

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Our Press Council and Britain's

I. F. W. J's Criticism

The third annual report of the British Press Council, published last month, brings into strong relief the important difference in the status of England's Press Council and that of the one to be brought into existence in our own country. The former is a voluntary organization, while the latter is to be a statutory one. On the face of it, it may appear that if an institution like this is to be completely successful in helping the newspapers to observe a proper code of journalistic ethics and censuring such of them as fail to maintain a high professional standard, it should be invested with statutory powers to impose sanctions. It was in fact on the basis of such superficial reasoning that the Indian Press Commission rejected a voluntary Press Council established by the newspaper profession itself and quite independent of the Government in favour of a statutory body armed with "the necessary sanction behind its decisions." The Commission recognized that though the Press Council in the U. K. is a voluntary organization, "it has not hesitated to condemn irresponsible behaviour or unjournalistic conduct on the part of newspapers." But somehow it comes to the conclusion that the fact of its being a purely voluntary body "has undoubtedly handicapped it in the exercise of its authority over the Press."

But the report of the U. K. Press Council now published gives an account of work done which dispels such fears. The Chairman of the Council in a foreword to the report says that the complaints made to the body about the newspapers and the demands that the Council examine and publish its views on them are steadily increasing, and he says this increase in its work is "not because of more violations of the freedom of the press or journalistic misdeeds but because more complainants look to it for trustworthy judgment." In fact, the Press Council is so effective a guide to newspapers just because it is a voluntary organization free from all connection with Government; its authority is the greater because it is in a position to exercise only moral influence on the press and is devoid of any legal power enabling it to carry its judgment into effect.

In one important respect a Press Council differs very much from a Medical Council or such other statutory bodies. The latter concern themselves merely with professional ethics and standards, but the former has besides this a vital interest in another matter—protection of the freedom of the press from governmental interference. And it follows that if a Press Council is to be a watch-dog of the liberty of the press, it must be free from all Government entanglements. The Council must consist of its own representatives and must finance itself from voluntary subscriptions and, not as recommended by our Press Commission, through a compulsory cess on newsprint consumed by journals.

The British Press Council whose main objective is to protect the liberty of the press says in its report:

There is much evidence that press freedom has declined in various parts of the world since the end of the war. This fact makes it essential that newspapers everywhere in the free world should be on constant guard against attacks, direct and concealed, against their right to publish news and to comment freely upon it.

The Indian Federation of Working Journalists in its fifth session at Lucknow expressed the opinion in a resolution that the Press Council Bill, introduced in Parliament, "required radical changes before it could be enacted" and suggested that the Bill should be sent to a select committee in order that such changes might be introduced. In another resolution the Federation deplored the action of the Punjab State in enacting a special Press Act incorporating in it "most obnoxious provisions which were not found even in the black laws of the British days." While welcoming the Government of India's action in allowing the Press (Objectionable Matters) Act to lapse, the Federation was alarmed by the pronouncements of those in authority that special laws to control the press were in the offing. It expressed the view that the existing general laws were sufficient to deal with any real dangers to the security and the integrity of the country and appealed to the Government to drop the idea of such special laws.

Horror Comics Bill

Passes the Lower House of Parliament

The Young Persons (Harmful Publications) Bill, introduced in September 1955, has passed the Lok Sabha. The Bill received much support on the floor of the House, due mainly to the emotional alarm created by such horrid publications, but the great possibilities of abuse of the power conferred by the measure were largely ignored, though some critics pointed to the fact that the provisions were too wide; and although the Home Minister admitted that the definitions in the Bill were unduly wide no amendments were introduced calculated to restrict its scope. We have dealt with this subject in a series of articles and have pointed out that the least that ought to be done in respect of the Bill was to bring it into line with the corresponding Act passed in the United Kingdom, severely restricting its scope and introducing the safeguards which the Act contains. It is unnecessary to repeat all those arguments, but such arguments as can be urged were expressed by the "Statesman" in summary form in an editorial under the caption of the "Hicklin Test," which indeed is the root of the trouble. The "Statesman" said:

Hicklin's case, relating to a prosecution for obscenity under Lord Campbell's Act, came before the Queen's Bench on appeal in 1868. Chief Justice Cockburn then laid down: "The test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall." Since then the test has been repeatedly attacked, by authors, publishers and latterly lawyers. It pays no heed to the author's or publisher's intention, makes no allowance for artistic merit; it puts a premium on the activities of ignorant or prejudiced common informers. Under it literal-minded magistrates have

repeatedly ordered the destruction of many of the great Western classics, together with some modern works now widely regarded as part of the cultural heritage. In 1954, a famous summing-up by Mr. Justice Stable suggested that interpretation might better accord with the spirit of the times. But other judicial opinion has not been so liberal and, though a Bill sponsored by the British Society of Authors was in 1955 unanimously given a first reading in the House of Commons under the ten-minute rule, statutory reform has so far also hung fire.

Yet this was, under the circumstances rather astonishingly, the test adopted for use in Britain's Children and Young Persons (Harmful Publications) Act, 1955. That India took it over is less surprising, since parts of the British Bill were copied here almost word for word, and the test had been in previous use in India's own law of obscenity. But it is none the less open to criticism, especially as British legislation was confined to works consisting "wholly or mainly of stories told in pictures," whereas Indian is not. If intention were to mean nothing and only access to count, a newspaper would be liable when reporting "the commission of offences" or (in connexion with the Middle Eastern and Hungarian crises, for instance) "acts of violence or cruelty" and "incidents of a repulsive or horrible nature." Pandit Pant said that he did not expect frequent use of the Bill's provisions, intended as a deterrent. But no Government can bind its successor, and the agents in this matter are the States. The Bill should surely have included at least some indication that its use must be reasonable. Officials are known to fight shy of this word, because it is subject to judicial interpretation, with the onus of proof on the prosecution; but there are circumstances in which it is appropriate, and this seems one.

