this very aspect of the matter. A question is often put to it:

No doubt you have issued some reprimands, but what is the use of a mere reprimand? Why cannot you impose a stinging punishment, say, a fine or expulsion of a dishonourable man or woman from the profession?

The Council's answer is:

Our reprimands are neither made nor taken lightly. Any journalist must hate being held up to public condemnation on grounds that are clearly stated. This may well affect his professional future. It will not make life easier for his proprietors.

The Council is a voluntary organization, a sort of court of honour, consisting entirely of men engaged in journalism. It does not believe it necessary to impose sanctions. The law provides already for the punishment of serious misdeeds by the Press, such as the publication of offensive physiological details, contempt of court, or seditious libel. If we are to set up a statutory body with power to impose sanctions we shall have to bring in the Government. This evolution might develop into a censorship with a threat to the freedom of the Press. We do not believe in Government censorship. The fact that some editors we have censured have protested so bitterly in their papers, though without printing the full circumstances, show how the Press Council reprimands hurt.

The only disciplinary authority the Council exercises is that of creating a deterrent influence against undesirable practices such as a breach of accepted newspaper ethics, and it has found that the reprimand it gives is quite adequate for the purpose.

Moreover, it must be remembered that a Press Council with teeth put into it will not be more but much less effective. The Royal Commission on the British Press said on this point:

If the Press is not aware of its responsibility to the public it cannot perform its functions adequately; but if it is not free it cannot perform them at all... Responsibility cannot be enforced by prohibiting the publication of one type of material or enjoining the publication of another, because regulation of this kind in the long run dams the free flow of information and discussion and undermines the independence without which the Press cannot give the service required of it. Whereas it is a question of opinion whether state control should be extended in other directions, nearly everyone would agree that state control ought not to be extended to the Press. In our view, therefore, it is preferable to seek the means of maintaining the proper relationship between the Press and society not

in Government action but in the Press itself. The sense of vocation (of the Press) leads us to believe that they will not be sought in vain.

The Council itself since it came into existence has been working on these lines. It never entertained the idea of imposing heavy punishments on offending newspapers or journalists like closing down newspapers or dismissing journalists from the profession, such as the Minister who piloted the Bill in Parliament has in mind as a remedy that may have to be possibly applied. The British Council only uses powers of publicity, reprimand and influence. As the first Chairman of the Council said:

It (the Council) has no powers of sanction, but its less spectacular methods will probably be the most effective, and our appeal to conscience and fair play has rarely been in vain.

And the Council undertook to exercise its moral authority on erring journalists not only because it desired to improve the quality of newspapers but also because such newspapers, by bringing the press into disrepute, threaten, as the report says, "the priceless liberty of the Press." For the Council places liberty of the Press in the forefront. It said:

In presenting this first annual report the Council wishes to emphasize that it considers its primary duty to be that of preserving in full the existing liberty of the Press. A free and trusted Press is the only ultimate safeguard of our democracy. The rights of the individual to express himself are precisely those of his newspaper. If those of the newspaper are whittled away those of the individual as surely diminish.

Our Bill too proclaims that it will be the object of the Press Council to preserve the liberty of the Press, but it is merely in imitation of the British Council. Neither in the discussion of the subject by the Press Commission nor in the provisions of the Bill is observable a fraction of the insistence laid on the topic by the British Commission or the British Press Council. Anyhow a body which is so tightly connected with the Government as to be entirely financed by public revenues and forced to function within the bounds of rules laid down by the Government can never be a safeguard against governmental interference with the freedom of the Press. The statutory powers conferred on the Council in the matter of investigating charges in itself impairs its capacity to act as the bastion of a free press. When it was suggested in the House of Commons on 13th July 1955 that the Prime Minister should take steps to establish a Press Council with statutory powers to deal with complaints about the conduct of the press in an appropriate manner Sir Anthony Eden replied that he found it hard to see how statutory powers could be effectively arranged which would not have some effect on the freedom of the Press, on which he thought Great Britain would be very chary of acting. The kind of organization which can give security to the press against interference by Government is a voluntary Press Council like that of the United Kingdom—set up by the press

itself, composed in accordance with its wishes (the inclusion of lay members depending solely upon it), working under its own rules, and meeting its expenditure by subscriptions paid by constituent organizations without reference to Government in any of these matters. It will have no statutory powers but its moral authority will be all the greater for that reason. We wish the Government would drop the present Bill and leave it to the press to establish its own organization for improving the general standard of newspapers—and, above all, of being vigilant against executive or legislative infringement of the FREEDOM OF THE PRESS.

Integration in Schools and on Buses

De-segregation in Clinton High School

FEDERAL AUTHORITIES TAKE A HAND IN ENFORCING INTEGRATION

In Clinton, a small town in eastern Tennessee with a population of 4,000 including 200 Negroes, a federal district judge in January 1956 ordered integration of the high school there after five years of litigation. The school board, although opposed to admission of Negroes, acquiesced in the court order, and Clinton's high school became the first state-supported high school in the state to open its doors to the Negroes. When the school opened in August last, 700 white and twelve Negro children were admitted. All went on smoothly at first, but later a group of extreme segregationists and members of White Citizens' Councils came into Clinton from outside to stir up racial antagonism. White mobs stoned the Negroes and threatened to attack local officials who supported school integration. The school had then to be temporarily closed. The Governor stationed National Guardsmen at Clinton to keep order and enforce the law. The federal judge who had ordered integration issued a sweeping injunction forbidding interference with the integration order. Then Clinton became calm, but again trouble arose. White youngsters and their parents hurled stones and eggs at Negro children. Then on 5th December, under orders of the district attorney, sixteen persons were arrested on criminal contempt charges for violating the court's injunction on the ground that they had "intimidated" school officials and had participated in communal disorder designed to prevent orderly school integration. The school which had to be shut down re-opened and Negro children went back to school. Use of its contempt of court power by the Federal Government had a chastening effect on the white rabble-rousers, which promised calm. These developments have shown that the Federal Government will use its powers to enforce integration where integration has been specifically ordered by federal district courts and the Justice Department is asked by local authorities to intervene. What remains to be seen is how the Government will proceed when federal courts order integration but where local officials refuse to carry out the order.

Desegregation of Schools in Dallas

DISTRICT JUDGE'S REMARKS PROVOKE CRITICISM

In Dallas in Texas state, more than a year ago, nineteen Negro youngsters filed suit for admission to public schools. Federal Judge Atwell ruled that Dallas need not integrate. The Circuit Court of Appeals sent

the case back to him with an order to hear it on merits. Judge Atwell heard it and on 19th December ruled that integration of whites and Negroes in the Dallas schools could not be ordered "at the present time." He said that Dallas school authorities had made an honest effort to integrate but had not succeeded under present conditions. Very likely an appeal will be preferred against the ruling to a higher court. In one other Texas case a Federal Court of Appeals has sent the case back to the district judge, directing him to issue a mandate ordering immediate integration, and if such a direction issues from the higher court, Judge Atwell will be unable to ignore it and the public schools of Dallas will be integrated.

The barring of mixed schools in Dallas for the present has caused severe dissatisfaction, but it should be remembered that the Supreme Court itself, when it outlawed segregation in public schools, recognized that time was needed to change community patterns and that as long as honest effort was made towards eventual integration, strong pressures were uncalled for; it rejected pleas for an order for immediate integration everywhere and ruled that school authorities must make a start in good faith towards bringing about integration "with all deliberate speed," thus approving a formula of gradual compliance. Judge Atwell's decision that integration should not be ordered "at the present time" therefore did not contravene the Supreme Court's ruling, as one may honestly believe that time was not yet ripe for it.

But the Judge made some gratuitous remarks in deciding the case, which have stirred much comment. He said, the Supreme Court's school desegregation decision had been based "on no law" but on what it regarded as "more authoritative, modern psychological knowledge." The question is raised whether anything could be done to chastise Judge Atwell for what may be regarded as contemptuous remarks. The general belief is that nothing can be done. Federal Judges are appointed for life and may be removed only by impeachment. [In India Judges of the Supreme Court and High Courts may be removed "on the ground of proved misbehaviour or incapacity" after an address by each House of Parliament supported by a majority of the total membership, which must not be less than two-thirds of the members present and voting.] Competent observers believe that Judge Atwell is not in danger of impeachment; it is thought that the opinion he expressed about the Supreme Court's decision, though uncalled for, could not be held to be one for which he deserved punishment.

