

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,  
Assistant Secretary, All-India Civil Liberties Council  
Office: Servants of India Society, Poona

Editorial Committee :  
Prof. P. M. LIMAYE,  
S. G. VAZE,  
Member and  
Secretary respectively of  
the All-India Civil  
Liberties Council

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## Continuance of the Detention Act

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

At the 250th anniversary of Benjamin Franklin this observation of his comes to our mind when commenting on the continuance of the Preventive Detention Act for another eighteen months—for the present: the qualification “for the present” is necessary because Mr. Datar, Minister in the Ministry of Home Affairs, frankly told the Rajya Sabha that he was unable to say whether after eighteen months have passed the Detention Act would be allowed to lapse or would be extended. Ever since the commencement of the last World War detention without trial is in force in this country. Such a measure might be excused for the duration of the war, but its continuance after the war is wholly without justification. Regulation 18 B of England, which corresponds to our law, was abrogated immediately after the close of the war and had been suspended some time earlier. But the successors to our then rulers have clamped preventive detention on Free India and have been employing it with vigour all this long time. They have of course done it in the name of national safety, but the sort of safety they have secured is at the expense of liberty; and, in the words of Benjamin Franklin, they deserve neither liberty nor safety.

India of course has her share of subversives, hooligans and trouble-makers, but if in every other country dangers to public order and national security from these sources can be successfully met in peace time by ordinary provisions of the criminal code, why should we alone in the wide world have to resort to detention without trial? In the U. S. A. the weapon of such detention is not available to the Administration, nor can the Congress forge it by special legislation—the Constitution itself forbids it. All other countries have in practice abstained from the use of the weapon. Why should India alone be an exception? This simple question our rulers do not ask themselves. Every time the subject is under discussion, the question is put to the Government by Opposition members, Mr. Kamath, a Socialist member, who in a motion urged the Government to bring in a bill to repeal the Detention Act, pointed out on this occasion that “India was the only country in the democratic world to have the Preventive

Detention Act” and asked why she should be placed in such a singularly shameful position. A well-known jurist and a distinguished scientist, Professor Satyendranath Bose, belonging to no party, described the Act as “an iniquitous law” and asked: “Is it not possible for the Government, armed with all the powers and with the good-will of the majority of the people, to maintain law and order without this Act?” Turning to Government benches, he said:

In the brief period of seven years you have shot down as many people as perhaps in the last fifty years of British rule. The preachings of Lord Buddha and the teachings of Mahatma Gandhi should not merely be “for export and earning foreign exchange.” The Government should practise them at home.

Acharya Kripalani, once President of the Congress and now Leader of the Socialist Party, said:

If I were an enemy of this Government and if I were an enemy of the Congress, I would wholeheartedly welcome this law to be on our statute book. It gives the Opposition an opportunity to denounce the Government not only from the point of view of justice but also from the points of view of legal jurisprudence, humanity, democracy and self-respect. The Act is grist to our mills. But as a friend of the Congress I say that it is for the good of the Government and for the fair name of the Congress that they repeal this Act.

Mr. Bhupesh Gupta, a Communist, observed that while Congress leaders had formerly declared that a Government which had to depend on preventive detention had no right to exist, the present Congress Government evidently thought it could not exist without such a measure.

The Government presumably is not conscious of any betrayal on its part of the basic right of personal freedom. The Home Minister pleaded that the Congress ever stood for individual liberty and freedom of speech and association for every citizen, but just in order to carry out that sacred purpose it had become necessary to prevent anyone who wanted to cause havoc from doing so. There was nothing unusual in preventive detention. Detention resorted to was only preventive and not punitive. And after all how many were under such preventive detention? Less than one in two million! “Is this really such a staggering figure?” he asked. Turning to the argument

that leading Congressmen had denounced detention without trial in the past but were enforcing it themselves at present, Mr. Datar on behalf of the Government remarked that times had changed, in the sense apparently that the critics of the British Government were now in the seats of power and had themselves to administer the country. "It was perfectly appropriate," he said, "for Congress leaders of those days to condemn the Preventive Detention Act. Detentions were then not ordered for the purpose of advancing the interests of the country, but now they were." So it comes to this that if detention serves, in the opinion of the ruling party, the best interests of the people, it becomes a perfectly legitimate weapon for that party to use; only if the use of the weapon is made against the existing ruling party by the former rulers, then it is an illegitimate use. Anyhow, detention without trial is, in the thinking of the present Government, just a matter of politics, having nothing to do with principle. It was also said by Government spokesmen in defence of the Detention Act that the Act was never used against any prominent politician and that the detention was never for long periods. Mr. N. C. Chatterjee showed how both the statements were contrary to facts by citing the detention of Sheikh Abdullah, former Premier of Kashmir State. He said:

You cannot keep a man in jail for three years without trial, however much you may politically differ from him. The charge that he was guilty of sabotaging the basic interest of Kashmir should have been brought against him and an opportunity given to him to defend himself. The late Dr. Shyama Prasad Mookerjee was clapped in jail under the Act and to the eternal shame of this Indian Government he died in detention in Kashmir.

It was really very brave for Mr. Chatterjee to have denounced the Government for detaining Sheikh Abdullah, for the Sheikh's detention is thought to be to the political advantage of parties with which Mr. Chatterjee is connected, but he rose above these narrow considerations and took his stand on principle. He said the Preventive Detention Act was like the Rowlatt Act which Mahatma Gandhi fought during the British days and which Motilal Nehru described as "no wakil, no dalil (no argument) and no appeal." He characterized the Act as a black mark against India and appealed to the Government to remove it from the statute book.

In reply to the Government's contention that the Act was only meant to be used and was in fact used against

goondas, Dr. Kunzru pointed out that only 35 per cent. of the *detenus* were in jail for "goondaism" and said he could not understand why recourse to detention should be had at all in dealing with goondas, for it should be possible for the Government to meet goondaism by the process of ordinary law and preventive detention should not be made a "short-cut" to law and order. The debate took place, as the Home Minister said, "in the trail and the shadow" of strikes at Kharagpur and Kalka, and the incidents appeared to lend justification to the Government for the use of detention in difficult situations. Referring to these incidents, Dr. Kunzru said: There had been dock strikes in the U. K., which threatened to disrupt the economy of that country. But even then the Government of that country had not dealt with the situation with the help of an extraordinary measure like the Preventive Detention Act. The situation in France was more difficult. Nevertheless, the law and order there had been maintained without any such Act. He said the Act had been misused by the Government. The situation might be difficult in some States, but that should put the authorities on their mettle and they should do their best to use the ordinary law to bring the malefactors to book, and not use the Detention Act.

The slackening pace of detention (in the first three months of the current year only 279 persons were placed under detention) should encourage the Government, some members argued, to do away with the Act as no longer necessary, but the Government countered the argument by saying that the very presence of the law on the statute book had by its deterring effect enabled the Government to deal with miscreants without actually having to invoke the law's provisions. Mr. Datar said: "The Government does not rely so much on the positive use of the Act as on its restraining influence." So the Government has best of both worlds: if the detentions increase, then obviously the situation has become so bad as to be uncontrollable except by use of the Act; if, on the contrary, they decline, then again, equally obviously, the Act has served its purpose of restraining the evil-doers and must therefore be kept up. The argument in this way moves in a vicious circle and in either case justifies the Government in holding on to a weapon which all civilized Governments have long given up. For, we must ever remember,

Independence, in the technical sense, is not enough. It must be the handmaiden of human liberty if it is to justify the sacrifices that are made in its name.

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## RIGHT TO FREEDOM OF PERSON AGAIN DEBATED IN HUMAN RIGHTS COMMISSION

At the twelfth session of the Human Rights Commission held in March at the U. N. headquarters in New York the two proposals made by the United States were passed: (1) requesting all governments to submit annual

reports regarding the progress they might have made in their countries in the matter of observing human rights enumerated in the United Nations Charter; and (2) calling for a world-wide study of some specific rights by the

secretariat under the supervision of four members of the Commission.