USE OF FACELESS INFORMERS

PROCEDURE LIBERALIZED IN IMMIGRATION LAWS

An announcement has been made recently that, in the administration of immigration laws of the United States, the use of confidential information, undisclosed to the parties concerned, will hereafter be severely limited, a limitation that will go far to make the Due Process Clause applicable to aliens as it is to citizens. The change is the more remarkable as only six months ago the U. S. Supreme Court had given its sanction to the Government's claim that it has the right not to reveal evidence in immigration cases. But this case had also provoked resounding dissents from the Chief Justice and three other Justices. And it was probably because of these dissents that the Government reconsidered its position in regard to the use of secret information which, as the "New York Times"

says, "runs contrary to the American grain," and decided to liberalize its procedure in this matter. The importance of the reform now announced will be best understood, if we first give an account of the case which led to the introduction of the reform.

In its anti-Communist fervour, the U. S. Congress passed in 1950 a law providing for the deportation of a person who has entered the United States and resided there, may be, for many years but has not acquired U. S. citizenship and is therefore still an alien if he "was at the time of entering the United States or has been at any time thereafter" a member of the Communist Party. It is obvious that such a law is likely to work great hardship on

certain persons if they are liable to be turned out of the country after a long residence there; their homes will be broken up and they will not know where to go in their old age. It is one thing to turn back a man when he seeks entry into the country and to remove him if he enters illegally, but it is quite another thing to banish a man after being lawfully admitted into the country and allowed to remain there for a large number of years. Recognizing the severe hardships to which resident aliens are likely to be subjected by making their expulsion automatic, as the law did, Congress amended the law by giving power to the Attorney General, in the Immigration and Nationality Act of 1952, to suspend the deportation that the earlier law had required. If a person has been present in the United States for at least ten years since the grounds for his deportation arose (in this case his membership of the Communist Party) and if he can prove that during all such period he was and is a person of good moral character, the Attorney General was authorized "in his discretion" to stop the removal of such a person if the removal would "result in exceptional and extremely unusual hardship." In order to give effect to this discretionary power in the matter of giving relief, he framed certain regulations concerning the procedure to be followed in considering applications for suspension of deportation, and one of such regulations allowed the use of confidential information if disclosure of the information would be prejudicial to the public interest, safety or security.

Just such a case of extreme hardship arose. Mr. Cecil Reginald Jay came over from England in 1917 for permanent residence in the United States and remained there since then except for the period when he served in the Canadian army during the first World War. It was discovered that from 1935 to 1940 he was a member of the Communist Party and for that reason he was ordered deported. He then applied for discretionary relief under the 1952 Act. An inquiry officer appointed to go into his case found that he was a person of good moral character and that it would cause extreme hardship if he were deported, in that he would be separated from relatives and friends. The officer therefore reported that Mr. Jay was qualified for suspension of deportation but still did not favour the grant of relief in view of certain confidential information. The Board of Immigration Appeals affirmed the decision.

Mr. Jay thereupon challenged the decision in the district court in a habeas corpus petition on the ground that denial of relief to him was unlawful because based on confidential undisclosed information. The district court and subsequently the Court of Appeals denied the writ. Then the matter came on certiorari before the Supreme Court, which on 11th June last affirmed the judgment of the lower court by a vote of 5 to 4. The main conclusions were that grant of relief is not a matter of right but of grace, and that there is nothing in the statute to show

"that the Attorney General is required to give a hearing with all the evidence spread upon an open record with respect to the considerations which may bear upon his grant or denial of an application for suspension of deportation."

From the majority decision Chief Justice Warren and Justices Black, Douglas and Frankfurter sharply dissented. The Chief Justice said:

It (the opinion of the majority) sacrifices to form too much of the American spirit of fair play in both our judicial and administrative processes.

(The hearing which is given to an alien and in which a decision is arrived at on the basis of undisclosed confidential information) is not an administrative hearing in the American sense of the term. It is no hearing.

Petitioner is not a citizen of the United States, but the Due Process Clause protects "persons." To me, this is not due process (to tear a person who has not offended against our laws from his relatives after 40 years of residence here). If sanction of this use and effect of confidential information is confirmed against this petitioner by a process of judicial reasoning, it may be recognized as a principle of law to be extended against American citizens in a myriad of ways.

I am unwilling to write such a departure from American standards into the judicial or administrative process.

Mr. Justice Black wrote:

No amount of legal reasoning by the Court and no rationalization that can be devised can disguise the fact that the use of anonymous information to banish people is not consistent with the principles of a free country. Unfortunately there are some who think that the way to save freedom in this country is to adopt the techniques of tyranny. One technique which is always used to maintain absolute power in totalitarian governments is the use of anonymous information by government against those who are obnoxious to the rulers.

Mr. Justice Douglas said:

Fairness, implicit in our notions of due process, requires that any "hearing" be full and open with an opportunity to know the charge and the accusers, to reply to the charge, and to meet the charge, and to meet the accusers. . . . A hearing is not a hearing in the American sense if faceless informers or confidential information may be used to deprive a man of his liberty.

Mr. Justice Frankfurter wrote:

The Attorney General may act on confidential information and Congress has left him to square it with his conscience. But he cannot shelter himself behind the appearance of legal procedure—a system of

administrative law—and yet infuse it with a denial of what is basic to such a system.

In the dissenting judgments much stress was laid on the fact that the discretion vested in the Attorney General (which according to the Chief Justice was not “an unfettered discretion” as stated in the opinion of the majority but “an administrative discretion” to be exercised in accordance with rules of fair play) was in fact exercised not by the Attorney General himself in all cases but by “his numerous subordinate hearing officers.” The “unfettered discretion” of the Attorney General thus becomes in practice the “arbitrary” power of inquiry officers (Justice Black). Justice Frankfurter wrote:

If the Attorney General's conscience is satisfied to act on considerations that he does not desire to expose to the light of day or to impart to an alien whose liberty may be at stake, thereby involving the fate of an innocent family, Congress leaves him free to do so. But Congress has not seen fit to invest his subordinates with such arbitrary authority over the lives of men.