Mixed Seating on Montgomery Buses

NEGRO LEADER COUNSELS NON-VIOLENCE TO MEET WHITE VIOLENCE

When the Supreme Court's ruling of 13th November in the Montgomery bus case (vide p. iv : 202), which struck down the state law and municipal ordinance requiring separation of the races in public transportation, was officially communicated, the bus company ordered its drivers to cease enforcing segregation. The Negroes on their part ended the boycott which began on 5th December 1955 and had continued for over a year, 90 % effective. For the first time on 26th December 1956 all the Negroes entered buses through the front door, sat in the first empty seats they saw and did not get up to give a white passenger a seat. This mixed seating on a first-come first-served basis passed off almost without an incident.

However, because it was feared that white supremacists would incite racial fights to prove that Jim Crowism must still be maintained, the Rev. Dr. Martin Luther King, a Negro minister who was the principal leader of the boycott movement, counselled the 50,000 Negroes of Montgomery at a meeting held to celebrate their victory to "evince calm dignity and wise restraint." "If cursed, do not curse back," he said. "If pushed, do not push back. If struck, do not strike back. Evidence love and good will at all times."

A small incident did happen. A Negro man boarded a bus and took a seat in the front, which used to be reserved for whites. A white woman immediately stood, charged that he had "muttered" at her, and began belabouring him with a book. The Negro took the attack in silence. Six other Negroes sitting in the bus said nothing and did not move to his defence, adhering to their leader's resolve never to meet violence with violence. Finally, they all rose and quietly left the bus. Negro leaders did not report the incident to the police. They are deliberately "playing down" all such provocations, determined not to give the white trouble-makers any chance to exploit the transition process.

On the lowering of colour barriers on the Montgomery buses, an attempt to secure desegregated seating on buses was made in Birmingham, an industrial city of 330,000 in the same state, Alabama, by the Rev. F. L. Shuttleworth. The Christian Movement of Human Rights, of which Mr. Shuttleworth is chairman, demanded of the city commissioners that they order bus integration, contending that the invalidation of the racial segregation on Montgomery's carriers had also knocked out Birmingham city's ordinance requiring segregated seating on public buses. Mr. Shuttleworth addressed public meetings, in which he said that if the ordinance was not promptly repealed he would ask Negroes to break it. The Police Commissioner warned that the segregation ordinance would be enforced. The whites, however, were frightened by the defiance movement. There was a blast of a large dynamite bomb which virtually destroyed the home of Mr. Shuttleworth in a Negro neighbourhood and damaged the adjoining Bethel Baptist Church, of which he is pastor. On the first day of the mass defiance of the ordinance, while many Negroes took seats in the front part of buses reserved under the City Code for whites, 21 of those who did so were arrested for violating the bus law. The movement continued, but it appeared at the time that Negro opponents of the segregation ordinance would go into the federal court and ask for an injunction restraining the city from enforcing it. In view of this Mr. Shuttleworth thought it best to call off the movement, pending a court test. "Since the issue is properly one for the courts, we now believe," he said, "that all purposes can be settled in the courts. It is not necessary for our citizens to ride unsegregated buses further at this time."

Boycott of Buses in Florida

A 'boycott of the public buses on the lines of the Montgomery buses boycott has been going on in Tallahassee, capital of Florida, for seven months. The boycott began after two university students, Negroes, were arrested for taking front seats in a bus. Charges against the students were dropped, but a boycott was called to protest against segregated seating. The leader

of the Negroes' drive to integrate the buses in Tallahassee was the Rev. C. K. Steele, president of the Inter Civic Council, who, like Dr. King in Montgomery, insisted that the integration movement must be carried on peacefully, warning the Negroes not to engage in violence, to "turn the other cheek" if disputes arose and to ignore oral abuse.

After the Supreme Court's ruling barring segregation on buses in Montgomery was announced, the movement took a different turn. Negroes rode city buses where they pleased, defying the segregation law. They encountered almost no opposition, but the City Commission directed the bus company to enforce segregation, on the ground that the Supreme Court's ruling had not yet been made applicable to Florida state. The bus company refused to give effect to the commission's directive, announcing that it would seek a court decision on the validity of the segregation requirements of its franchise and of the state law in the light of the Supreme Court's ruling. The commission, however, suspended the franchise of the bus company. The latter took the position that the franchise was revokable only on thirty days' notice, and that the summary suspension of the franchise by the commission was illegal. A federal district court was moved for injunction, and the judge granted a temporary injunction, thinking that the company required some protection and saying that the rulings of the Supreme Court made "every segregation act or law of any state as dead as a doornail." The city meanwhile filed suit asking that the bus company be forced to operate the buses on a segregated basis within thirty days or forfeit its franchise.

While this dispute was going on between the commission and the bus company, the mass defiance movement continued, and on 27th December the Inter Civic Council arranged a demonstration of desegregated bus riding. When Mr. Steele and sixteen members of the council arrived to board buses, a group of about forty white youngsters came on the spot, accompanied by 200 white persons, and began jeering and voicing threats of violence. When this happened, Mr. Steele and his companions, wedded to non-violence, thought it best to call off the demonstration. Mr. Steele said: "We are not seeking trouble. Those young people looked as though they might mean trouble. I felt we had nothing to gain by precipitating any disturbance." He expected that the matter would be settled peacefully in other ways.

COMMENTS

The late Mr. K. G. Sivaswamy

We deeply mourn the loss which the civil liberties movement has suffered by the sudden death in New Delhi on 9th January of Mr. K. G. Sivaswamy, organizing secretary of the All-India Civil Liberties Council. His primary interest in life was the improvement of the status of tenants and he did much, by issuing well-documented publications and by active organizational work on socialistic lines among tenants, to bring an awareness of the land tenancy problem to the public mind and to improve the lot of the tenantry in the part of Madras Presidency where he lived. His devotion to the interests of the poorer classes in general led the Government of India to appoint him a member of the Plantation Com-

mission and the United Nations to include him in the committee which inquired into the effectiveness of the co-operative movement among the fellahs of Egypt. In both these spheres he is known to have made a valuable contribution.

It was he who by his tireless energy and a great deal of driving power organized the first All-India Civil Liberties Conference in Madras, at which the All-India Civil Liberties Council was formed, intended to be a watch-dog for the preservation of civil liberties in India. That such an eminent jurist as Mr. P. R. Das presided over the first Conference and has since been guiding the activities of the Council as President was mainly due to his efforts. The starting of this magazine, the INDIAN CIVIL LIBERTIES BULLETIN, owed in no small measure to his initiative. His other pre-occupations did not leave him much time thereafter to continue to take as active a part in the movement as he wished to; even so, his services were considerable. The All-India Civil Liberties Council had hoped that he would take over, as he himself expected to be able to do after finishing the Plantation Commission's work, from the present Secretary the latter's job. But this was not to be, much to the detriment of the vigorous conduct of the movement.

Congress Resolution on Hungary

NON-CONDEMNATION OF THE AGGRESSOR

India's ambiguous and equivocal role in the debates on the Hungarian question requires constant explaining away. Mrs. Vijayalakshmi Pandit, Ambassador to the Irish Republic, found herself compelled to take a hand in this process. She said on 1st January in a broadcast in Dublin:

Our attitude towards Egypt and the Suez problem was understood and even shared by other nations, but this understanding was not extended to our stand on Hungary. From Ireland alone I received over a hundred letters which questioned our sincerity and criticised our policy.

Some of you may have thought that we were un-mindful of the human tragedy enacted in Budapest, but this was not so. The Indian Government, wished to make a real contribution to the basic issue which is the withdrawal of Soviet troops and the right of the Hungarian people to freedom.

Merely joining in a chorus of condemnation would not have been of much assistance. India's attempt in international affairs has been to try and build a bridge between areas of conflict and it was necessary for my Government to explore the possibility, even at the risk of being misunderstood for the time being.

The Government of India think that "a real contribution" to the solution of the question will be facilitated if India abstained at the United Nations from condemning the aggressor, while most other nations think that condemnation must precede the thinking out of any constructive plan, if a proper perspective of the problem is to be retained.