Finding that interminable debates were going on about the drafting of an International Covenant on Human Rights without any prospect of a satisfactory settlement being ultimately reached either in respect of what the contents of the rights should be or what form the guarantees of those rights should assume, the United States representative at the Commission, on the directive of President Eisenhower, put forward these proposals as a practical contribution towards "wider observance of and respect for human rights and fundamental freedoms throughout the world." Mrs. Lord, speaking for the U. S., urged acceptance of the proposals on the ground that "the Commission could not remain indifferent to the violations of human rights in so many parts of the world, (that) it must utilize all means in its power to further observance of and respect for these rights" On the proposal for submitting reports, she said it was true that the Covenant itself contemplated a system of reports, but, firstly, it was not known when this instrument would be finalized and in what form and, secondly, the Covenant would come into force only in those countries which agreed to it while the system to be inaugurated under her proposal would be in operation in every member-state of the United Nations. In order to remove any possible apprehensions about interference by the U. N., she agreed that the reports would be "objective" and were not intended to censure any country and the Commission would not sit in judgment as a court on the actions of any government,

Even so, Soviet Russia and the countries associated with it offered stiff opposition. The representative of Russia sneered at the proposals, saying that the future of the Covenant would be jeopardized by the U. S. proposals, since under the Covenant governments would be required to submit reports on the progress achieved in the field of human rights, "having regard to the obligations they had contracted," while under the U. S. proposal "States would merely provide data without undertaking to observe human rights and fundamental freedoms." This would weaken the "judicial impact" of the Covenant, and (in the words of the Polish representative) "the Commission's work would be reduced to a much too modest level." It might appear from this that Russia was very keen on putting teeth into the Covenant, but Mrs. Lord was not slow to point out that "the Soviet Union itself, as its representatives had often asserted during previous sessions, would not agree to the inclusion of any system of implementation in the Covenant." The inference is therefore unavoidable that while Russia would not object to any amount of discussion of human rights, it would resist all proposals requiring any action on its part. This became even clearer in the discussion of the United States proposal for the study of a specific right when the U. S. S. R. representative condemned the proposal, even though it was one for merely instituting a study entailing no further

obligation on any State except that of furnishing data, on the ground that even this proposal would "serve as a means of interference in the internal affairs of a State"!

It was proposed by the United States and approved by the U. N. Commission that the first human right to be selected for study should be "the right of everyone to be free from arbitrary arrest, detention and exile." It is well known to our readers (vide p 304 of the BULLETIN) that the draft Article in the Covenant relating to Freedom of Person is extremely unsatisfactory, defining "arbitrary arrest and detention" in very loose terms. The only guarantee of personal freedom it contains is that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." This clause which in effect nullifies personal liberty as a constitutional right was adopted on the motion of India and is only a replica of Art. 21 of our own Constitution. As the latter places freedom of person at the mercy of the Indian legislatures, the former places it at the mercy of the legislatures of the acceding States.

The same question came up in the debate on the U. S. proposal for the study of the right of personal liberty as to what exactly "arbitrary arrest and detention" meant. It was suggested that arbitrary arrest should be defined as an arrest that was "illegal" or "contrary to national legislation." The Australian delegate, Mr Pyman, took strong exception to this definition on the ground that it would cover arrests which might be apparently legal but really arbitrary. He proposed the inclusion of the following definition of "arbitrary" in the U. S. proposal:

The word "arbitrary" would be understood to mean arrest or detention:

- (a) on grounds or in accordance with procedures other than those established by law, or
- (b) under the provision of a law, the basic purpose of which is incompatible with respect for the right of liberty or security of person.

The United Kingdom delegate, Mr. Hoare, was of course all in favour of the definition since, as he said, it "was in line with the proposal which the United Kingdom Government had made for amendment of the Article on that subject in the draft Covenant." The U. S. representative, Mr. Green, said that the definition was acceptable to the United States Government and added "One of the useful results of the proposed study would be to reveal how the term ("arbitrary," used in the Universal Declaration of Human Rights in declaring the right to personal freedom) was interpreted in the legal systems of different countries." It was of course not to be expected that the definition would be accepted by all nations. Mexico, for instance, roundly declared that if in conducting the study an inquiry was made in accordance with the Australian delegate's suggestion, whether the law under which an individual had been arrested was "compatible with respect for the right to liberty and

security of person," the Mexican Government "could not tolerate any foreigner passing judgment on the laws of Mexico"—an attitude exactly similar to that of Soviet Russia. It is not known what circumstances would be regarded by the writers of the report as constituting

arbitrary arrest and detention. One can only hope that the study would at least throw light on the laws of the different countries in this respect and that this would enable the world to judge in which countries arbitrary detention is held as lawful.

## BANNING OF FILMS

### A GRAVE CONSTITUTIONAL ISSUE RAISED

On 16th May the Government of India issued a notification banning the exhibition of eight films dealing or supposed to be dealing with the theme of Africa on the ground apparently that they "fail to portray the people of Africa in proper perspective." All these films were granted certificates previously, but the notification withdrew these certificates from them. The Cinematograph Act, 1952, confers such power on the Government. Sec. 6 (a) of the Act permits the Central Government "of its own motion" to direct that a previously certified film be uncertified. The section only provides that "before notification of such direction the person to whom the certificate was issued shall be given a fortnight's notice to show cause as to why such a direction be notified." But in this instance no such notice was given. The films were first banned and the persons concerned were later apprised of the fact, and they were certainly not advised of their rights under the Act. The banning took place because of complaints made by some visiting African students that some of the films exhibited in India were "anti-African" in tone. The complaints came to the notice of the Prime Minister and the Congress Working Committee, and obviously as a result of the pressure brought by them the Central Board of Film Censors decided at its meeting on 8th March to adopt a revised policy regarding films about Africa.

What is the nature of the films proscribed? The "Statesman" says:

Two of them, both adaptations of stories by distinguished authors, hardly deal with the people of Africa at all. Mr. C. S. Forester's "African Queen" (the name of a boat, not of a character from a Tarzan film) concerns an episode from World War I located in former German colonial territory; the only African characters appear to be a mission congregation in a brief opening sequence and a few Askaris of the German service in even briefer war episodes later. Mr. Ernest Hemingway's "Snows of Kilimanjaro" concerns an American big game hunter in delirium from a wound incurred when saving an African servant's life, which permits flashbacks into his past; the main action is located in Paris or Italy, and during the Spanish Civil War. Though the portrait of German methods in the first film is less flattering than in Mr. Forester's original story, there seems no

other ground on which an intelligent person could take rational objection to either.

The "Times of India" says of these films:

No one who has seen these excellent films could accept the allegation that they disparage the African way of life in any material respect. The same can be said of "Mogambo," a lesser but wholly unobjectionable picture from the African stand-point. After all, it is significant that in Africa itself these films have been seen with pleasure, and certainly without protest, by many Africans.

How hyper-sensitive some Africans are about films depicting African life was shown by the "Times of India" by means of an incident that happened to it recently. While criticizing the banning of these films, it said:

We recall an instance recently when an African reader of this paper objected strongly to a performance in Bombay of an African dance, on the ground that it was depicted as savage and primitive, with a lot of shaking of limbs and leaping in the air to the beating of drums. The fact that this is precisely how African tribesmen perform their exceedingly interesting "ngomas" seemed to be of no consequence to our reader. Our own tribesmen have not very dissimilar dances; but we do not feel either humiliated or disgusted at seeing them performed or filmed. Indeed, the Government itself has produced documentaries featuring these dances. Why should the Africans be encouraged to feel so unduly touchy about something which we ourselves are able to accept as a matter of course?