If in his wisdom the Attorney General devises a system for delegating the means for carrying out the

responsibility for which Congress has given him discretion, he cannot also delegate his discretion.

The reform, now introduced in the matter of limiting the use of confidential information as the basis for deportation decisions, follows largely the line taken in the dissents. The Immigration Commissioner has announced (to quote the summary of the “New York Times” on the subject) that:

Aliens will be permitted to examine (confidential) information against them except only when “the most compelling reasons involving the national safety or security are present.” Furthermore, it will be up to the Commissioner himself personally—and not, as in the past, a subordinate—to certify that such secrecy is necessary in any given case.

While sometimes it is necessary on national security grounds to withhold details of accusations and to conceal sources when action against aliens is contemplated, such cases are relatively rare. Saying this, the “Times” proceeds:

The procedure envisaged by the Immigration Service takes this factor (of national security) into account and, while fully protecting the interests of the United States, recognizes that concealment will be the exception rather than the rule.

SEGREGATION IN PUBLIC INTRASTATE TRANSPORT OUTLAWED BY U. S. SUPREME COURT

It will be recalled (vide p. iv:83) that about a year ago Mrs. Rosa Parks, a Negro woman of Montgomery in Alabama state was arrested for refusing to give up her seat to a white person when called upon to do so by the bus conductor and fined for violation of the Montgomery City code and the Alabama state law, which require bus operators to provide separate but equal accommodation for white and coloured passengers. The conviction of Mrs. Parks led to an almost complete boycott of the city's buses (see p. iv:108) by Negroes—a boycott that has cost the bus lines \$750,000 in revenue over the past eleven months.

The Parks case was not carried further, but four other women who were similarly compelled by bus drivers to comply with the municipal and state segregation laws brought suit challenging the constitutionality of the city and the state laws. In June a three-judge federal court held by a majority of 2 to 1 the challenged statutes unconstitutional. The court said that the state law and city ordinance requiring segregation of races on intrastate buses “violate the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.”

The city and state authorities appealed to the Supreme Court, which on 13th November unanimously affirmed the

lower court's decision. The appellants had invoked the *Plessy v. Ferguson* decision of 1896, in which the Supreme Court ruled that racial segregation on railways was not unconstitutional if separate but equal facilities were provided. The “separate but equal” doctrine was later applied to segregation in other fields such as education and generally prevailed till the Court's ruling of 1954 outlawed racial segregation in the public schools. Since then the doctrine has been discarded in every test that has been brought to the Supreme Court—in public parks, on public golf courses, etc.

In the Columbia case also (see p. iv:111) the Supreme Court similarly dismissed a bus company's appeal against the Court of Appeals' decision invalidating South Carolina's bus regulation law, but the dismissal was based on technical grounds, viz., that procedural requirements had not been complied with, and the Supreme Court did not specifically affirm or reverse the lower court's decision. But the instant case definitely outlawed laws that require separation of the races on public vehicles. Although only Alabama laws are involved in the ruling, it implies that eight other states in the South which have similar laws will equally be affected by the ruling. These states have as it were been put on notice that it is only a matter of

time until all segregation laws relating to transit are declared unconstitutional.

The decision was hailed by all important American newspapers. For instance, the "Washington Post" wrote:

Segregated seating in city buses, one of the most conspicuous, cruel and pointless manifestations of Jim Crow, has now formally been declared unconstitutional. . . . Earlier decisions outlawing segregation in public schools and in public playgrounds left no room for doubt that the Supreme Court regards segregation in any facilities supported or chartered by government as a denial of the equal protection of the laws. The "separate but equal" rationale which has been employed ever since 1896 to justify the inequality of segregation has now been entirely discarded. Segregation is revealed for what it has always been—discrimination.

A recent survey shows that since the Supreme Court's historic decision of 1954 more than 350 school districts in nine of the 17 Southern and border states have integrated their lower-grade schools, and that in the field of higher education, since the first Negro was admitted to the University of Maryland in 1935, 164 colleges and universities in Southern and border states have opened their doors to Negroes, 95 of these having done so since the Supreme Court's ruling.

COMMENTS

The Right to Sue the State

LAW COMMISSION'S REPORT

In our July issue we said at p. iv. 135 that the Indian law in regard to wrongful acts committed by Government employees was 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. This part of the Law Commission's report is now published, and the "Statesman" has thus commented on it:

In India the law was somewhat different because the State inherited liabilities of the East India Company, but these tended to be circumscribed by subsequent case law, and similar anomalies arose. One of particular interest concerns the State's duties less to the public than to its own employees. Whereas a private firm would be bound by adjudications over wage claims and other conditions of labour, the State can, and frequently does, refuse to abide by them. Art. 300 of the Constitution continued the previous position, subject to modification by statute. To inquire how far such modification seemed indicated was deservedly therefore one of the questions referred by the President to the Law Commission. Its learned

report, the first of the series lately laid before Parliament, examines the question thoroughly.

The reasoning and conclusions are too complicated to be more than baldly summarized here. But the Commission regards reforms as the more necessary both because of the increased impact of the State on private citizens, and because of the conceptions of implicit in a welfare State; the law, moreover, should be made explicit and comprehensible, not left to be developed by judges—a sentiment with which ordinary people will heartily agree. "There is no convincing reason why the Government should not place itself in the same position as a private employer," whether in its duties to its own servants or in its responsibility for their acts as against third parties. The distinction between sovereign and non-sovereign functions should no longer be invoked; the defence of "act of State" should only be pleaded in listed circumstances, mainly relating to defence, emergency, or special socially desirable functions, for instance, quarantine.