Mrs. Pandit's broadcast was followed by the adoption by the Congress of a resolution endorsing the policy of the Congress on the Hungarian crisis as reflected in its executive's resolution in Calcutta. It would be remembered that on this occasion the All-India Congress

Committee rejected an amendment condemning the armed intervention in Hungary in the way in which the main resolution condemned the armed intervention in Egypt. This means that the Congress still stands by non-condemnation of the aggressor against Hungary. The recent resolution says that the developments in the Egyptian and Hungarian crises have proved that "where such an attempt at coercion is made, world opinion opposes it." World opinion, if judged by the censure passed by the United Nations General Assembly, certainly "opposes" the crushing of Hungarian liberty by a mass attack on the part of Russia. But what was India's part in the expression of this world-wide opposition? Abstention. All that the Congress could bring itself to do in the matter of these two crises was to "welcome" the withdrawal of the Anglo-French forces from Egypt and to "trust" that "the foreign forces in Hungary will also be withdrawn." This is how India's neutralist policy works out in practice.

HABEAS CORPUS PETITIONS

Magistrate Defies Court Order

SEQUEL TO RAM MANOHAR LOHIA'S ARREST

It was reported in the July 1956 number of the BULLETIN, at p. iv: 75, that Dr. Ram Manohar Lohia and six persons of Manipur State were arrested for prosecution for breach of the order of the district magistrate of Manipur under sec. 144, Cr. P. C., to address a meeting, but the Judicial Commissioner, holding the order invalid as infringing on the right to freedom of speech and freedom of assemblage, on 24th April 1955 ordered the persons to be set at liberty and quashed the commitment orders passed against them.

But in fact they were not released. Dr. Lohia and Mr. Laisram Achow Singh were brought to the outer gate of the jail and were immediately re-arrested on the district magistrate's order under the Preventive Detention Act. Thereupon Dr. Lohia filed a habeas corpus petition in the Supreme Court for securing his release from detention. When this happened, the State considered it prudent to release the other detenu, Mr. Singh. Mr. Singh, however, after release made an application in the court for taking action against the district magistrate and the superintendent of Imphal jail under the Contempt of Courts Act in re-arresting him in defiance of the court's order. The Judicial Commissioner on 31st August 1955 held the officials guilty of contempt in re-arresting Mr. Singh for detention on grounds substantially the same as those which the court had ruled illegal. The court said:

(The re-arrest) amounted to an attempt to discredit this court in the eyes of the public as it was meant to impress on the public that whatever order might be passed by this Court, (the arrested person) would be kept behind the bars, and so the action clearly sought to undermine the confidence of the public in the proper discharge of this Court's function in deciding the case strictly according to law without fear or favour.

The magistrate was fined Rs. 50 and the jail superintendent let off with a warning.

In order to wipe out the disgrace of conviction, these officials filed an application in the Judicial Commissioner's court under Art. 134 (1) (c) of the Constitution for leave to appeal to the Supreme Court against this decision. The main grounds they urged were that the order under sec. 144,

Cr. P. C., passed against Dr. Lohia, Mr. Singh and others was "legal although technically defective," and that, even though it be deemed to be invalid, the district magistrate had power under the Preventive Detention Act to re-arrest Mr. Singh "whenever satisfied that he (Mr. Singh) was acting in a manner prejudicial to the maintenance of public order," and that the court "could not legally examine the sufficiency or otherwise of the grounds of detention." In regard to the last argument, the Judicial Commissioner said:

This Court did not look into the grounds whether they were sufficient or not, but they had been looked into for the purpose of ascertaining whether the order passed under the Preventive Detention Act was a bona fide order or a mala fide one.

It was held that the order was not bona fide.

A detention order passed without appreciation of the fact that the order in such cases of detention has grave consequences on the judicial trial and must bear scrutiny of the courts on the footing that such an order was called for notwithstanding such appreciation may well be held to be lacking in bona fides.

It has been found as a fact that the re-arrest (of Mr. Singh) under the Preventive Detention Act, on grounds which had been held to be illegal that very day tended to shake the faith of the public in the Court's ability to decide cases without fear or favour.

The test of the offence lay not in the object in the mind of the contemner but in the tendency which his manifest and outward acts inherently possess to interfere with the uninterrupted flow of justice in an impartial manner.

In regard to the contention that even though the order under sec. 144 was defective on formal grounds it should have been deemed to be binding because it was intended to preserve peace and public order, the Court remarked that it was held as a fact that Mr. Singh was exercising his fundamental rights and there appeared to be no chance of disturbance of public tranquillity on account of any act of Mr. Singh, and so the order issued against him could not be deemed to be binding on him in any manner.

In the result the Court rejected the petition, saying:

Under Art. 134 (1) (c) the granting of leave to appeal is discretionary and appeal does not lie as a matter of right under sub-cl. (a) and (b) of cl. (1) of that Article.

As there has been no departure from the principles of natural justice and as no question of law is likely nor has it been raised in this Court at this stage and as there is nothing exceptional or special in this case calling for review of the decision of this Court, I think no grounds have been made out for allowing the present petitioners leave to appeal to the Hon'ble Supreme Court.

Detention After Prosecution

Syed Halimuddin Rahat Maulai, a pleader of Moradabad, was arrested on the charge of having made a speech in support of an agitation against a publication wherein certain derogatory remarks had appeared against the Holy Prophet. The speech was thought to be inciting to violence. He was being duly prosecuted for this alleged offence, but after 27th November, when the sessions judge ordered him to be released on bail, the authorities changed their way of proceeding against him. As soon as he came out of the jail gate on 28th November, he was served with an order of detention under the Preventive Detention Act.

This order was challenged in the Allahabad High Court on the ground that the district magistrate of Moradabad had in effect usurped the functions of a court in detaining the petitioner when he was undergoing a prosecution and nullified the effect of the judicial order made by the sessions judge releasing him on bail. Mr. Justice Mukerji and Mr. Justice Choudhry, who heard the habeas corpus petition, rejected this contention. They said the order of detention clearly made reference to the maintenance of public order and the maintenance of the security of the State. The view of the district magistrate was that the activities of the petitioner threatened public order and went to the extent of threatening the security of the State. Their Lordships said further it was perfectly settled now that it was not open to a court to go into the question whether or not the grounds on which a detention order had been made were sufficient for making the order. The order that had been made in this case could not be subjected to an objective judicial test. The petition was dismissed (17th December).

BOMBAY TENANCY ACT

Status of a Sub-Tenant

RULING OF THE HIGH COURT

A full bench of the Bombay High Court, giving a ruling on a reference relating to the Tenancy Act of 1948, held on 17th December that even though a landlord might legally terminate the tenancy of a person, the sub-tenants who were lawfully cultivating the land would be protected from eviction by reason of sec. 4 of the Act.

The full bench consisted of the Chief Justice, Mr. Justice Gajendragadkar and Mr. Justice Vyas.

Jayantilal Trikamlal Vyas, of Dholka, a landlord, filed an application for ejecting his tenant, Bai Jivi Somabhai, on the ground that the tenant was in arrears of rent. The tenant had no answer to the landlord's application. Patel Gandabhai and Patel Mathurabhai, who were sub-tenants of the tenant and were cultivating the land under a legal contract of sub-tenancy, were made parties to the application. The contention of the landlord was that if the tenancy of the tenant could be legally terminated, then the sub-tenants had no right to continue to remain on the land.

A division bench, before whom the matter came up for hearing, referred it to the full bench, and the question for consideration was whether the Tenancy Act of 1948 gave any protection to these two sub-tenants.

Their Lordships said that in this case the contract of sub-tenancy between the tenant and the sub-tenants was a legal contract and the sub-tenants were cultivating the land legally. Under the ordinary law, when a tenancy was terminated, the sub-tenants would have no right to remain on the land, and the question here was whether the 1948 Act had made any change in this ordinary law and given protection to the sub-tenants.

Sec. 4 of the Tenancy Act provides that a person lawfully cultivating any land belonging to another would be deemed to be a tenant if such land was not cultivated personally by the owner, and if such person was not a member of the owner's family, a servant of the owner, or a mortgagor in possession.

Thus sec. 4 of the Tenancy Act had made a change in the ordinary law, and the condition to be satisfied before a person could become a tenant under sec. 4, namely, a protected tenant, was that he must lawfully cultivate any land belonging to another person.