The motive of the Government in banning the films was without a doubt no other than to respect the feelings of Africans, but however unobjectionable the motive, deference was shown at the cost of an invasion of precious liberty—freedom of speech and expression and freedom to practise any profession or to carry on any occupation, trade or business, guaranteed respectively in Art. 19 (1) (a) and (g) of the Constitution. Saying that the constitutionality of the Government's action requires to be tested, the "Statesman" frames the constitutional issue raised as follows:

A Madras court held, in *R. M. Seshadri v. District Magistrate*, that a licensee of a cinema is not deprived of freedom of speech and expression by being

prohibited from exhibiting certain films; he is merely carrying on a business, as is a bookseller. That view might or might not be maintainable before the Supreme Court. Learned authority has suggested that the Madras court wrongly disregarded *Srinivasa v. The State*, perhaps with relevance to U. S. ruling, now superseded by such cases as *Gelling v. Texas*, that publications whose intent was to entertain rather than inform did not require the protection of the U. S. First Amendment; in *Gelling's* case the U. S. Supreme Court on the contrary declared: "If a board of censors can tell the American people what it is in their best interests to see or to read or to hear, then thought is regimented." But, supposing the Madras judgment to be good law, the purview seems merely transferred from that of Art. 19 (1) (a) to that of Art. 19 (1) (g): freedom to "practise any profession, or to carry on any occupation, trade or business." Admittedly the State may reasonably restrict this latter right in the interests of public decency or morality, and by later amendment arbitrarily in such matters as nationalization. No court would be likely to invalidate wholly a law establishing a Board of Film Censors. But where discretion is subject to the requirement that it be reasonable, its exercise is justiciable; and it is at least arguable that an action might lie.

#### Cases Referred to above

The cases referred to by the "Statesman" in its editorial may be dealt with here. In *R. M. Seshadri v. the District Magistrate, Tanjore*, decided on 24th August 1951, Mr. Seshadri, the owner of a cinema theatre in Thiruthurai-pundi, challenged the validity of the conditions, not required for securing the safety of the public, which were imposed upon him in granting a license in respect of his theatre. One of his contentions was that those conditions infringed his fundamental right to freedom of speech and expression. The Madras High Court summarily rejected this contention, making what would appear to be a sweeping statement while doing so. Rajamannar C. J., who spoke for the Court, said:

It is impossible for us to accept the position that a licensee of a cinema theatre who exhibits films is exercising a right of freedom of speech and expression in exhibiting films which he desires to exhibit. He is not exhibiting them either as the expression of his thoughts and ideas or of those borrowed from someone else and adopted by him. In our opinion, the petitioner is doing nothing but carrying on a business, and even remotely it cannot be suggested that these films represent his speech or expression. His right to freedom of speech and expression is no more infringed by his being prohibited from exhibiting certain films or by being directed to exhibit certain films than in the case of a bookseller who is prohibited from selling certain books or is directed to sell certain other books.

*Srinivasa v. the State of Madras*, decided a few months earlier, i. e., on 2nd November 1950, was not a case dealing with the licensing of films at all. It was a case concerning the constitutionality of two clauses of sec. 4 of the Press Act of 1931, but it was cited in *Seshadri's* case to support the contention of the petitioner that freedom of speech and expression was involved even if a film written not by the licensee of a theatre but by some one else was to be exhibited. The Public Prosecutor in the *Srinivasa* case had contended that the right to freedom of the press covered only matter of which a citizen was the author and did not extend to matters of which others were authors. "There is no justification," wrote Mr. Justice Panchapagesa Sastri, "in my view, for this unwarranted limitation of the meaning of the phrase in Art. 19 (1) (a). What is guaranteed is much wider than that." Mr. Justice Govinda Menon agreed with this view "that the term 'freedom of speech and expression' would include the liberty to propagate not only one's own views but also to write or print matters which are not one's own, but either have been borrowed from someone else or are printed under the direction of that person."

In the United States it was long held by the Supreme Court that as motion pictures were intended to entertain rather than to inform the free speech guarantee did not apply to them. In *Mutual Film Corp. v. Industrial Commission*, 236 U. S. 230 (1915), a case involving a statute requiring the prior approval of a board of censors before any motion picture could be publicly exhibited, the Court said:

It cannot be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded . . . , we think, as part of the press of the country or as organs of public opinion.

This opinion was expressly overruled by the Court in the *Miracle* case, *Burstyn v. Wilson*, 343 U. S. 495 (1952). It said:

It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behaviour in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform. (That the production of motion pictures is a large-scale business conducted for private profit does not mean that they should for that reason fall outside the First Amendment's aegis.)

Expression by means of motion pictures is included within the free speech and free press guarantee of the First and Fourteenth Amendments.

The Court had gone far to adopt this position in *Winters v. New York*, 333 U. S. 507 (1948), in which it said:

The line between the informing and the entertaining is too elusive for the protection of that basic right (a free press). Every one is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine.

*Gelling v. Texas* (2nd June 1952), referred to in the "Statesman" article, involved an ordinance of a city in Texas authorizing a local board of censors to deny a license for the showing of a motion picture which, in the board's opinion, "is of such a character as to be prejudicial to the best interests of the people" of the city. In this case Justice Douglas, citing the "Miracle" opinion, said:

If a board of censors can tell the American people what it is in their best interests to see or to read or to hear, then thought is regimented, authority substituted for liberty, and the great purpose of the First Amendment to keep uncontrolled the freedom of expression defeated.

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#### Another Instance of Film Censorship

##### IN THE INTEREST OF "FRIENDLY RELATIONS WITH FOREIGN STATES"

Another instance of censorship, equally open to objection, has been disclosed by the "New York Times" in the following editorial of 6th June:

"With These Hands," a popular film produced by the International Ladies Garment Workers Union, has been shown through the United States Information Agency in schools, union meetings, conventions and other gatherings in towns and villages throughout India for the past five years. The film pictures the true, and very American, history of the union's successful fight against the sweatshops of earlier days and of its many other activities to improve

conditions for its members—a saga told through the life of a typical New York dressmaker. Among its most telling sequences are those which show the struggle of Communists to control the union and how they have been effectively thrown out.

The Government-appointed Indian Censorship Board's license of the film recently expired. It is reported this board will not renew it unless these sequences are cut out. This action is said to be based on a rule against foreign films "likely to arouse disrespect of, . . . or liable to embarrass" the Government's "relations with, any foreign Government." In one of the sequences communism is called "a Moscow creation."

This action raises several leading questions. What has happened, after five years of the film's licensed showing, to make this rule suddenly apply? Does this mean that efforts of Indian unions to resist Communist control will now embarrass their own Government? This is hard to believe in view of Nehru's tough stand in the past against Communist subversion.

The episode is most unfortunate. It is embarrassing to the United States Government. The U. S. I. A. has, of course, refused to submit to any such censorship and has withdrawn the film from further circulation. It should also embarrass the Government of India. Only in Iron Curtain countries has this film been outlawed. Finally, it is too bad that the workers of India are to be deprived of so good an example of how free unions function in a free economy. But censors have been known before to make rulings that reflect neither national policy nor enlightened public opinion. We hope this is merely another such—one subject to prompt reversal.

Is a license to be given for exhibiting the film?

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## SECURITY RISK PROGRAMME

### LIMITED BY SUPREME COURT TO SENSITIVE JOBS

The Supreme Court on 11th June, the last day of its current term, ruled by a majority of 6 to 3 that the security risk procedures put into force by the President's executive order of 1953 and authorizing dismissals of Federal employees as "security risks," could be applied only to incumbents of "sensitive" positions, i. e., those who are directly concerned with the national security as distinguished from the general welfare.

Mr. Kendrick M. Cole, a Federal food and drug inspector in New York, was accused in 1953 of associating with persons "reliably reported to be Communists" and of attending meetings of the Nature Friends of America, a group on the list of organizations designated as subversive by the Attorney General. Mr. Cole at first refused to reply to the charges, calling them "an invasion of my

private right." Two weeks later he asked for a hearing. His request was denied, and the Secretary of the department concerned dismissed him.

Mr. Cole filed suit for reinstatement, arguing that the law of 1950 under which action had been taken against him could not properly apply to a non-sensitive job like his and that the President's executive order based on the law had gone far beyond the intent of Congress in extending the law's provisions to all employees of the Federal Government. It was admitted by the Government that Mr. Cole's position was not sensitive. The Supreme Court, reversing the Court of Appeals for the district of Columbia, upheld the contentions of Mr. Cole.