Before giving rise to legislation, the report will probably be much pondered; in official circles, perhaps not altogether with pleasure. The State's willingness to forgo its privilege regarding labour awards has yet to be shown; an excuse for only partial compliance might be sought in the still restricted scope of even the Crown Proceedings Act. In other respects there is also the possibility of rear-guard actions. But the Commission itself has done its job comprehensively and well. About the only omission, and that perhaps not strictly within the terms of reference, is consideration whether any reform is desirable in the law regarding other sovereign bodies. A post-war English case has, for instance, somewhat anomalously, established that a news agency may not be called to account for alleged libel if, like Tass, it can plead to be an organ of a foreign Government.

Bullets used "on Flimsy Pretexs"

SOCIALIST PARTY'S CONDEMNATION OF GOVERNMENT

The National Conference of the Praja Socialist Party adopted on 27th November a resolution condemning the methods adopted by the Central and State Governments in dealing with incidents of breaches of law. The resolution viewed with grave concern that while the Government sanctimoniously preached the principles of Pancha Shila and the methods of peace to the nations of the world, their own treatment of people in India was seldom consistent with such professions. The vicious habit was growing among ministerial spokesmen of laying the blame for Government violence on the people; while in some cases the people might not have been entirely free from blame, in the vast majority of cases, the bullet had been resorted to on flimsy pretexs and the slightest provocation. The crowning shame of

it all was the stubborn refusal of the Government to institute independent judicial enquiries into the "atrocious incidents" and the failure to implement the recommendations made by enquiry committees in many cases.

Police Firings in Bombay

VINOBA CONDEMNNS CONGRESSMEN AND JOURNALISTS

At a committee meeting of the Sarva Seva Sangh held at Palni last month, Vinobaji Bhave expressed his emphatic opinion that a judicial inquiry should have been held into the police firings at Bombay and other places, and he particularly blamed Congressmen and leading journalists for the complacent attitude they took on the question. He said:

The arguments that are being given for avoiding such an inquiry and the way things have been managed in an authoritarian vein are highly undesirable. Many Congressmen holding places of power and authority in the organization have come and told me privately that they feel that a legal inquiry of the firings was necessary. But they have not the courage to say this publicly and this pains me much more because truth suffers. To me this is more serious than ordinary violence. It was not truthful for those who believed in the need of instituting a legal inquiry to remain silent and meekly submit to the leaders in the Government. I am opposed to this kind of party spirit. Loyalty to the party takes the place of loyalty to truth.

We resort to police firings. We do not feel the need of instituting legal inquiries. Because of our party loyalty we meekly submit to policies we do not entirely approve. Even the big newspapers in the country are so respectable. Excepting a few journals belonging to the parties in opposition hardly has any leading newspaper raised its voice against the persistent refusal of the Bombay Government to institute a legal inquiry into the police firings.

HABEAS CORPUS PETITION

Detentions in Kashmir

DETENUS ORDERED RELEASED BY SUPREME COURT

Abdul Jabar Butt and Abdul Haq Bande were arrested and detained by the State of Kashmir on 26th April under the State's Preventive Detention Act, in order to prevent them from acting in a manner prejudicial to the State. The State's Act, like the corresponding Indian Act, provides in sec. 8 (1) that the "detaining authority shall as soon as may be communicate to the detenu the grounds on which his detention has been ordered," but, unlike our Act, the State's Act contains a proviso which authorizes the State, in the case of a person detained in the interest of the security

of the State, not to communicate the grounds of detention if the State declares that the grounds cannot be communicated. The above-mentioned detenus were not supplied with any grounds of detention, but a declaration was made on 30th June, i. e., a little over two months after they were detained, that the grounds of detention were not be furnished to the detenus for the reason that it would be against public interest to do so.

The detenus then applied for writs of habeas corpus challenging their detention on the ground that the State Government had failed to make the necessary declaration about the non-supply of grounds of detention within the time allowed by law. It was contended that this declaration should have been made "as soon as may be" after detention, which meant within a reasonably short time and without delay. The Supreme Court on 13th November allowed the applications, though the State's High Court in which a similar plea was made had rejected their petitions.

The Attorney-General of India, who appeared for the Kashmir State in the Supreme Court in these cases, submitted that the State's Act did not specify any time limit for the making of the declaration and that there was no reason to hold that a declaration should be made within a reasonable time or within the shortest possible time. The time limit envisaged in the words "as soon as may be" was only applicable to cases where the grounds were to be supplied and not to cases where no grounds had to be intimated. Hence the Government could make a declaration under sec. 8 (1) of the Act at any time and the requirements of that section would be fulfilled whenever the Government made such a declaration.

The Chief Justice, who delivered the judgment of the Court, rejected the arguments advanced by the Attorney-General. He said that if the grounds of detention were not communicated to the detenu [in the case of persons not detained in the interest of the security of the State] within the period described by the expression "as soon as may be," the detenu would be held deprived of his statutory right under sec. 8 (1) and that his detention would become illegal as not being in accordance with the procedure prescribed by law. Applying the principle of "harmonious construction," it should be held that the proviso to sec. 8 (1) implied that "the time for making a declaration should be co-terminous with the time fixed for communicating the grounds of detention." In their opinion, His Lordship said, the authority vested in the Government to make a declaration contemplated by the proviso should be exercised before the expiry of the span of time predicated by the expression "as soon as may be" occurring in sec. 8 (1). The affidavits filed by the State Government did not disclose any good reason for the delay of two months, and consequently the petitioners were deprived of their liberty otherwise than in accordance with law. His Lordship directed the release of the detenus.

INDUSTRIAL DISPUTES ACT

Retrenchment Compensation

SCOPE OF SEC. 25 F DEFINED

The Constitution Bench of the Supreme Court, on 27th November, while interpreting the term "compensation" and defining the scope of sec. 25 F of the Industrial Disputes Act providing for retrenchment compensation, stated that "in no case is there any retrenchment unless there is discharge of surplus labour or staff in a continuing or running business" and that the term "compensation" does not apply to termination of service on bona fide closure.