Sec. 14 of the Act provided that a tenancy could be terminated if the tenant had sub-let the land, and sec. 27 had made a sub-tenancy invalid in law.

But, Their Lordships said, at the time when the sub-tenancy was created, the sub-tenancy was regulated by the Tenancy Act of 1939, and that Act had not invalidated the sub-tenancy. Therefore, on the facts of this case, it was clear to Their Lordships that the sub-tenants came on the land under a valid sub-tenancy and therefore the two sub-tenants were validly cultivating the land under sec. 4 of the Act of 1948. By reason of this section on the termination of the tenancy of the tenant a statutory tenancy would come into existence so far as these sub-tenants were concerned and that protected the sub-tenants from eviction.

Their Lordships said that the one idea that ran through the Tenancy Act was that the actual tiller of the land should not be evicted provided the title of the tiller was derived from some legal incident and was not the result of an unlawful act. If therefore the title of the sub-tenants in the present case was a legal title and they were actual tillers, then, in Their Lordships' opinion, it would be defeating the object with which the Tenancy Act was passed to come to the conclusion that they were not protected by the provisions of the Act.

Their Lordships sent the matter back to the division bench for decision on merits in the light of the above judgment.

U. P. COURT FEES ACT

Some Clauses make Taxation "Wholly Arbitrary"

ALLAHABAD HIGH COURT HELD THE CLAUSES VOID

The Rt. Reverend L. Raymond, Bishop of the Roman Catholic Diocese of Allahabad, made an application for grant of a probate of the will executed by one Ernest Raymond Yakchee in respect of property which was valued at Rs. 5,09,179. The office assessed the court fee payable on the application at an amount of Rs. 31,533. This assessment having been contested by the applicant, the matter was referred to a taxing judge, at whose request the question came for decision to a bench of the Allahabad High Court. Mr. Justice Desai and Mr. Justice Beg delivered the judgment on 5th December.

The State Government suggested that of the eight clauses of article 11 of the first schedule of the Court Fees Act, by which the amount of court fee to be paid is determined, the first three clauses constituted one group and the next five another group, and that while the first three clauses were mutually exclusive in their operation, the others were cumulative in their operation. Mr. Justice Beg observed that in his opinion this interpretation of the clauses of the second group would be in consonance with the intention of the legislature, as shown by sec. 19-1 (i) of the Act, which laid down that the court fee should be paid on the entire valuation of the property as made under that section.

On this interpretation, Mr. Justice Beg pointed out, the first lakh would not be taxable at all, where the value of the property exceeded five lakhs. It could not fall under cl. 3 of the first group because the group, according to the State Government, was exclusive. That clause would apply only if the valuation of the property did not exceed one lakh. The second lakh would be taxable under cl. 4, the third under cl. 5, the fourth under cl. 6, the fifth under cl. 7, and the amount exceeding five lakhs under cl. 8. The

result of this interpretation of the article would be that, since cl. 4 could not apply to the first lakh because under it only the portion which was in excess of one lakh was taxable, whereas a man who claimed a probate of a will in respect of property worth one lakh would have to pay under cl. 3 a court fee of Rs. 3,750, a man who wanted a probate in respect of a will covering a property of one lakh and one hundred would have to pay under cl. 4 a court fee of Rs. 5. This would create an obvious discrimination between the two cases.

This discrimination, His Lordship observed, was neither based on reason, nor had it any logical connection with the object of the Act. The object of the Act, as pointed out by sec. 19-1 (i), was to lay down a method of progressive taxation according as the value of the property was enhanced. It could not be the object of the Act to exempt any property up to one lakh when its value exceeded one lakh.

In His Lordship's opinion, cl. 4 was hit by Art. 14 of the Constitution and ceased to be a valid piece of legislation after the coming into force of the Constitution. It was not possible to separate cl. 4 from the remaining clauses of the second group. If it was removed, the foundation of the scheme itself would disappear. Therefore, all the clauses of the second group fall to the ground as an invalid piece of legislation, having been drawn within the destructive range of Art. 14 of the Constitution. Again, if all the clauses of the second group (i.e., cls. 4 to 8) were swept away as invalid, the result of maintaining the first three clauses would be that, whereas properties below one lakh would be chargeable with court fee, properties above one lakh would not be chargeable. This action too would create an arbitrary discrimination. The entire article 11 of schedule 1 was thus inconsistent with Art. 14 of the Constitution and therefore it was not possible, in the existing state of law, to levy any court fees on the present application for probate.

Mr. Justice Desai, in a separate judgment, agreed with Mr. Justice Beg that cls. 4 to 8 of article 11 of schedule 1 became void. Cls. 1 to 3 also might become void on a parity of reasoning, but it was unnecessary for him to deal with them because they did not apply in the present case. He observed that article 11 of schedule 1 infringed Art. 14 of the Constitution inasmuch as it divided applications for probate into different classes for purposes of taxation under the Court Fees Act on no principle at all.

NOTES

South Africa's Mass Treason Trial

Nation-Wide Round-up of Anti-Segregationists

Hundreds of organizations and private homes were raided in 1955 in South Africa in a search of evidence of treason and offences under the Suppression of Communism Act, which nominally provides for the outlawing of communism, but has been called a formidable engine for the stifling of opposition to the Government's apartheid programme. Among the homes raided then was that of the Rev. Trevor Huddleston, an Anglican priest and an enemy of the Government's policy of racial segregation.

As a result of the raids then made, the political security police carried out in December last a nation-wide round-up of persons opposed to Government and arrested

153 persons for a mass treason trial. Among those arrested are Mr. L. B. Warden, a white member of Parliament who represents Negroes in Cape Province; Mrs. Helen Joseph of Johannesburg, Secretary of the South African Women's Federation, who a few months ago led a march of Negro women to Prime Minister Strydom's office in Pretoria to protest against Negro women having to carry "passes;" Prof. Zachariah K. Matthews, head of Fort Hare University for Non-Whites in Cape Province; and ex-Chief Judge Albert J. Luthuli, president of the African National Congress. An official publication said that "approximately 600 people in South Africa have been listed as Communists in the six years since the Suppression of Communism Act came into force." So more arrests might well be expected hereafter.

The arrested persons are charged with high treason, but that being difficult to prove, they are also charged with lesser offences like sedition and contraventions of the Suppression of Communism Act. In South African law the crime of treason is committed by those who, the State says, "with hostile intention disturb, impair or endanger the independence of the State, or attempt or actively prepare to do so." Collusion with foreign Governments apparently need not be involved. The Suppression of Communism Act, passed in 1950, is so general in its language that almost any organizationally-minded non-white could be included. A Communist is defined as one who "aims at the encouragement of feelings of hostility between the European and non-European races" or who "aims at bringing about any political, industrial, social or economic change . . . by the promotion of disturbance or disorder . . . or by the threat of such acts."

They were placed before a magistrate in Johannesburg on 19th December for a preliminary inquiry, which was attended with riots leading to police firing. The public prosecutor, in opening the case, said that the case arose out of the activities of certain associations for the formation of a "national liberation movement." Among the groups making these efforts he named the Congress of Democrats, the African National Congress, the Indian National Congress, the Congress of Workers, the Congress of Trade Unions, and the Coloured People's Organization and their youth affiliates. The Government contends that the Congress of Democrats is a subversive organization; that speeches made at one of its recent meetings advocated communism; that a bulletin published by the Congress spoke of the need for money to buy machine guns, which the prosecutor said was "incitement to revolt." Volunteers for the organization, he added, were asked to take the pledge: "I hereby agree to fight apartheid. I take the oath. I will die fighting." He concluded:

The basis of the high treason charge is incitement and preparation to overthrow the existing State by revolutionary methods involving violence and the

establishment of a so-called "people's democracy" on the basis of the Eastern European Communist satellite states and China.

In connection with the trial when it comes off after specific charges are framed against the accused individually, it should be remembered that in the last session of Parliament an amendment was introduced empowering the Minister for Justice to set up a hand-picked court of two or three judges to try treason cases.

The British Labour Party's executive condemned "the arbitrary arrests of opponents of the Government," saying that they were intended to intimidate and victimize those who were opposed to racialism, and declared that "South Africa has become a police state."