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The 1950 Act ( 5 U. S. C. 22 ) empowers summary suspension and then unreviewable dismissal as "security risks" in eleven sensitive Government units ( the Departments of State, Commerce, Justice and Defence including Army, Navy and Air Force, the Coast Guard, the Atomic Energy Commission, the National Security Resources Board and the National Advisory Commission for Aeronautics ). The head of any of these agencies " may, in his absolute discretion and when deemed necessary in the interest of national security, suspend without pay any civilian officer or employee " in his agency. " To the extent such agency head determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his suspension and within thirty days after such notification any such person shall have an opportunity to submit any statements or affidavits ... to show cause why he should be reinstated." "The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final." A permanent employee is entitled, before final dismissal, to a hearing, a review by the agency head, and " a written statement of the decision of the agency head." While the Act, in giving the power of discretionary dismissal, limited it in the first instance to employees in specified agencies directly concerned with national safety, it also expressly authorized the President to extend its provisions to other agencies as he deemed " necessary in the best interests of national security." The President later by his executive order extended it to the entire Government, with the result that President Truman's programme was scrapped, which, though it covered the entire government, did not involve summary suspension without pay and permitted appeal to a Civil Service Loyalty Board, whereas the later order of President Eisenhower provided for dismissal without appeal. And the question in the instant case was whether the powers conferred by the Act were not intended, even under its enabling provision, to apply solely to persons in sensitive jobs, i. e., jobs affected with national security, or whether they could be applied indiscriminately to any or all employees of the Federal Government.

The Supreme Court, agreeing with Mr. Cole's contentions, held that the President had exceeded his powers in extending the security programme under the 1950 statute to workers in non-sensitive positions and that the statute was intended to authorize the dismissal as security risks of only those employees who were in positions "concerned with the nation's safety." The majority opinion of the Court was written by Justice Harlan, and joining with him were Chief Justice Warren and Justices Frankfurter, Black, Douglas and Barton. Justice Harlan said

the specifying of certain sensitive agencies in the 1950 Act had indicated that it was aimed only at " those activities of the Government that are directly concerned with the protection of the nation from internal subversion or foreign aggression." He said the legislative history of the law buttressed this conclusion. Justice Harlan agreed that genuinely disloyal employees would be undesirable in any Government job, regardless of sensitivity, but he held that many other existing laws provided ways to remove such employees without use of the tougher security risk procedures.

The dissenting opinion was written by Justice Clark and joined in by Justices Reed and Minton. The dissent argued that the legislative history showed Congress had meant to permit inclusion of all Government agencies in the security programme. Justice Clark noted that Congress had repeatedly voted appropriations to carry out the Eisenhower programme.

The President believed that the national security required the extension of the coverage of the Act to all employees. That was his judgment, not ours. He was given that power, not us. By this action the Court so interprets the Act as to intrude itself into Presidential policy-making.

The Court would require not only a finding that a particular person is subversive, but also that he occupies a sensitive job. Obviously this might leave the Government honeycombed with subversive employees.

We believe the Court's order has stricken down the most effective weapon against subversive activity available to the Government.

Since about half of the Federal employees dismissed as security risks were in non-sensitive positions, the far-reaching implication of the Court decision can readily be appreciated. The Government naturally shows no disinclination to obey the Court order. Indeed, the Justice Department immediately took steps to put it into effect by reinstating some seventeen Federal employees in non-sensitive positions who had been currently suspended under the security programme and has announced that " pending further study, no removal proceeding would be commenced against any employee." Probably, the Government is contemplating amendment of the 1950 law by adding some other posts to those mentioned in the law as sensitive. What will be done in the case of the many employees already ousted from Government service by methods the Supreme Court has now outlawed remains to be seen. The Court's decision was hailed by the American Civil Liberties Union. The "New York Times" says: The effect of the decision " is not in any way to destroy the security programme, but to impose upon it the common-sense limitation that a Federal employee holding a position that had nothing to do with the national security could not be fired under existing security risk procedures."

It is well-known that the United Kingdom deals with public servants in sensitive and non-sensitive positions differently.

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### Improvement on the Way

In fairness to the Administration it must be said that the Government was already contemplating some steps by which the present security risk investigations would lose much of their rigidity. A "security risk" is invariably suspended without pay, and because the investigation often takes a long time this works great hardship on the employee concerned. Recognizing this, the Attorney General in his memorandum of last year said he had asked Congress to change the law so that an employee charged under the security programme would get his pay while under suspension. Another weakness in the programme was that employees were sometimes charged with nothing more than that they knew or were related to a certain Communist. The Attorney General has written in to all the departments urging them to comb all charges carefully before bringing them, and further an Army order states a soldier's associations with suspect persons or groups would be discounted unless he personally knew of subversive aim. The Atomic Energy Commission, which perhaps is the most sensitive of all agencies and has more justification for strong security measures than any other department, has recently issued new regulations governing security procedures, which prescribe the standard of personal guilt by laying down that even past membership in subversive organizations should be disregarded if the evidence indicates that the individual was innocent of subversive intention.

The most controversial aspect of security proceedings comes under the heading of "confrontation." The Attorney General's note urged agencies to produce adverse witnesses for cross-examination by the employee "where possible," but this leaves a large loophole. The President in May last said that the agencies would give employees a statement of charges upon suspension and, "in non-sensitive jobs, produce witnesses giving derogatory information and allow the accused the right of cross-examination." The revised rules of the Atomic Energy Commission provide that although the faceless "reliable informant" will still remain unknown to the accused, he will be subject to questioning by the hearing board and counsel. Further, the hearing board will, if it wishes to bring in a witness, have the power of subpoena, which hearing boards do not now possess. The dismissed employee will also have a right of appeal from the finding of the hearing board to a review board. As the "New York Times" says: "This may not be the perfect solution, but it is certainly an improvement over some present procedures" and it may well be expected that the safeguards which have now become applicable to the Atomic Energy Commission will soon be extended to all other agencies. Thus it is clear that progress is being made

in substituting, in the words of the "Times," "common sense and balanced evaluations, in the determination of who is and who isn't a security risk, for arbitrary judgment and automatic tests."

## Pre-emption of the Field of Sedition

### Bills to Confer Concurrent Jurisdiction on States

Proposals have been made since the Supreme Court's decision in *Pennsylvania v. Nelson* (vide p. iv:111 of the BULLETIN) which would, if enacted, nullify that decision. The Court in this case held that since the federal Smith Act proscribes the knowing advocacy of the overthrow of any government—federal, state or local—by force and violence, a Sedition Act of any state which proscribes the same conduct is unenforceable; that such a state law is therefore superseded by the federal law; that Congress has now occupied the field of sedition to the exclusion of parallel state legislation; and that the states were not intended by Congress to be given concurrent jurisdiction with the federal Government. The bills now contemplated would permit the states to exercise concurrent jurisdiction in matters involving subversion.

The Supreme Court's ruling was mainly based on the subsisting federal-state relations; but the Court also pointed out the disadvantages that would result from allowing the states to enforce their separate sedition laws. These laws are by no means uniform and apply different procedures in trials and even "different criteria of substantive offences." As an instance of the latter, the Court says:

Some [of the state laws] even purport to punish mere membership in subversive organizations which the federal statutes do not punish where federal registration requirements have been fulfilled.

The Pennsylvania law itself includes "becoming a member of any [subversive] assembly, society or group" in "sedition," while the federal Government's Internal Security Act of 1950 merely requires communist organizations to register. Again, the Pennsylvania statute defines "sedition" as any utterance of which the intent is "to incite or encourage any overt act with a view to bringing the government of the state or of the United States into hatred or contempt."

These words "bringing the government into hatred or contempt" have a familiar ring to us in India, but in the United States they have an utterly odious sound. Indeed, the Supreme Court says about this clause in the Pennsylvania statute:

This provision is strangely reminiscent of the (federal) Sedition Act of 1798, which punished utterances made "with intent to defame the government or either house of the Congress or the President; or to bring them . . . into contempt or to excite against them . . . the hatred of the good people of the United States."



There is no legislation which in the United States is more hated and denigrated than this Sedition Act, and because of the opprobrium it aroused, it could never be put into effect and was allowed to lapse.

As to the grave procedural defects in the Pennsylvania statute, the supreme court of the state, whose decision the federal Supreme Court affirmed, said:

Unlike the Smith Act, which can be administered only by federal officers acting in their official capacities, indictment for sedition under the Pennsylvania statute can be initiated upon an information made by a private individual. The opportunity thus present for the indulgence of personal spite and hatred or for furthering some selfish advantage or ambition need only be mentioned to be appreciated. Defence of the Nation by law, no less than by arms, should be a public and not a private undertaking. It is important that punitive sanctions for sedition against the United States be such as have been promulgated by the central government authority and administered under the supervision and review of that authority's judiciary. If that be done, sedition will be detected and punished no less, wherever it may be found, and the right of the individual to speak freely and without fear, even in criticism of the government, will at the same time be protected.