The question of interpretation arose as a result of the claim for retrenchment compensation made by several workmen of the Barsi Light Railway Company whose services had been terminated on the eve of the Central Railway taking over the railway system from the company in January 1954 and who had not been absorbed by the Indian Railways. The same question arose for consideration on claims advanced by the workmen of Shri Dinesh Mills Limited, Baroda, numbering 470, whose services were terminated consequent on the closure of the mills in January 1954.

The Bombay High Court, which had occasion to consider the matter on writ petitions filed before it under Arts. 226 and 227 of the Constitution, held in both the cases that the workmen were entitled to claim compensation under cl. (b) of sec. 25 F of the Industrial Disputes Act and that the Railway and the Mills were liable to pay such compensation to them. Thereafter, the managements of the two companies went in appeal to the Supreme Court by virtue of a certificate granted by the High Court.

The two appeals before the Supreme Court raised the common question of law as to the validity or otherwise of the claim for retrenchment compensation under cl. (b) of sec. 25 F of the Industrial Disputes Act, which was introduced by Central Act 43 of 1953, amending the Industrial Disputes Act 1947. This section enacts that no workman who has served for over a year shall be retrenched until he has been paid compensation equal to 15 days' wages for every year of service. The term "retrenchment" is further defined "as the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment."

The Supreme Court examined the question whether the term as defined in the Act gave a meaning to retrenchment wholly different from the accepted connotation. The Court held that the essential requirements of the definition as contained in the Act were fulfilled by the ordinarily accepted meaning of the term "retrenchment" and therefore "when, within the framework of the ordinary acceptance of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the

definition as destroying the essential meaning of the word defined."

On this principle the term "retrenchment" in the Act connotes the discharge of surplus labour only and not the termination of service on discontinuation of the business by a total closure. This view is fortified by the earlier cases in which it has been accepted that an industrial dispute to which the provisions of the Act apply is one which arises out of an existing industry. Furthermore, the provisions of the Act, almost in their entirety, deal with an existing or continuing industry and not a dead business.

On these considerations Mr. Justice S. K. Das, who delivered the judgment of the Court, said:

We hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in sec. 2 and as used in sec. 25 F has no wider meaning than the ordinary, accepted connotation of the word: it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business.

Sec. 22 of the Appellate Tribunal Act

The Constitution Bench of the Supreme Court, allowing on 28th November the appeal of the Banaras Ice Factory against its workmen, held that when workmen are discharged by the employer as a result of a bona fide closure of business during the pendency of proceedings before an Industrial Tribunal it is not necessary to obtain the prior permission of the Tribunal.

The Banaras Ice Factory decided to close down for business reasons and consequently discharged its workmen after giving them due notice. As another industrial dispute between the parties was then pending, the workmen made a complaint to the Labour Appellate Tribunal that the appellant had contravened sec. 22 of the Industrial Disputes (Appellate Tribunal) Act by discharging them without its permission.

The appellant referred to sec. 22, which provides that during the pendency of any appeal under this Act no employer shall "discharge or punish, whether by dismissal or otherwise, any workman concerned in such appeal save with the express permission in writing of the Appellate Tribunal," and urged that this section did not apply to a discharge on a closure. The Appellate Tribunal, while accepting the bona fides of the closure, held that permission before discharge was necessary and directed that the workmen be paid full wages as compensation for the period of involuntary unemployment up to the date of the award.

In the appeal by the Factory against this decision the Supreme Court confined its judgment to the main question

"whether the word 'discharge' occurring in cl. (b) of sec. 22 includes termination of the services of all workmen on a real and bona fide closure of his business by the employer."

On this question the Court observed that the objects of the legislation for adjudication of industrial disputes could have its fulfilment only in an existing and not a dead industry, and sec. 22 must also be interpreted in harmony with the general scheme and scope of the Industrial Disputes Act.

The Supreme Court, referring to the objects of sec. 22 of the Act as expressed in the case of the Automobile Products of India Ltd., reaffirmed that the section was meant to protect workers against victimization by the employers during the pendency of a dispute and to ensure that proceedings before tribunals would take place in a peaceful atmosphere. Mr. Justice S. K. Das, who delivered the judgment of the Court, said :

These objects are capable of fulfilment in a running or continuing industry only. There is hardly any occasion for praying for permission to lift the ban imposed by sec. 22, when the employer has the right to close his business, and bona fide does so, with the result that the industry itself ceases to exist.

In the result the decision of the Labour Appellate Tribunal was set aside and the appeal was allowed on the ground that the appellant had not contravened the provisions of sec. 22 of the Act.

LEGISLATIVE PRIVILEGES

Arrest for Contempt of Legislature

HIGH COURT'S JUDGMENT IN "BLITZ" CASE

The acting Chief Justice of the Bombay High Court, Mr. N. H. C. Coyajee, on 16th November dismissed the suit filed by Mr. Homi D. Mistry, deputy editor of "Blitz," against Mr. N. Hassan, former Speaker of the U. P. Assembly, the U. P. State, the State of Bombay and the Commissioner of Police, Bombay, for damages for alleged wrongful arrest and restraint.

The warrant for the arrest of Mr. Mistry was issued by M. Hassan, in pursuance of a resolution passed by the U. P. Assembly on 7th March 1952 to answer a charge of contempt of the House.

Mr. Mistry was acting editor of "Blitz," when a warrant for his arrest was issued by Mr. Hassan, to answer a charge of contempt of the Speaker, arising out of the publication of a news item in the "Blitz" of 29th September 1951, considered to constitute a contempt of the Speaker and the Assembly. Mr. Mistry was arrested on 11th March 1952, taken to Lucknow, where he was detained without being produced before a magistrate, and was released on 18th March 1952 on orders passed by the Supreme Court, which held that Mr. Mistry's detention was illegal. Mr. Mistry thereupon filed his suit,

The main contention of Mr. Mistry was that the warrant issued by the Speaker of the U. P. Assembly could not be executed against a person outside the territorial limits of the State of U. P.