The arrests are interpreted as political purges designed to put away every person who could lead or direct the mounting anti-apartheid agitation in the country. The trial is expected to drag on for a year and a half, so that when the general elections take place in the middle of 1958 there will be no anti-apartheid front to combat, and the racial frenzy of the white extremists will be such as to cow down the few liberals among the whites. If this happens, the Strydom Government, which is already firm in the saddle, will have to face no election worries. The brutal wave of repression has obviously a purpose behind it.

Non-Communist Affidavit

Supreme Court's Ruling

The U. S. Labour-Management Relations Act of 1947 (popularly called the Taft-Hartley Act) requires in sec. 9(h) each officer of labour unions to file an affidavit stating that he is not a member of the Communist Party nor affiliated therewith and that he does not believe in, is not a member of nor supports any organization believing in or advocating the overthrow of the government by violence. The Supreme Court has in several cases upheld the validity of this section.

The Taft-Hartley law provides that the National Labour Relations Board shall not extend any of the benefits of the law to a union unless each officer of the union makes the non-Communist affidavit. The change it made in the then existing position is this. While the Wagner Act of 1935 made collective bargaining by the employer compulsory and made the employer recognize a union chosen by employees as the only legitimate representative of those employees to negotiate with him, the Taft-Hartley Act bars a union with Communist officers from negotiating with the employer as an exclusive bargaining agent.

The National Labour Relations Board under this law refuses to hold representative elections when an officer of a union seeking recognition as the sole bargaining agent is under indictment for filing a false non-Communist affidavit. If such an officer is proceeded against for forgery and found guilty, the board treats the union itself as having become disqualified for the benefits of the law. Thus a union is

punished for an offence committed by any of its officers. In two recent cases the Board took such a decision.

The Supreme Court on 10th December unanimously reversed the decision. It ruled that a non-Communist oath taken falsely by a union officer does not expose the union to penalty even if the union members are aware of the crime. It said that the criminal code provides a penalty for the individual who takes the oath falsely and that is the only remedy available. The Court thus ruled that a union continued to qualify for the services of the Board even though one of its members was found to have sworn falsely in taking the oath.

Mr. Justice Douglas, speaking for the Court, said it had been argued that if the Board could look into the truth of all affidavits and enter orders of disqualification in case they were found to be false, union members would have greater incentive to rid themselves of Communist leaders.

Denial of a Passport

ON THE BASIS OF UNDISCLOSED CONFIDENTIAL INFORMATION

Upheld by a Federal District Court

On 20th December federal district judge Mr. McGarraghy ruled that the State Department has the right to refuse to grant a passport on the basis of confidential information which it does not disclose. This ruling was given in the case of Mr. W. B. Dayton, a cosmic ray physicist, who wants to come to Bombay on a three-year appointment at the Tata Institute of Fundamental Research. Once before the Judge had upheld the State Department's denial of a passport, but the scientist then carried the case to the Court of Appeals, which in September 1955 directed the Secretary of State, in case he still refused to grant a passport, to inform the district court whether his findings were based on evidence openly produced or (in material part) on secret information not disclosed to the applicant. In the light of this ruling the Secretary of State supplied some data. He said that Mr. Dayton once headed a Communist front organization and that he associated with persons suspected of being part of the Rosenberg spy-ring, who were passing atomic secrets to Russian spies. The Secretary said further that disclosure of confidential information in the files of the State Department "might prejudice the conduct of United States foreign relations."

Mr. Dayton's attorneys argued that he was entitled to confront any unfriendly witnesses heard by the State Department in connection with his application and that denial of the privilege of confrontation deprived him of due process of law. Rejecting this argument, Judge McGarraghy said:

This contention asserts for the plaintiff in an administrative proceeding a right of confrontation conferred only on defendants in criminal actions and is not supported by authority where the question has been raised in administrative proceedings.

Noting that the Secretary of State had asserted that disclosure of confidential information in the Dayton case "would have an adverse effect upon our ability to obtain and utilize information from sources abroad and interfere with our established relationships in the security and intelligence area," the Judge ruled that the denial of a passport under these circumstances "did not violate either procedural or substantive due process." He said:

To hold otherwise would be to say that any citizen of the United States, desiring a passport for the purpose of going abroad to engage in activities which will advance the Communist movement, could force issuance of a passport unless the Secretary of State made disclosures detrimental to our national interests, affecting our internal security and prejudicing the conduct of the United States foreign relations.

O'Connor's Conviction Voided

REFUSAL TO ANSWER DOES NOT CONSTITUTE CONTEMPT

Mr. Harvey O'Connor, author of "Mellon's Millions," "The Gugenheims," and "The Astors," copies of which books later were distributed in U. S. information centres, was indicted for contempt of Congress in 1953 and sentenced by a federal district judge on 18th November 1955 to a year in prison for refusing to answer the question put to him by Mr. McCarthy as head of the Permanent Sub-Committee on Investigations. The question was whether Mr. O'Connor had been "a member of the Communist conspiracy" when he wrote the books. Mr. O'Connor appealed against the conviction and the Court of Appeals on 20th December unanimously quashed the conviction.

The indictment was thrown out for vagueness of the charge, just as in the case of Mr. Owen Lattimore, a former State Department consultant on Far Eastern Affairs, who was indicted for perjury in denying that he was a sympathizer with Communism or Communist interests. The Court ruled that the question put to Mr. O'Connor was so "imprecise and ambiguous" that it was not a crime for Mr. O'Connor to refuse to answer it. According to the Court, the charge was vague within the meaning of the Sixth Amendment, which requires that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation. The Appeals Court said:

This [Amendment] required in the present case that the question set forth in the indictment be definite enough to enable the accused to answer it with knowledge of its meaning. One cannot be held guilty of criminal contempt for refusing to answer a question, the intended scope of which is so uncertain that if he attempts to answer it truthfully, according to his understanding of the

meaning, he runs the risk of being indicted for perjury because others understand it differently.

CURRENT TOPICS

The Pontiff's Christmas Message

Condemns the Double Standard in Egyptian and Hungarian Crises

India is widely criticized for applying a double standard of international morality in judging of the crises in the Middle East and mid-Europe: stern in condemning Great Britain and France for taking the law into their hands when the matter was before the Security Council by sending their forces in Egypt, though the only object in taking this unilateral action was to contain the hostilities that then raged between Israel and Egypt and thereby to keep the Suez Canal open, (this action was rendered necessary it was thought because of the inability of the United Nations to do so promptly), and though the forces were withdrawn when a U. N. force specially created for the purpose was ready to take over the task; but hesitant to condemn the horrible international crime committed by Soviet Russia in using her massed military force to crush Hungary, for which no excuse or mitigation can at all be urged.

While this criticism is growing in volume and strength, Pope Pius XII, no less a statesman than a religious leader, spoke bitterly in his Christmas message of the different ways in which the United Nations itself dealt with the danger to peace in the two areas — West Asia and Eastern Europe — according to the power of the intervening countries. The discrimination which the Pontiff detects in the handling of the two crises by the U. N. apparently lies in the failure on the part of the U. N. to send its own force into Hungary, where Russian tanks "noisily crash over borders, sowing death in order to force civilian peoples into a pattern of life they explicitly detest," as it was sent into Egypt. It may be said in this connection that the distinguished Spanish diplomat and scholar, Salvador de Madariaga, suggested such U. N. action soon after the Hungarian revolution was militarily suppressed by the Soviet Union. He wrote in the "New York Times": "Why doesn't the U. N. send an ultimatum to the Soviet Union demanding evacuation of Hungarian territory within a week and an immediate cease-fire? Why doesn't the U. N. send a police force to Hungary? . . . Is the faith of the West in freedom so low that they do not see the hope of liberating Eastern Europe and even Russia from Communism if they make a stand now and prevent the murder of Hungary?"

The Pope hoped that the United Nations could at least have expelled Soviet-dominated Hungary from its

membership of the world organization. [India's one excuse for not supporting U. N. resolutions is that Hungary still retains national sovereignty which earned it membership of the United Nations last year!] The Pontiff said:

No one expects or demands the impossible, not even from the United Nations; but one should have a right to expect that their authority should have had its weight, at least through observers, in the places in which the essential values of man are in extreme danger.