The reference in this quotation to "the right of the individual to speak freely" refers apparently to the reservation made in the Internal Security Act, which in sec. 1 (b) says: "Nothing in this Act shall be continued . . . in any way to limit or infringe the freedom of the press or speech as guaranteed by the Constitution of the United States." Speaking of the states' sedition laws, the federal Supreme Court says:

Some of these Acts are studiously drawn and purport to protect fundamental rights by appropriate definitions, standards of proof and orderly procedures in keeping with the avowed Congressional purpose, "to protect freedom from those who would destroy it without infringing upon the freedom of all our people." Others are vague and almost wholly without such safeguards.

On this ground the Court held that "administration of state Acts would conflict with the operation of the federal plan" to meet the forces of subversion and that therefore "no room has been left for the states to supplement" the plan. Opposing the bills intended to subvert this ruling, Mr. Emanuel Celler, Chairman of the House Judiciary Committee, remarks: "The prevention of subversive activities is so clearly an integral part of national defence that it behooves us to ask those who so strenuously oppose federal pre-emption of the field whether they favour an Army, Navy or Air Force for each of the forty-eight states."

## EVIDENCE ILLEGALLY SEIZED QUESTION OF ADMISSIBILITY IN CRIMINAL PROSECUTIONS

The U. S. Supreme Court's decision that evidence illegally seized is inadmissible in a prosecution for violation of a federal law in a federal court (*Weeks v. United States*, 282 U. S. 313 [1914]), and yet that such evidence could be admitted at a trial by a state court for a state offence (if the state chose to follow that practice) without denying the due process of law required by the Fourteenth Amendment (*Wolf v. Colorado*, 338 U. S. 125 [1949]) sometimes produces baffling situations. The constitutional principles involved in the high court's opinion in these two cases were vigorously canvassed in a recent case before the Supreme Court in *Rea v. United States* decided on 16th January this year.

One Danton George Rea was prosecuted in 1953 in a federal district court for unlawful acquisition of narcotics in violation of a federal law. The indictment was based on evidence obtained by a federal narcotics agent under an improperly issued search warrant. Because the evidence was seized under an invalid court process and in contravention of the Fourth Amendment, the District Court suppressed the evidence in conformity with the *Weeks* ruling and, on the Government's later motion, dismissed the indictment. Thereafter, Rea was charged in a

New Mexico court with possession of the same narcotics in violation of the state law. In the state court the case against Rea could be made by the testimony of the same federal agent based on the same illegal search and on the evidence seized under the same federal warrant. For New Mexico is one of the states which do not bar evidence which is obtained by illegal means. Rea, therefore, filed a motion in the district court to enjoin the federal agent from testifying in the state case with respect to the narcotics obtained by the agent as a result of his illegal search. The district court denied relief and the court of appeals affirmed. The case then went to the Supreme Court on a petition for certiorari.

### The Weeks Case

The briefs and oral argument in the case dwelt largely on the constitutional questions. In the *Weeks* case the Supreme Court laid down for the first time that in a federal court evidence obtained by means of an illegal search and seizure by public officers is not admissible against an accused in a criminal prosecution, and this decision has been consistently adhered to ever since. The common law rule is that the admissibility of evidence is

not affected by the illegality of the means by which it is obtained and the Weeks case announced an exception to this common law rule by excluding all evidence, in the procuring of which government officials took part by methods forbidden by the Fourth and Fifth Amendments. But the federal exclusionary rule is not required by a constitutional command; it was not derived in the Weeks case from the explicit requirements of the Fourth Amendment; it was rather adopted as an effective way of deterring unreasonable searches, designed to protect people against unrestrained searches and seizures by law enforcement officers. Mr. Justice Black has said that it is "a judicially created rule of evidence which Congress might negate."

#### The Wolf Case

The question then arose whether the federal exclusionary rule should be made applicable to the states by virtue of the due process clause of the Fourteenth Amendment. This issue presented itself in 1949 in the Wolf case, in which the defendant was convicted on the basis of records seized at his office by state officers without a search warrant. Justice Frankfurter, delivering the opinion of the Supreme Court, said: "The question 'is whether the basic right to protection against arbitrary intrusion by the police demands the exclusion of logically relevant evidence obtained by an unreasonable search and seizure because, in a federal prosecution for a federal crime, it would be excluded. As a matter of inherent reason, one would suppose this to be an issue as to which men with complete devotion to the protection of the right of privacy might give different answers. When we find that in fact most of the English-speaking world does not regard as vital to such protection the exclusion of evidence thus obtained, we must hesitate to treat this remedy as an essential ingredient of the right.'" The Court held that although the right to security against violation of one's privacy constitutes a basic right guaranteed by the Fourth Amendment and therefore is enforceable against the states through the due process clause of the Fourteenth Amendment, "in a prosecution in a state court for a state crime (the due process clause of) the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." Justice Douglas, with Justices Murphy and Rutledge, since deceased, dissented, saying: "The evidence obtained in violation of it (the Fourth Amendment) must be excluded in state prosecutions as well as in federal prosecutions, since in absence of that rule of evidence the Amendment would have no effective sanction."

#### The Stefanelli Case

A way around the Supreme Court's majority judgment in the Wolf case was sought in *Stefanelli v. Minard* (342 U. S. 117 [1951]). New Jersey police entered petitioners' homes without legal authority and seized property

used by them in book-making, a misdemeanour under state law. Relying upon the proposition in the Wolf decision, which was otherwise unfavourable to them, viz., that "were a state affirmatively to sanction such (arbitrary) police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment," they brought suit in a federal district court for equitable relief to prevent the use of such evidence in state criminal proceedings pending at that time. The suit was brought under the Civil Rights Act, which provides for redress against anyone who, acting under colour of state law, subjects a person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution. The petitioners contended that if the Fourth Amendment, according to this opinion, forbids unreasonable searches and seizures by the states, such a search and seizure by state police officers subjects its victims to the deprivation of rights for which redress is afforded by the Civil Rights Act. The district court dismissed the suit for an injunction to prevent evidence unlawfully secured by the state police from being used in a state criminal trial and the court of appeals affirmed.

On a writ of certiorari the case came up before the Supreme Court. In this case too Justice Frankfurter delivered the judgment of the Court. It was thought that there was no occasion to consider constitutional issues in deciding the case, as it appeared to the Justices that the decision depended upon the balance to be struck between the policy of the Fourth Amendment providing against unreasonable searches and seizures and the interest in efficient law enforcement. The Court held that "the federal courts should refuse to intervene in state criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure. . . . If we were to sanction this intervention, we would expose every state criminal prosecution to insupportable disruption." Justice Black concurred, but Justice Douglas again dissented, saying that not to enjoin illegal evidence "is to make the Fourth Amendment an empty and hollow guarantee so far as state prosecutions are concerned."

#### The Instant Case

In the instant case (*Rea v. United States*) the Supreme Court held by a majority that the injunctive relief sought should be granted, viz., that the federal narcotics agent be enjoined from testifying in the New Mexico court. Justice Douglas who spoke for the majority members of the Court, said:

We put all the constitutional questions (discussed in the briefs and oral argument) to one side. We have here no problem concerning the interplay of the Fourth and Fourteenth Amendments nor the use which New Mexico might make of the evidence. . . . (Here is a case) that raises not a constitutional question but one concerning our supervisory powers over federal law enforcement agencies.

A federal agent has violated the federal rules governing searches and seizures. The power of the federal courts extends to policing those requirements and making certain that they are observed.

No injunction is sought against a state official. The only remedy asked is against a federal agent who, we are told, plans to use his illegal search and seizure as the basis of testimony in the state court. To enjoin the federal agent from testifying is merely to enforce the federal rules against those owing obedience to them.

They (the federal rules) are designed as standards for federal agents. The fact that their violation may be condoned by state practice has no relevancy to our problem. Federal courts sit to enforce federal law; and law extends to the process issuing from those courts.