His Lordship ruled that, in accordance with Art. 194 (3) of the Constitution, the U. P. Assembly had the right to commit a person for contempt of that House, such a right being an essential privilege for maintaining the dignity of the House; that the Assembly was entitled to take the assistance of the Bombay Commissioner of Police in executing the warrant; that a State Legislature was not only entitled to issue a warrant for the arrest of a person beyond the territorial limits of the State, but such a warrant could be executed against a person outside the territorial limits of the State.

His Lordship observed that if this was not to be the position, then it would be open to any person to go beyond the territorial limits of a State and attack the Legislature of a State without being amenable to punishment at the hands of that State. Therefore, this power was necessary for the maintenance of the dignity of a Legislature.

His Lordship pointed out that the warrant issued by the U. P. Assembly Speaker was a general warrant and therefore His Lordship was not entitled to look into the warrant or to question its validity.

As regards the question as to how the fundamental rights of a citizen on the one hand and the privileges of a Legislature on the other could be reconciled, His Lordship said that since the Legislature had the privilege of issuing a warrant and since the privilege is non-justiciable, there could not be any consideration of the fundamental rights.

GROSS ABUSE OF POWER

Jana Sangh President Suspended

ORDER SET ASIDE BY HIGH COURT

On 22nd November Mr. Justice Bhargava at the Allahabad High Court allowed the writ petition of Mr. Sarada Baksh Singh, elected president of the Hardoi municipal board, challenging the U. P. Government's order of 25th June suspending him under sec. 48 of the U. P. Municipalities Act, and set aside the order saying that it was not a bona fide one.

The contention of the petitioner was that he was elected president of the board on the Jana Sangh ticket, and because the State Government did not like the election of a non-Congressman to the office, attempts were made to remove him from the presidentship. At first a motion of no-confidence was brought against him in December 1955, but it was lost. Thereafter on 22nd June the State Government served a notice on him to show cause within two weeks why he should not be removed from his office of president. But just two days after the notice was

received, the vice-president had received a letter from the State Government, which was forwarded to him, that he had been suspended under sec. 48 (3) of the Act, which empowers the Government to suspend a municipal president for "gross misconduct."

Three charges were brought against the petitioner in the notice served on him. The first of these charges was that he had deliberately delayed the election of vice-presidents by not calling a meeting of the board till 23rd August 1955. His Lordship found that the petitioner had made repeated attempts to hold meetings, but that the meetings had to be adjourned for want of quorum, and that on 14th February "the Congressmen abstained en bloc from coming to the meeting in pursuance of their declared purpose of obstructing the petitioner from working the municipal board." This showed that "there was non-co-operation on the part of the majority party." "There was no misconduct on the part of the petitioner, much less gross misconduct. The real gross misconduct was of those members who preferred to be elected as members of the board and yet failed in their duty to discharge it by attending the meeting." His Lordship further held that no misconduct had been made out in regard to the other two charges. The three charges did not amount to misconduct, much less to gross misconduct.

His Lordship said that the satisfaction of the State Government was based on misapprehension. He accordingly set aside the order suspending the petitioner.

EQUALITY BEFORE THE LAW

Special Treatment in favour of Government

BY-LAW ACCORDING SUCH TREATMENT DECLARED VOID

Mr. Raj Narain Lal, proprietor of a flour mill in Agra, was served by the Agra municipal board with a notice to remove encroachment he was alleged to have made over a Nuzul plot under a by-law the board had made under sec. 118 of the Municipalities Act, which gave municipalities power to manage Nuzul (i. e. Government) land. Mr. Lal challenged the validity of the by-law in a writ petition filed in the Allahabad High Court.

Mr. Justice Mahotra on 15th November allowed the petition and, holding the by-law invalid, issued a writ of mandamus directing the municipal board not to act under the notice.

In his judgment His Lordship observed that the impugned by-law gave power to the municipal board to determine which land was Nuzul land and further gave it a summary power to eject a man from the land, if he was thought to have encroached upon it, even without giving him a right of appeal against that order. Thus under the by-law special treatment was meted out to owners of Nuzul land, which could not be justified. If anybody encroached upon the land of a private citizen within the municipal limits, the citizen's remedy only lay

in filing a suit before a proper court for the ejection of the unauthorized occupant. In that suit the parties would have an opportunity to produce evidence to substantiate their title. Any party aggrieved by the decision of the court had a right to go up in appeal. The objective of the Municipalities Act did not justify any special treatment to Government in respect of Nuzul land. His Lordship ruled that the by-law in question encroached upon the right of equality before the law guaranteed under Art. 14 of the Constitution and thus was void.

TOPICS

Hungary as a Sovereign Country

India's View Comes Home to Roost in S. Africa

India's dubious and in effect hostile attitude to any U. N. action in Hungary (a delegate described it as "valiant defence" of the U. S. S. R.) stems from her insistence that Hungary, even after Russia's military intervention which suppressed the political freedom of the Hungarian people, remains a sovereign, independent country and thus must remain free from any interference at the hands of the U. N. Mr. Krishna Menon argued on behalf of the Indian Government that the United Nations being based on the principle of sovereign equality of all its members, "we cannot in any circumstances, either in what we may consider the right action or the wrong action that is perpetrated against us, disregard the sovereign rights of members;" that Hungary being admitted to the U. N. as a sovereign nation, "any approach that we make, as though this is a colonial country which is not represented at the United Nations, is not in accordance with the law or the facts of the position." In saying this he merely echoed what Russia and the Russian-imposed Hungarian Government were saying all along—that consideration of the Hungarian question is "an act of interference in the domestic affairs of the Hungarian State."

This is not the first time that Russia pleaded for non-interference by the U. N. particularly when such U. N. interference was likely in any way to check her own interference in other countries' affairs, and India's adding her voice to Russia's on the occasion perhaps did not affect the practical outcome of the debate very much. But it gave South Africa an excellent opportunity to make a neat retort. India year after year during the last ten years has brought up the question of the treatment of Indians in South Africa before the U. N. General Assembly, and this year too Mr. Menon asked that the South African question be put on the agenda. Every year South Africa invokes Art. 2, para. 7, of the U. N. Charter forbidding the U. N. to intervene in the domestic affairs of its member States and protests that consideration of that subject would constitute an infringement of South Africa's

sovereign rights as a member of the world organization. This year too South Africa raised the same objection, though it was overridden in the end, partly because the Soviet bloc has no scruples in the matter of the United Nations interfering with the affairs of members not belonging to the bloc.