Although the United Nations' condemnation of the grave violations of the rights of men and of entire nations is worthy of recognition, one can nevertheless wish that, in similar cases, the exercise of their rights, as members of this organization, be denied to states which refuse even the admission of observers—thus showing that their concept of state sovereignty threatens the very foundations of the United Nations.

The Pope reiterated his opposition to the utter and absolute pacifism of the Tolstoyan and Gandhian variety which holds use of force and consequently war as unjustifiable and immoral in all circumstances. There can be envisaged a situation, he said, "wherein every effort to avoid war being expended in vain, war — for effective self-defence and with the hope of a favourable outcome against unjust attack—could not be called unlawful." By the same reasoning he supported the collective security system of the United Nations and the organization of a U. N. force "with the right and the power of forestalling all military intervention of one state in another, whatever be the pretext under which it is effected, and also the right and the power of assuming, by means of a sufficient police force, the safeguarding of order in the state which is threatened." The establishment of a U. N. force for securing the cessation of hostilities and preventing their recurrence in Egypt is indeed an event fraught with great hope for the future, for it puts force behind the collective will of the international community under the law.

Ike's Severe Condemnation

of Brutal Aggression against Hungary

On the Human Rights Day, 10th December, President Eisenhower made a statement, the major part of which was devoted to a scathing condemnation of Soviet aggression in Hungary. While "this year the free world has the most compelling reasons for observing the Human Rights Day with renewed awareness and resolution," he remarked, "it has little cause to 'celebrate' that Day." He said:

The recent outbreak of brutality in Hungary has moved free peoples everywhere, to reactions of horror and revulsion. Our hearts are filled with sorrow. Our deepest sympathy goes out to the courageous, liberty-loving people of Hungary.

The terror imposed upon Hungary repudiates and negates almost every article in the Declaration of Human Rights.

It denies that men are born free and equal in dignity and rights, and that all should act in the spirit of brotherhood.

It denies the right to life, liberty, and security of person.

It denies the principle that no one shall be subjected to cruel, inhuman, or degrading treatment.

It denies that no person shall be arbitrarily arrested, detained, or exiled.

It denies that all are equal before the law and entitled to its equal protection.

It denies the right to fair and public hearings by an independent and impartial tribunal.

It denies the right to freedom of thought, conscience, and religion.

It denies the right to freedom of opinion and expression.

It denies the right to freedom of peaceful assembly.

It denies that an individual may not be held in slavery or servitude.

It denies that the will of the people shall be the basis of the authority of government.

That these human rights have been so flagrantly repudiated is cause for world-wide mourning.

But the human spirit knows, as Thomas Jefferson said, that the God who gave us life, gave us liberty at the same time. The courage and sacrifices of the brave Hungarian people have consecrated that spirit anew.

On this Human Rights Day, it is for each one of us to recognize anew that we are brothers in our Father's house, and each is truly his brother's keeper. We cannot shed responsibility, nor do we want to do so. Let us resolve on this day that the world shall never forget what tyranny has done to our fellowman in Hungary.

Each in his own way, let us do all that we can to reaffirm, in word and in deed, our faith in the cause of freedom everywhere in the world.

So doing, these honoured dead "shall not have died in vain."

Free Elections under U. N. Auspices

BETE NOIRE OF INDIA

India found in the resolution adopted by the United Nations General Assembly on 9th November, asking that free elections, "under United Nations auspices," should be held in Hungary as soon as "law and order" had been restored, an excuse to oppose the whole resolution, thus also opposing the U. N.'s request for evacuation of Soviet forces from Hungary "without any further delay." She had previously only abstained from the U. S.-sponsored resolution of 4th November calling upon the Soviet Union to stop its armed attack on the people of Hungary and to withdraw all

its forces without delay from Hungarian territory. Similarly she abstained from resolutions passed later — on 21st November and 4th December calling upon the U. S. S. R. to comply with its former requests and that of 12th December condemning the violation of the U.N. Charter by the Soviet "in depriving Hungary of its liberty and independence and the Hungarian people of the exercise of their fundamental rights." What India really wanted to secure is that "moral condemnation" of the Russian aggression should not be pronounced by the U. N.

But the demand for free elections under U. N. auspices stirred her ire in a special degree. What she feared was that if she did not oppose this demand straightaway, it would recoil on her in her dealings with Pakistan and that she would be compelled to hold a plebiscite in that State under U. N. auspices which she does not like. But could she not have freed herself from these extraneous considerations and considered the U. N. resolution in the light of the conditions prevailing in Hungary? What do "free elections" mean in that country? All the previous elections after the Soviet armies occupied Hungary in 1944 have apparently been technically free, and although every time the Soviet-sponsored Communists were in a hopeless minority, they have been in complete control.

In 1945 the Communists polled only 17% of the votes, and the Smallholders party won 57%. But Soviet Marshal Voroshilov, to-day President of the U. S. S. R., managed to have the defeated Hungarian Communists in the Government and, what is more significant, to be entrusted with "the all-important Ministry of the Interior, which bossed the already Red-infiltrated security police." With its aid the Smallholders party was broken up and high pressure indoctrination of Communism was resorted to. Even so in the 1947 elections the Communists received only 22% of the vote. "The mop-up of the organized opposition went on. The Socialists were forced to merge with the Communists. Other opposition parties were dissolved. The power-bastion of anti-Communist resistance, the Catholic Church (over 65% of the people of Hungary are Roman Catholics), was breached by persecutions; these culminated in the 'treason' trial and imprisonment of Josef Cardinal Mindszenty. By May 1949 a Soviet-style election finally gave the unopposed Communists the kind of majority they expected in a satellite — 95% of the vote." In the May 1953 elections (the fourth since the end of the war) the single-list system produced a 98 2% vote for Muscovite Communists.

Little wonder that the Hungarian rebels made "free elections"—i. e., multi-party instead of single-list elections—their battle-cry in their struggle for freedom and democracy, and they knew that the best means to ensure really free elections was to hold them under the auspices of the United Nations. The demand was voiced everywhere, the Communists themselves joining in it no less than non-Communists; why, even Kadar wants "free elections." In these circumstances it was but natural that this demand should have been included in the calls which the United Nations made on the Hungarians' masters. Who is Nehru to resist it? He says no sovereign country should be compelled to have its elections supervised by another country or by the U. N. But what is the situation in Hungary? In the first place Hungary is no longer a sovereign country but just a part of Soviet imperialism. In the second place the United Nations has no power of compulsion. It may in its resolution "call upon" a member State to do this, that or the other, but its resolutions are not

legally binding upon Governments. They are mere requests addressed to the Governments concerned. The latter can turn them down, even as India's own resolution for the admission of U. N. observers into Hungary was turned down (though India wanted only the truth of the reports about mass deportations of rebels to be investigated by these observers). India might have added the clause "without prejudice to its (Hungary's) sovereignty" to the resolution about free elections as she added to her resolution about U. N. observers. Such legalistic considerations are of no moment in such an affair. The only question is: how were Hungarians to re-establish freedom for the individual and the nation, which was their object, without their elections being really free, and how could the elections be free in the present circumstances unless they were held under U. N. auspices? As a writer has said, free elections would have proved that the Communist vote would have dwindled from 17% in 1945 to probably not more than 1%. India, in opposing free elections, really opposed national self-determination for the Hungarian people.

Break in Afro-Asian Bloc's Vote

ON RESOLUTION CONDEMNING SOVIET AGGRESSION

The solidarity of the Asian-African countries at the United Nations on the Egyptian question was natural. The Arab nations were bound to sympathise with Egypt and the Asian nations which had just emerged from a colonial status into independence were also bound to resent bitterly Anglo-French intervention in Egypt, which they regarded mainly as an act of imperialism. One would have expected this solidarity to continue in protesting against the horrors which the Soviet had perpetrated in Hungary, the worst form of colonialism. But the Arab nations which were fighting against the unilateral action of Britain and France in Egypt with the aid of Soviet Russia could not bring themselves to vote against their patron; all they could do was to abstain from openly siding with the Soviet Union. The Asian nations need not have been deterred by any such consideration from recording their vote against the aggressor. But, mainly by the exertions of India, who somehow persuaded herself that it would be against her policy of non-alignment with the Eastern and Western blocs, these nations also abstained.