The obligation of the federal agent is to obey the rules. They are drawn for innocent and guilty alike. They prescribe standards for law enforcement. They are designed to protect the privacy of the citizen unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruits of his unlawful act either in federal or state proceedings.

Justice Harlan (whom three other Justices joined) dissented. He said: "In accommodating state and federal interests in criminal law enforcement this Court has hitherto taken the view that the states should be left free to follow or not the federal exclusionary rule set forth in *Weeks v. United States*. The present decision seems to me to be a step in the opposite and wrong direction."

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## ALL-INDIA CIVIL LIBERTIES COUNCIL

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### Inquiry into Police Excesses in Bombay A COMMITTEE APPOINTED BY THE ALL-INDIA CIVIL LIBERTIES COUNCIL

The All-India Civil Liberties Council has decided to appoint a committee of inquiry for the purpose of finding out whether, in quelling the disturbances that occurred in the course of the movement for the United Maharashtra State, the police on any occasion opened fire on crowds when there was no need for firing or whether they kept up the firing too long so as to be in excess of what the situation required or justified. It is alleged that in Bombay City the police and Home Guards indulged in uncontrolled firing which resulted in the death of 15 persons on 21st November 1955, the day when the Bombay Legislative Assembly met in Bombay to consider the recommendations of the States Reorganization Commission, and for five days in January 1956 after the Government's decision was announced that Bombay City would be centrally administered, 72 persons

(according to official calculations) succumbed to police firing which, it is complained in various quarters, was not only excessive but indiscriminate. Similar incidents are reported from some other centres of the United Maharashtra movement, like Kolhapur, Belgaum and Nasik. An official inquiry into the firing was demanded but was not conceded by Government. In the absence of such an official inquiry, the A.-I. C. L. O. thought it desirable to hold an unofficial inquiry as to the truth or otherwise of the charge that the police used excessive force in dealing with the disorders of the time. The committee of inquiry will consist of eminent jurists whose competence to inquire into these matters and whose impartiality in doing so cannot be impugned. It is to be hoped that the Bombay Government, though it did not initiate an inquiry, as it should have done, will co-operate with the committee in finding out the truth.

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## COMMENTS

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### Liability of Public Authorities for Civil Wrongs

#### Recommendation for the Law to be Amended

The law in regard to wrongful acts committed by Government employees is, it is said, going to be brought into line, on the recommendation of the Law Commission, with the Crown Proceedings Act 1947 of the United Kingdom, which will have the effect of placing the Government in the same position as a private citizen in respect of liability for wrongful acts or defaults by its servants.

In England, before the 1947 statute was passed, it was held, on the maxim that "the Crown can do no wrong," that the Crown could not be sued in its own courts for civil wrongs or torts committed by its servants or agents. The Crown theoretically enjoyed complete immunity in respect of wrongs by its servants. This special position of the Crown as a litigant, which was abolished by the statute, it is true, did not create any great injustice in practice. For, although the Crown could not be sued for torts committed by any of its servants in the course of his duties, he could be sued personally for any wrong he might have committed, and the fact that what he had done was done on the orders of his superior afforded him no defence. The Crown in such cases stood behind its servant and paid the damages that were awarded against him.

In cases where, for one reason or another, it was not possible to fix liability upon any particular servant of the Crown, some person was nominated by the Crown so that an action could be brought against him on the assumption, which was never controverted, that he was responsible for the wrongful act. But, in *Adams v. Naylor*, A. C. 543 (1946), the House of Lords remarked that this device of a "nominated" defendant against whom proceedings could be taken was open to objection, and the observation<sup>2</sup>:

in this case expedited the amendment of the law as it stood previously.

So much in respect of liability in tort, i. e., a wrongful act which does not arise out of contractual obligations. In the matter of contracts, a subject could only proceed by the special process of Petition of Right and could bring an action with the permission of the Crown. But the Crown's fiat was invariably granted wherever any merits appeared in the claim. Nonetheless, the remedies which were available were not as of right but as a mere matter of grace.

The Crown Proceedings Act changed the whole of this and gave the subject a complete right to sue the Crown in contract as well as in tort. Sec. 1, which relates to contracts with the Crown, enables the subject by ordinary proceedings to enforce any claim against the Crown, which previously would have been impossible to a subject, without the necessary fiat, by way of petition of right. Sec. 2 makes the Crown liable in tort, in its public capacity, to the same liabilities for wrongs committed by its servants as a private individual.

The English law as it stood before amendment in 1947 was applied in India and has remained unchanged. If the recommendation of the Law Commission is accepted and given legislative sanction, the Government will be placed on an equal footing with private citizens in respect of tortious acts of public officials.

#### Marriage Reforms in Pakistan

Pakistan's Commission on Marriage and Family Laws, appointed a year ago, has made recommendations which are calculated to take many long steps to bring Muslim personal law in the matter of polygamy and divorce into accord with modern ideas of social justice. In Pakistan, an Islamic State, all laws to be valid must be such as agree with the fundamental principles of the Quran and the Sunnat (the traditional law based on the precepts of Mahomed), and this Commission too was charged with the duty of examining if existing laws needed "modification in order to give women their proper place in society according to the fundamentals of Islam." The Commission's general finding is that the laws enjoined by the Holy Book are essentially just and fair but are often perverted in interpretation and that what is really required is machinery to enforce the laws in a just manner within the great latitude for elasticity which Islam allows. In the matter of divorce, for instance, Islam, which made marriage a civil contract, gave women equal right of divorce with men. Due, however, "to the rigidity of juristic orthodoxy and owing to the ignorance or economic dependance of women, the liberal aspects of marriage and family laws are either relegated to the background or become impracticable because of the complexity of procedure of our law courts." Professor Fyze says: "The law of divorce . . . was so interpreted, at least in the Hanafi school, that it has become a one-sided engine of

oppression in the hands of the husband." The remedy is correct interpretation and proper enforcement of the essential principle. Of polygamy, the Commission says, it is "neither enjoined nor permitted unconditionally nor encouraged by the Holy Book," and the Commission recommends that polygamy should be controlled, a second wife being permitted in the lifetime of the first only by permission of a matrimonial court, and it has suggested the setting up of special matrimonial courts for quick disposal of cases involving all aspects of marriage. If the courts work as they are intended to work, great progress will be made in removing some of the abuses of Islamic law.

#### Reforms in Soviet Russia

Shortly after Stalin's death the organ of the Soviet security police called Ossab, which could arrest or liquidate persons in extra-judicial proceedings, was abolished. Now three old decrees issued during the purges of the 30's, conferring special powers on security organs in dealing with sabotage and terrorism, have been revoked. Under these decrees techniques were used to extract confessions from persons accused of counter-revolutionary activities. They demanded a full investigation within ten days. They made it possible for a defendant to be informed of the charges only one day before his trial. They made it possible for a defendant to be tried without being present. They provided for no appeal. They made mandatory immediate execution after imposition of the death penalty. The recent decree abolishing the decrees of 1934 and 1937 says that in the future "investigations and courts must be guided by judicial standards."

While the police apparatus is being thus overhauled in order to safeguard individuals against police persecution, reforms are also being introduced in the sphere of labour. It has been announced that internment camps, the existence of which was being stoutly denied by Soviet delegates at the Unesco, will be abolished in less than 18 months. Hereafter people will be detained either in prisons or "corrective labour colonies" having factories in which the prisoners would be made to work. While the labour camps will be fully wiped out within a year and half, already hundreds of thousands of persons, it is said, have been freed from camp and exile. The law of 1940 which provided that a worker leaving his job without the permission of his employer could be sentenced to prison has been repealed. Workers can now leave their jobs on two weeks' notice. If they do so they lose social security benefits but anyhow are saved from imprisonment. Young people are however still assigned to jobs when they finish their education.

On this the "New York Times" says:

The present repeal (of the law of sixteen years ago) is a partial step forward, but there is a long road still ahead. Soviet unions are still company.

unions whose primary task is to speed up production. Soviet workers have still no right to strike. There is nothing approaching genuine collective bargaining in the Soviet Union. Wages, working conditions and the like are still basically set unilaterally by the Government, the biggest employer in the world. The dissatisfaction of Soviet workers presumably forced this one step forward. We can hope there will be others.