But the South African delegate had this time a handy lever to support his Government's objection in the observations which India's delegate made on the Hungarian problem. He specifically quoted one sentence from Mr. Krishna Menon's speech protesting against U. N. interference in the affairs of member States, viz. :

My delegation cannot subscribe at any time to any phraseologies or proposals before the Assembly which disregard the sovereignty of States represented here.

Having received such valuable support for what exactly is South Africa's stand, the South African delegate clinched the matter by saying :

It is precisely the objection of my Government that the request of the Government of India for the inscription of these items (treatment of the peoples of Indian origin and policy of apartheid) represents a complete disregard for the internal sovereignty of the Union of South Africa as a member of this organization.

If, after complete suppression of the Hungarians' freedom by Russia, Hungary still remains a sovereign State, and "hands off" is the proper policy for the United Nations to follow in regard to her, how much more necessary is it (so the South African delegate argued) for the U. N. to let South Africa who has not yet been brought under subjection by any other country to settle her domestic affairs as she chooses ?

Mr. Krishna Menon opposed U. N. action in Hungary as unwarranted, because it would, according to him, be contrary to "the law or the facts" of Hungary's position. That "the facts" invite intervention by the U. N. is something which the blind can see; but even on the law of the matter Mr. Menon is too dogmatic. Must the U. N. treat a country which was once a sovereign member of the body as always sovereign, although it has since been visibly brought under complete subjugation by another? If so, what is the justification for unseating Nationalist China who still claims a title to the mainland of China? What is there to compel the U. N. to be guided by mere words?

The U. N., which has accepted as a sacred trust the obligation to promote the well-being of non-self-governing territories, requires under Art. 73 of the Charter such of its member States as are in control of these territories to submit information relating to economic, social and educational conditions of the peoples of their colonies, and when a State tries to rid itself of the obligation to supply such information on the ground that the territory in question has attained a status of self-government, the U. N. does not accept such claims at their face value but examines them. A writer in the "Statesman" has given such instances in a recent issue of the journal. He says:

In 1951 the Netherlands informed the Secretary General that no further information under Art. 73 (E) would be transmitted regarding the administration of Surinam and the Antilles, as they had attained a full measure of self-government in internal matters and as their Parliaments were freely elected on the basis of general and secret suffrage. Even this did

not satisfy the General Assembly which, in its Resolution 850 (IX), 1954, laid down that the communications received from the Dutch Government should be examined by the ad hoc committee in the matter of factors of self-government with "particular emphasis on the manner in which the rights of self-determination, had been attained and freely exercised." It also recommended that a mission should visit the territories to evaluate the opinion of the local people regarding the change in status.

In 1953 the General Assembly accepted the statement of the U. S. A. that no further information would be sent about Puerto Rico. In 1954 it accepted a similar statement from Denmark regarding Greenland. On both these occasions the General Assembly was satisfied that the local peoples had attained self-government, although Puerto Rico became a commonwealth and Greenland an integral part of the Danish realm.

Would it be contrary to law if the U. N. re-examined the change that might have taken place in the status of a country admitted to its membership on account of subsequent developments there, which may have reduced that sovereign State to the position of a vassal? Is it not quite possible that the U. N. may dismember the State because it has come under the complete domination of another? On this ground the Socialist Party in this country demanded that India should withdraw recognition from the Soviet-dominated Government of Hungary; Mr. Nehru on 20th November turned down the demand. But that is another story.

Revolutionary Idealism of the Hungarian Insurrection

In order to attract the sympathy of forward-looking people in the world apologists of the Russian suppression of Hungary's movement for freedom and democracy have been describing the revolt as the work of fascists bent on re-establishing landlordism and capitalism in the country. Thus Suslov at the 39th anniversary of the Bolshevik Revolution represented the Hungarian revolution as a "revival of fascism" brought about by "Horthy's Fascist Army." Kuznestov, speaking at the General Assembly on 9th November, repeated this. He said the Nagy Government which the Russian Army ousted from power "was made up of the forces of reaction; with direct help from abroad, the Horthy officers took up positions at the head of the counter-revolutionary forces." But the Hungarian people rebelled against it: "they did not permit the restoration of the old feudal, capitalistic system so detested by the Hungarian people." Even the Yugoslav dictator, Tito, though he condemned the first Soviet military intervention as "fatal error," justified the second in which the puppet Kadar regime was installed by Soviet tanks, on the ground that "reactionary elements" were about to bring down the whole socialist structure in Hungary. But all these assertions are wide of the mark. The true nature of the Hungarian revolution has been thus described by Professor Stephen Borsody, who was Counsellor of the Hungarian Legation in Washington in 1947 :

The revolution was a spontaneous popular upheaval against Soviet tyranny and Communist rule of terror. . . . The insurrection was the work of a new revolutionary society which came into existence since 1947.

After the second World War a democratic revolution took place in Hungary which smashed the old semi-feudal structure of society. This revolution of 1945 emancipated the peasants from the shackles of the latifundia; it liberated the workers from the exploitation of monopoly capitalism; it paved the way for the rise of a new intelligentsia of proletarian origin.

Although the Communists succeeded in corrupting this revolution when they seized power in 1947 with Soviet backing, nevertheless they failed to destroy the democratic dynamism of the new revolutionary society. As soon as the Soviet liberalization policy, following Stalin's death, eased the terror of the satellite dictatorships, the democratic forces of the Hungarian society reasserted themselves in full vigour.

It is noteworthy also that the democratic upsurge was spearheaded by a great many Communists imbued (or re-imbued) with the spirit of revolutionary idealism.