The U. N. General Assembly adopted nine resolutions, one after another, in four weeks after the Russian aggression had taken place against Hungary, and the Asian nations had managed every time to maintain their neutralist attitude on this question. But when the Assembly took the plunge in its tenth resolution on 12th December to condemn Soviet intervention, there was a break in the Asian-African bloc. Some of them felt that since the Assembly had failed to secure compliance with even the modest demand for admission of U. N. observers into Hungary for an on-the-spot investigation of the situation, the U. N. should at least put on record the world organisation's condemnation of the aggressor. India, Burma, Ceylon and Indonesia, who had acted as a team to push Afro-Asian bloc of nations along the neutralist road, could not keep together. Burma and Ceylon broke from India and Indonesia by voting in favour of the condemnatory resolution of 12th December sponsored by the United States and nineteen other nations: they felt that their neutralism would become just the opposite of it if it required them in effect to condone Russia's brutal aggression.

Burma had already begun to take an independent line; it was borne in upon her that the policy advocated by India was too weak. She therefore voted for the Cuban

resolution of 21st November, which urged the Soviet and Hungarian authorities "to take immediate steps" to stop the deportation of Hungarians and to permit those who had been deported to return promptly, while India could not make up her mind on the basis of facts published that mass deportations were at all taking place and could only urge U. N. observers to find out whether this was or was not a fact. It was only to be expected therefore that Burma would give up her neutral attitude when it came to condemn the aggressor. (Iraq too broke rank with the other Arab states to vote for this resolution and also for the resolution demanding that the Soviet immediately cease deportations in Hungary.) Ceylon took the same line as Burma and her delegate made a strong speech too, such as was not to be expected from India's delegate. He said:

The Assembly is now called upon to pronounce a moral judgment on a fellow-member on whom the peace of the world to a great extent depends. As Ceylon does not belong to any Power bloc, it can consider the situation with detachment. All the Assembly's resolutions have been treated with contempt. We must now decide how to proceed. It is not denied by the Soviet Union or its friends that carnage has taken place on a scale which must shock world public opinion. It has been conceded that the Hungarians have no opportunity of expressing their will, India suffered a heavy defeat in her diplomacy—a defeat which was fully deserved by her unprincipled opportunism.

Martial Law in Hungary

INTERNATIONAL JURISTS' COMMISSION'S STATEMENT

The puppet Kadar regime declared a state of siege when the Budapest Central Council of Workers decided to go on a 48-hour general strike in protest against mass arrests of the leaders of workers' councils. The International Commission of Jurists has issued the following statement in regard to the trials that are proceeding under the decrees issued at the time:

The summary trials now proceeding in Hungary raise issues which are of the utmost importance to lawyers throughout the world. By a martial law decree of December 8, 1956, supplemented on December 12, the Government of Janos Kadar has listed a wide range of alleged crimes, which can be tried by summary procedures with a mandatory sentence of death.

According to one of the accused now facing such trials, all safeguards in preliminary proceedings have been already eliminated by the power given to the Public Prosecutor to bring any person before the trial court "if the prosecutor's office can submit immediately the necessary evidence to the court."

According to a decree issued on November 10, 1956, it is sufficient for the Prosecutor "to present the indictment verbally during the trial," which can take place without a fixed date for the hearing or the issue of summons.

On behalf of the International Commission of Jurists, with its headquarters at the Hague, Netherlands, three former attorneys-general of the U. K., Sir Hartley Shawcross, Q. C., M. P., Sir Frank Soskice, Q. C., M. P. and Sir Lionel Heald, Q. C., M. P., as well as J. E. S. Simon, Q. C., M. P., have applied for visas to attend the trials. Mr. Grimond, M. P., leading member of the English Bar and Leader of the Liberal Party in the House of Commons, also has expressed

his willingness to go to Hungary for the same purpose.

The International Commission of Jurists requests support of all countries for these efforts to ensure that justice is done to the Hungarian people in conformity with the basic principles of law and procedure recognized by lawyers throughout the world and, indeed, solemnly subscribed to by the Hungarian Government in the Geneva Convention for the protection of civilian prisoners in time of war (Art. of 1949).

Detention Without Trial

REVIVAL OF STALIN'S INTERNMENT SYSTEM

To the decrees referred to above establishing the martial law regime was soon added after the issue of these decrees another re-establishing the dreaded internment system of the Stalin era, under which thousands of people

were jailed without trial. The decree says: "Persons whose activity or behaviour endangers public order, especially production, can be placed under detention." "On suggestion of police authorities, the State Prosecutor can order detention which will be carried out by the police." The Chief Prosecutor must investigate the case of the detained person within 30 days and internment can last a maximum of six months.

This practice of keeping people "detained without trial," inaugurated by Stalin, was abolished by Imre Nagy in 1953, when he became Prime Minister for the first time. Nagy was widely applauded by the Hungarian population when one of his first acts was the abolition of internment. This is another indication of the fact, on which we have been insisting, that in Hungary there is keen demand not only for political independence but also for democratic civil rights.

THE UNITED NATIONS ON TRIAL

The United Nations has had little difficulty in exacting obedience from England and France, which nations but for the aberration on their part in Egypt have been generally loyal to the basic concept of that world organization. But now, in dealing with Soviet Russia's brutal aggression against Hungary, it faces its gravest test since its inception. Russia has consistently ignored the numerous resolutions adopted by the General Assembly on the subject. All else having failed, the Assembly asked, as "a solemn climax" (in the words of the United States delegate) to the previous unheeded resolutions, to vote direct condemnation of the aggressor on 12th December. The vote on this condemnatory resolution was 55 to 8, with 13 abstentions. That so many nations joined in passing this moral judgment on the Soviet Union was satisfactory, but we very much regret that our own country, India, was, on this occasion as on many previous occasions, among those who abstained.

One would have thought that, having taken a leading part in getting the United Nations to condemn the unilateral Anglo-French action in Egypt, India would be only too glad, if only to prove the sincerity of her non-alignment policy, to seize the opportunity which by sheer chance came about the same time of condemning Soviet Russia's aggression in Hungary. But somehow she persuaded herself that her neutralist policy required her, while condemning Britain and France for their imperialist acts in the Middle East, not to condemn the hundred times worse imperialism of the Soviets in Eastern Europe. Iraq voted for the resolution, her delegate saying that "the fact that Iraq shared the Soviet Union's anti-colonial stand on Egypt and Africa does not blind it to the Soviet atrocities in Hungary." Pakistan did likewise. Begum Ikramullah, the Pakistani delegate, said:

My Government does not believe in taking a neutral position on the moral question at issue because we do not think that one can be neutral in relation to certain basic and fundamental issues,

Referring to Pakistan's military alliances, she said:

Unfortunately, in the sort of world we live in, pacts and alliances exist. We consider it an inherent right of a nation to choose whatever alliances and alignments it wants to make, as conceded in the U. N. Charter. But we do not subscribe to the theory that by doing so one mortgages one's judgment or curtails one's freedom of action for all time. In taking the action we took in the matter of Egypt we have proved that pacts do not impair our moral sense, and it is because our moral senses are outraged by happenings in Hungary that we seek to put a stop to them.

What Sir Pierson Dixon, the British delegate, said in speaking on the Hungarian resolution appeared to be for India's special behoof. He pointed out that if the condemnatory resolution was not passed, it would mean a "compartmentalized world" and it would mean that members spoke of so-called colonial oppression in one part of the world and failed to recognize it in its full horrible form in another. He said:

The acts of the Soviet Government in Hungary are acts of real colonialism in pursuit of a purely selfish imperial policy which never in fact was pursued by the Western Powers.

I suggest to you that to accept these doctrines would be disastrous to world peace and to the United Nations.

The United Nations could only play a great role as a preserver of peace and dispenser of justice if it acted on universal principles and the chief of these must be fairness and not one standard for the Soviet Union, another for Europe and yet another for Asia.

India, however, decided that the double standard was just the one that should be applied in the Egyptian and Hungarian crises by a country which stands aloof from all power blocs.