### Freer Exchange of Information and Ideas

#### FRESH BID TO END THE IRON CURTAIN

Prompted probably by Soviet Russia's invitation to the U. S. A. and twenty-eight other countries to an Air Show at Moscow, which gave the impression of willingness on the part of the Russian Government to show foreign visitors its military apparatus, President Eisenhower on 29th June called for a new effort to seek exchanges of information and ideas with Russia and other communist bloc countries. The National Security Council had recommended that a fresh attempt be made to establish reciprocal exchanges between the East and the West, though at the foreign ministers' conference at Geneva in October last (see p. iv: 21) Russia rejected the 17-point proposal put forward by the Big Three for progressive elimination of press censorship, end to jamming of radio broadcasts, opening of information centres and exchanges of books, newspapers, films, etc. Mr. Molotov was the Soviet foreign minister at the time, but on the eve of the Yugoslav President's visit to Russia he was suddenly replaced. This perhaps affords an additional ground for hope that the Soviet Government may now be in a more responsive mood. President Eisenhower's secretary said at a press conference that although the Western programme for increased contacts between East and West was unacceptable to the Soviet Government in October last, "the President believes that such a programme, if carried out in good faith and with true reciprocity, may now contribute to the better understanding of the peoples of the world." The purpose of the policy is to get the Soviet Government to open up its vast territories and population increasingly to Western ideas, news, air transportation and visits. The over-all effect, if the policy is successful, would be to tear down the Iron Curtain.

#### Turkish Press Gagged

Allegedly as an aid in meeting the difficult economic situation with which Turkey is faced, the Turkish Parliament adopted on 7th June a Press Act severely curbing the freedom of the press. One clause of this law provides jail sentences of one to three years on being convicted of "publication of false news which could curtail the supply of consumer goods, or boost prices, or cause loss of respect for and confidence in the authorities." The first two parts of the clause speak of the economic malaise but the third

is general (from which the inference is drawn that the real aim of the measure is to silence all Opposition), just as our Preventive Detention Act, directed principally against subversives, also purports to have been designed to check black-marketing activities. This clause in the Turkish Act also applies to public speeches.

Another clause provides prison terms for foreign correspondents who send out "baseless or exaggerated news likely to shatter the prestige or influence of the Government". The law also sets educational standards for newsmen. One wonders what educational standards have been prescribed for members of Parliament or of the Government: they should in fairness be much higher.

The Turkish Parliament is almost a one-party legislature and yet the voice of opposition was heard in it. Mr. Inonu, former President, said the aim of the law was to gag the press and create a regime of duress. A member of the ruling party, Mr. Sonmez, said the legislation would "kill press freedom in Turkey" and was promptly slapped by a fellow party member for this temerity. The "New York Times" writes editorially about the law:

Strong and free governments do not need this sort of repressive measures. There are other and better ways to promote a responsible press. This type of legislation suggests merely that the Government is afraid to face scrutiny, and no suggestion could be more damaging... Modern Turkey will suffer a severe sentence [by awarding jail sentences to her pressmen] at the bar of enlightened public opinion everywhere.

#### Detention Law Being Repealed in W. Pakistan

The Chief Minister of West Pakistan, Dr. Khan Saheb, made a dramatic announcement on the opening day of the Legislative Assembly in May to the effect that all safety laws under which the Government has powers to detain anyone without trial would be repealed and all prisoners detained under the laws would be released. Although, during the session of the Assembly which lasted for 18 days, no bill to repeal the safety laws was introduced, it appears that an ordinance will soon be promulgated by the West Pakistan Government removing those clauses in the safety laws which provided for preventive detention. For the Central Government's Minister of the Interior said at a press interview on 4th July that though the practice of detention without trial would be discontinued in West Pakistan, the Security Act of the Central Government, recently extended for a year, would still remain and detention without trial under the Act would continue elsewhere.

#### Delegation of Power to Administrative Agencies

##### MR. RAMASWAMI'S SUGGESTION

Speaking at a seminar on Parliamentary Government in India organized in Patna, Mr. V. Ramaswami, Chief Justice of the Patna High Court, said recently that the

great question now was how to ensure the rule of law when the legislature had to delegate some of its powers to administrative agencies and leave to them a large amount of administrative discretion. Mr. Ramaswami said the supremacy of Parliament was of no practical value if little or no control was exercised by it over the delegation of power. One method of control is to provide in the enabling statute that the regulations made by the Executive should be laid before Parliament for a prescribed period of time. Within the period Parliament should approve or annul the regulations. The other control is to have all such regulations scrutinized by a committee of Parliament. Such a committee should have the power to obtain explanations from Government Departments concerned. Such a scrutinizing committee exists in England.

#### Role of the Press

Mr. C. Rajagopalachari, former Governor-General and author of the post-independence Press Act, writes :

After independence, patriotism and public co-operation in India have swung to the other end of the arc and the Indian Press has gone all out for praise and admiration, leaving the Prime Minister in a dangerous state of loneliness, for unqualified adulation day in and day out is loneliness. The daily Press, which at present flourishes in a business sense, is daily chiming concord and approval and in all doubtful cases waits to form an opinion until the Prime Minister indicates his own, and contributes little or nothing by way of criticism.

## TOPICS

### Segregation on Buses Outlawed

A three-man Federal Court in Montgomery on 5th June ruled by a 2 to 1 vote that city and state laws requiring segregation on Montgomery buses violated the due process and equal protection clause of the Fourteenth Amendment to the Federal Constitution. The judgment was given in the case of Mrs. Rosa Parks, a Negro woman of Montgomery who, it would be recalled ( vide p. iv : 83 ), was arrested on 3rd December last for refusing to give up her bus seat to a white, which led to an almost complete boycott of the city's buses by Negroes. The Alabama Public Service Commission, one of the defendants in the suit, is going to appeal against the decision to the Supreme Court, which however has already ruled in the case of Columbia ( vide p. iv : 111 ) that segregation on buses operating within a city is unconstitutional. The appeal will be lodged because the Columbia ruling can be said not to affect Alabama's capital directly since it was not named in that litigation.

In the meanwhile the former President, Mr. Truman, took occasion in his speech at Oxford University on 21st

June to condemn racial segregation practised in the Southern states of the U. S. A. He said :

In my country, to our sorrow, there are those who are still denied full citizenship in some of our states and denied full stature as human beings by some of our citizens still living in an intellectual and moral dark age.

The condemnation applies specially to Dixiecrats and it reflects great credit on the courage of the Democratic leader to have denounced this group when the elections are approaching so near.

#### Deportation of an Alien

##### SUSPENSION OF ORDER DENIED ON CONFIDENTIAL INFORMATION

Mr. Cecil Reginald Jay came over to the United States from England in 1914 and has since lived in the U. S. A. The Immigration Service began deportation proceedings against him because he had belonged to the Communist party from 1935 to 1940. Although not a crime at the time, such membership has since been made by Congress a reason for deportation.

After a regular deportation hearing, at which all information was openly presented, Mr. Jay was found deportable. He then applied for "suspension of deportation." This is a provision that Congress permitted the Attorney General to exercise "in his discretion" to give relief to technically deportable aliens in hardship cases.

Under regulations of the Attorney General, Mr. Jay received a hearing before an Immigration Service officer in his suspension request. On the open record the officer found him eligible for suspension, as a person of good moral character whose deportation would work "extreme hardship" on himself and his family.

Then, however, the hearing officer ruled that on the basis of "confidential information" he would not grant the suspension of deportation. He was upheld by the Board of Immigration Appeals.

This ruling was on appeal to the Supreme Court and the Court by a 5 to 4 upheld on 11th June the Government's right to use confidential information in denying clemency to a deportable alien. Justice Reed wrote the majority opinion in which Justices Minton, Clark, Burton and Harlan joined. The majority opinion held that the grant of suspension of deportation was not a matter like a trial, covered by constitutional guarantees of due process. Justice Reed said :

Suspension is manifestly not a matter of right under any circumstances, but rather is in all cases a matter of grace. This unfettered discretion of the Attorney General with respect to suspension of deportation is analogous to the Board of Parole's powers to release Federal prisoners on parole.

A separate vigorously worded dissent was filed by each of the four dissenters, Chief Justice Warren and

Justices Black, Frankfurter and Douglas. Justice Black wrote :

The core of our constitutional system is that individual liberty must never be taken away by short-cuts, that fair trials in independent courts must never be dispensed with. That system is in grave danger. This case emphasizes that fact. Prosecution of any sort on anonymous information is still too dangerous just as it was when Trajan rejected it nearly 2,000 years ago. Those who prize liberty would do well to ponder this.

### Apartheid on the Voting Rolls

On the passage of the Coloured Voters Bill removing 40,000 voters of mixed white and Negro blood from the same voting register as whites (see p. iv:85), two Coloured men, Messrs. Collins and Brikkels, challenged the validity of the Act in the Supreme Court in Capetown. The challenge was made on behalf of the affected persons by the United Party. As the Act had been passed by a two-thirds majority in both Houses of Parliament, the attack was now based on the fact that this majority was secured by illegally enlarging the Senate. It was contended that the Senate, enlarged by the Senate Act of 1955 so as to give the Government the necessary two-thirds majority to alter the Constitution, was an improperly constituted body and that the Government had therefore exceeded its powers in altering the voting rights of Coloured persons which were specifically guaranteed by the Constitution.

The Court on 18th May found the Senate Act valid and thus upheld the Coloured Voters Act. It held that the South African Constitution gave Parliament the right to determine the size of the Senate and that no limitation could be implied upon the scope of powers expressly granted to Parliament so as to preclude it from enlarging the Senate. On the question of the guarantee of voting rights in the Constitution, the Court said :

One thing this guarantee is not is that the applicants [Coloured persons] will never lose their rights.

Thus the Strydom Government won another round in a five-year constitutional battle to enforce apartheid on Coloured voters. The Government is eager to disqualify Coloured persons in Cape Province from voting for the same candidates as whites because, as they usually vote against the Nationalists, they hold the balance of electoral power affecting several seats in Parliament.

An appeal has been lodged against the present decision in the appellate division of the Supreme Court in Bloemfontein, and the appeal will be heard when the Court's term begins in November. The Government has already packed the court by appointing five new judges known to be of the Nationalist way of thinking, and if this highest tribunal of South Africa upholds the Senate Act and the South Africa Act (Amendment Act), the Government will have won a final victory in this long drawn out struggle.

### Discrimination in Administration of Justice

The Civil Rights League of Capetown furnishes in its recent News Letter the following information about two bills proposed to be introduced in the Union Parliament :

Two Bills at present being brought before Parliament propose, for the first time, deliberately to differentiate between the right of appeal to the courts of Africans and of other racial groups. The first Bill, to be introduced in the Senate, seeks to apply the "Natal Code" to the Cape, thereby depriving Africans in that Province of the right of appeal against certain removal and other orders issued in the name of the Governor-General (as the "Supreme Chief" of the Africans).

The other, the Natives (Prohibition of Interdicts) Bill, makes it possible for the Minister (or, in practice, a magistrate) to order the removal or dis-possession of an African, even if in so doing the Minister is transgressing the law. The Bill prevents Africans from applying for restraining interdicts if the Minister is acting outside the law. It also prevents any other appeals or reviews holding up the Minister's edict. It thus, says the "Natal Witness," establishes "the dangerous principle of one law for the Blacks and another for the Whites." It is true that after an African has been ejected, if a court is satisfied that his ejection is wrong, it can order his return to his old home with compensation. But how many Africans — transported, perhaps, hundreds of miles to the Reserves — will be able to appeal? It is not difficult to imagine the disruption of urban African life which would be caused by the application of such a law. What would we say if it applied to us?

### Appeal Court's Ruling

#### IN A CONTEMPT OF CONGRESS CASE

Mr. John T. Watkins, a labour union organizer, who had been named as a member of the Communist party at a meeting of a sub-committee of the House Un-American Activities Committee, was summoned in April 1954 by that sub-committee as a witness before it and was asked to explain his position in relation to the party.

Mr. Watkins spoke unreservedly about himself but had scruples in informing on others. He freely acknowledged he had "co-operated" with the Communists during the period 1942-47, but refused on grounds of principle to talk about some thirty persons named by the sub-committee. He said :

I do not believe any law in this country requires me to testify about persons who may in the past have been Communist party members or otherwise engaged in Communist party activity but who to the best of my knowledge and belief have long since removed themselves from the Communist movement.

When directed by the chairman to answer the questions, he refused. Thereupon he was indicted for contempt in refusing to answer questions asked of him, found guilty and awarded a one-year prison sentence.

He appealed to the Federal Court of Appeals in Washington, which on 26th January reversed the conviction in a 2 to 1 opinion. The Court held that the questions Mr. Watkins had refused to answer were not pertinent to the purposes for which the sub-committee was created. It held that Mr. Watkins was obliged to answer questions serving some legitimate purpose. The Government had not shown what legitimate purpose would be served in 1954 by questions about persons who may have been Communists in 1942-47. The Court said :

If we were obliged to decide what the committee's purpose was in asking the questions, we might be forced to conclude that the committee asked them for the sole purpose of exposure. It is very questionable whether exposure of individuals to public contempt is a valid legislative purpose.

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## TENURE OF A CIVIL SERVANT

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"At the Pleasure" of the President or Governor

BOMBAY HIGH COURT'S RULING

Mr. T. V. Ravindran, an employee of the Ambernath Ordnance Factory, filed a petition in the Bombay High Court for a writ of certiorari under Art. 226 for setting aside an order for terminating his services passed by the superintendent of the factory. The petitioner contended that he was retrenched by the respondents without observing the formalities laid down in the Industrial Disputes Act, although an ordnance factory was within the scope of the Act. He further contended that he was not paid compensation due to him under the Act. He alleged that his services were retrenched because of his trade union activities.

The respondents invoked the provisions of Art. 310 (1) relating to the tenure of office, which says : Every person "who holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President and every person who . . . holds any civil post under a State holds office during the pleasure of the Governor." The contention was that, in the present case, whatever the Industrial Disputes Act might lay down, the President of the Union had an overriding power conferred upon him under the Article, and that by reason of that overriding power it was open to the Union to terminate the services of any of its employees without assigning any reason and without giving notice.

Chagla C. J. and Dixit J. agreed with the respondents contention. While saying that there was no reason why, in this particular case, the respondents should not give effect to the provisions of the Industrial Disputes Act, at least as far as payment of retrenchment compensation was concerned, the Chief Justice stated that even though a law might be passed which might apply to the Government and the State might, in the ordinary course, give effect to it in the case of its own employees, the ultimate power which the Constitution had conferred on the President to terminate the services of a civil servant without notice and without any liability to pay compensation must remain unaffected.

The petition was dismissed (6th July).

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## PRESS ACT OF 1951

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### Publication of a Scurrilous Booklet

On a complaint filed by the district magistrate, the sessions judge of Bulandshahr ordered Mr. Ganga Prasad Singhal to deposit a security of Rs. 2,000 under the Press (Objectionable Matter) Act 1951 for printing in his press a booklet called "Maha Satyagraha" containing attacks on various officers serving in the district and on the Ministry. Mr. Singhal admitted that the booklet was not in good taste, but pleaded that he was ill when the order for printing it was placed at his press, that the order was accepted by his employees, and that he would not have accepted the order if he had been working at the time. The sessions judge held that the Press Act was offended by the booklet "Maha Satyagraha," which he said was so indecent that it could only be printed by the gutter press. What had been written in it was of a vulgar type with no literary taste. In his opinion a warning would not suffice, and an order was passed directing Mr. Singhal to deposit a security of Rs. 2,000.

Mr. Singhal appealed against the order to the Allahabad High Court, and Mr. Justice Bhargava on 2nd July dismissed the appeal. Rejecting the contention of the appellant that there was no "objectionable matter" in the booklet within the meaning of the Press law, His Lordship observed that under sec. 3 of the Act "objectionable" matter "was defined as any words, signs, etc., which were grossly indecent or scurrilous, obscene or intended for blackmail. It was clear that the booklet did contain matter which was scandalous and was also possibly intended for blackmail. It was not a case where there was any fair criticism of the policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means, and in these circumstances the sessions judge's order was fully justified.