While the refusal of the Soviet-imposed Hungarian Government to accede to the Assembly's modest demand to admit U. N. observers into Hungary moved other nations to go from requests to condemnation, it led India to move backwards. She would now give the go-bye to all former Assembly resolutions and merely ask the United Nations to start negotiations with Russia for the purpose of withdrawal of Soviet forces from Hungary. It was no use, the Indian delegate declared, to keep on reiterating the resolutions previously passed; the context in which the earlier resolutions had been adopted had changed. India was no longer interested in sending U. N. observers to Hungary. "The issue before us to-day is not the question of eliciting a large number of facts and passing judgments on them," Mr. Krishna Menon said, though he still stood by the position that India was not prepared "to subscribe to stories either of deportation or of atrocities unless they are proved." But establishment of facts might lead to a call for condemnation, which India would do everything possible to avoid. Why did India balk at condemnation if it was deserved? Mr. Menon explained. "We believe that resolutions involving condemnation, which in their logical consequences would be followed up by a declaration of who is aggressor and who is not and would thereby stultify the United Nations, are not elements that would assist in a solution." "Negotiations and condemnation could not go hand in hand. The Assembly should condemn only when all hope of negotiations had failed, and even then it should be cautious about the use of condemnation." Without therefore forming any opinion about the rights and wrongs of the matter, India argued that the U. N. should initiate efforts with the Soviet Government to induce the latter to withdraw her forces from Hungary and bring about a general settlement. And these negotiations should be undertaken irrespective of whether the intervention of the Soviet armies was justified or not, for to proceed on the footing that their presence was unjustified would lead to "a further alienation of the Soviet Union," which must be avoided at all costs; the negotiations were to be carried on on the footing that the withdrawal of Soviet forces would conduce to a settlement desired by the United Nations which Soviet Russia should accept in the general interest. But what makes India think that negotiations would necessarily fail if the negotiator first tells the person with whom he is negotiating that a grievous wrong has been committed and must be promptly redressed? And what answer will the Secretary General of the U. N., who is to initiate negotiations, have if the Soviet delegate repeats what he has all along been saying, that the Russian army went into action in Hungary at the request of the properly constituted Hungarian Government, and its withdrawal was a matter entirely between Hungary and Russia, with which none else could have anything to do? If, however, the U. N. Secretary General could say that in the opinion of the United Nations the Soviet intervention in Hungary was an act of aggression, which it believed it

had a right to check, the weight of this world opinion might possibly have some effect on Russia, and at any rate it would give the Secretary General a *locus standi* to open negotiations for the evacuation of Soviet troops. India's tenderness for the Soviet Union is misplaced even for practical reasons, for to approach Russia on any other basis is merely to invite a rebuff, which Russia knows how to administer.

Furthermore, it should be remembered that India not merely refused to join in the indictment of Russia but practically went back on the previous resolutions adopted by the Assembly. She wished to start from scratch as it were and to open negotiations with the Soviet Union through the Secretary General of the U. N. on the withdrawal of Russian forces from Hungary as if no action had been taken by the Assembly before. This means that if its proposal had been accepted, the Hungarian question would have remained where it was on 4th November, when Russia by exercising her veto in the Security Council removed the question in effect from the agenda of the United Nations. The founders of this body had originally left it to the Security Council, and the Security Council alone, to deal with aggression. The plan envisaged by them in this behalf was that the Security Council was to decide by a unanimous vote whether in any case aggression had taken place. If it was of the view that aggression had taken place, it was to ask each member nation to send its armed contingents, which were to be held in readiness for the purpose, to the place where aggression had been committed in order to stop the aggression. If, however, the Security Council could not so decide, maybe because of the exercise of veto by a single power therein, then there was no aggression, and there was no question for the General Assembly to discuss. The Assembly was not concerned with such matters at all, according to the provisions of the United Nations Charter. This position was, however, altered later. By the so-called Uniting-for-Peace procedure the Assembly could be seized of a case vetoed by the Council and could express its own opinion as to whether aggression had taken place or not. It was by taking advantage of this new procedure that the United States brought up the question of Hungary before the General Assembly on the very day Russia had exercised her veto in the Security Council. The expression of opinion by the Assembly in such a case becomes effective if two-thirds of the members present and voting support it. On 4th November, when the Hungarian problem first came before an emergency session of the Assembly, India abstained as she did on 12th December, when the resolution condemning Russia's intervention in Hungary was passed. If a few other nations had similarly abstained, there would have been nothing on the record, and the matter would have rested where it was on 4th November, when Russia's veto rendered any action by the Security Council impossible. Mr. Krishna Menon, in fact, said in one of his speeches,

almost with regret, that the U. N. Assembly was arrogating to itself powers which were meant for the Security Council. But is it not a great advantage that when a single member of the Security Council blocks any question, the Assembly should at any rate be enabled to discuss it? India's abstention really means that the Assembly should be under a disability to discuss any question involving aggression, either by way of condemnation or any other. Thus it will be seen that India's vote really hinders the process of mobilizing world opinion which by the new procedure recently adopted the Assembly is now in a position to set in motion.

The two-day strike of the Budapest Central Workers' Council was almost completely successful in spite of the dissolution of the Council and declaration of martial law. The President of the Council and his deputy were arrested, but this itself led to extension of the strike and the carrying out of a "creeping paralysis" plan. Even if workers turned up in some factories, they stood idle before the doors or if they entered the factories did no work. The Soviet-imposed Kadar Government added to the martial law decrees another under which persons who disturbed the public order and "especially production" could be detained for six months without trial, thus reviving the internment system which was introduced by the hated Rakosi who was in power during the Stalinist period and which was abolished by Imre Nagy when he became Premier in 1953. Coal shortage too brought about a severe reduction in production.

Kadar being proved to be unable to control the situation, the Soviet Government, it was believed, thought at first of replacing him and later of getting some other groups to co-operate with him. There were rumours that a coalition government would be formed and negotiations for the purpose were said to have been commenced with the Smallholders party though many doubted whether these groups would ever be willing to join such a government. Nagy for his part was reported to have expressed the view that there was no alternative for Hungarian Communists but to agree to free elections even if in the process they were snowed under. Hopes were held out to the people that if the proposed coalition showed a disposition to settle down, the Soviet garrison in the country might be reduced. Though the Soviet Union was reducing its forces in Hungary, it was believed that it still had from twelve to fourteen divisions in the country compared with eighteen to twenty at the peak period.

The much advertised statement of a new policy by the Kadar Government was announced on 6th January. It followed talks in Budapest attended by Khrushchev, the Soviet Communist Party leader, and Communist party leaders from Bulgaria, Czechoslovakia and Rumania (but

not from Poland), and because of the tough line taken at these talks, Kadar's new policy was anything but liberal. It said that political co-operation was wanted only from "loyal Communist elements," which meant: that if the Government was broadened, it would be only "with handpicked collaborators," as the "Statesman" says, "such as were totally unable to prevent the forcible Communist dictatorship under democratic cover after World War II." The statement declared that negotiations on the stationing of Soviet troops in Hungary would be held, but what these negotiations would be became clear from the praise which Kadar gave in the statement to the Soviet Union's crushing of the revolution. The Russian alliance was assumed to be permanent. The declaration promised that Hungary's cultural and economic life would be democratised, but on political matters no improvement was contemplated. In any case the statement fell ominously short of the original demand of the rebels and later of the Central Workers' Council for an end to the one-party system and early free elections. "We are back where we started," was a frequent comment in Budapest's streets and cafes after the statement was issued.

The Kadar Government having refused to admit U. N. observers into Hungary and three investigators appointed by the Secretary General of the U. N. having received no official co-operation from the Kadar Government and being thus able to obtain only a "fringe" of the material required for forming conclusions, the Secretary General proposed that an ad hoc committee of the U. N. Assembly with broad powers be established for the purpose of inquiring into the facts of the Hungarian situation, by collecting information from refugees like Miss Anna Kethly, non-Communist member of the deposed Nagy Government who fled from Budapest after the Russian occupation. This fact-finding body is to make a full investigation of suppression of rights in Hungary and the occupation of Budapest by Russian troops after the Soviet Union had promised that its soldiers would be withdrawn. It is believed that a mass of data could be collected which would give strong background to the Assembly's resolution of 12th December condemning the Soviet Government for disregard of the Assembly's directives. Accordingly, the United States and 23 other nations proposed the creation of a five-nation committee to collect evidence of Soviet interference in Hungary's internal affairs and submit a report to the Assembly. The proposal was accepted by the Assembly on 10th January by a vote of 59 to 8, with 10 abstentions. India was again among the abstaining countries, but neither Burma nor Ceylon nor Indonesia.