Nationalism, so much spoken of, was indubitably a dominant force behind the Hungarian revolution. And so were other traditional ideals which united the nation against the Soviet Russian tyrant and his Communist stooges.

But, in order to understand all the forces behind the revolution, more attention should be paid to the recent changes in Hungarian society. For this is a struggle of a society which is not looking backward, but is inspired by a vision of freedom and democracy that never existed before in the Danube Valley.

The only fault of the Hungarian revolution, in the eyes of the Soviet Union, was that the Nagy Government adopted reforms, some of which were quite alien to the Soviet concept of normal Socialist development. If it be "reactionary" to introduce free elections and to allow freedom of speech, for instance, then the Hungarian revolution was truly reactionary.

Poles Win Concessions from Moscow

Soviet-Polish Declaration

Poland has earned good dividends on her policy of moderation towards Moscow. The Poles rebelled against Russia's economic exploitation and military control, but they did not carry the rebellion so far as to give rise to suspicion at Moscow, as was the case with the Hungarian revolt, that they wanted a change in their basic form of government or aspired to break away completely from the Communist "community" of nations. This fact has enabled them to win many concessions from the Soviet Union. Without a doubt the grim events in Hungary helped them to a great extent to get what they did in their recent negotiations with Soviet leaders in Moscow.

The Russian leaders made a frank admission that in the Stalin regime many serious blunders were made in dominating Poland's economic system and in opposing Poland's local autonomy, and now they have agreed that Polish-Soviet relations would hereafter be developed "on the basis of complete equality and respect for territorial integrity, national independence and sovereignty, and of non-interference in internal affairs." If this happens in fact, the Poles will have obtained all that they dared to hope for when they rose in rebellion against Soviet imperialism.

It is true that they will still have the Russian army on their soil, but it is doubtful if, in temporarily waiving their claim for a complete evacuation of the Soviet troops, they have really lost very much. For they are conscious that the presence of Russian troops in Poland is necessary for maintaining the Oder-Neissa line fixed at the Potsdam conference in 1945, which gave the Poles a large expanse of German territory. Naturally, West Germany does not accept this frontier, and the Poles fear that what they were able to gulp down at Potsdam may be taken from them if the Russian forces are not at hand to prevent it. It is understood that the Soviet army will be confined to Western Poland and at certain points along supply lines that feed Russian troops in Eastern Germany. The size and location of Soviet forces in Poland is to be determined by negotiation between the two countries, but the presence of the forces, whatever they are, "can in no way affect," it is declared, "the sovereignty of the Polish State and cannot lead to their interference in the internal affairs of the Polish People's Republic." This is very satisfactory; only it should be remembered that Poland's sovereignty must be within the Communist structure. "The movement of Soviet military units (inside the Polish territory) demands the agreement of the Polish Government," a point on which Gomulka had laid much stress.

Agreement has been reached also about rights of extra-territoriality concerning Soviet troops. Heretofore crimes committed by Soviet soldiers or their families in Poland were handled by Soviet authorities. Now they will be obliged to respect and adhere to the provisions of Polish law, the limits of Polish and Soviet jurisdiction in this matter being settled by negotiation.

In the economic sphere the Poles have obtained relief to the extent of 2,400,000 rubles (or \$600,000) on account of two items. The Soviet Government collected from Germany reparations, of which 15 per cent. were to go, under the Potsdam agreement, to Poland. The Soviet Government as reparations trustee for Poland owed the latter country a certain amount. This is one item, and the other is on account of the forced delivery of coal by Poland to Russia between 1946 and 1953 at prices well below the world market. Poland was compelled to sell to the Soviet Union large quantities of coke at the rate of \$17.50 a ton. On this coke the Poles had to pay transportation charges to the Polish border, making the net price to them only \$13.25 a ton, when high-grade coke was selling on the world market at \$19.50 a ton. It was calculated that Russia owed Poland a million and half dollars on account of reparations and 2 millions on account of coal. The Poles will now get \$600,000 "in full settlement" of these claims. Poland will also obtain a two-year credit for 1,400,000 tons of wheat and a \$175 million loan from Russia.

The joint declaration deals with general international questions also. Poland thereby joins the Soviet Union in asking that Britain and France withdraw their forces from Egypt in obedience to a U. N. resolution. But what about another resolution of the United Nations calling for withdrawal of Soviet armies from Hungary and allowing U. N. observers to enter Hungary and move freely therein for the purpose of investigating the situation? Poland impliedly joins Russia in saying "no." The declaration indeed contains Poland's implicit support for Russian intervention and also an express statement that U. N. resolutions on Hungary "do not aim at

helping the Hungarian people but at distracting the attention of the peoples from the aggression against Egypt"—a statement which has been refuted on the floor of the U. N. General Assembly not only by England and France, which are interested parties, but by the United States and Canada, who were no whit less keen on United Nations action in Egypt than the Soviet Union itself. When on 4th November Mr. Subolev, the Russian delegate, said in opposing the United States resolution on Hungary that introduction of the Hungarian question was a "smoke screen" to divert attention from Franco-British intervention in Egypt, Mr. Lodge, the American delegate, made a strong attack on Soviet tactics, which showed, he observed, "a sickening picture of duplicity and double-dealing." While the Soviet delegation called for peace in the Middle East, with "unutterable cynicism" the Soviet Union poured reinforcements into Hungary, he said, to overthrow the Hungarian Government. Poor Gomulka, strong as he is, could not refuse to pay the price, demanded of him, of support for Russian intervention in the neighbouring country for the valuable concessions he was able to obtain.

Titoism and Liberalization

MILOVAN DJILAS LOCKED UP

The action taken by Tito against Milovan Djilas, who at one time rose to the top in Yugoslavia's Politbureau, reveals the true inwardness of Titoism, just as Soviet Russia's cruel suppression of the Hungarian revolution, while making terms with Poland's revolt, shows the limit to which Khrushchevism will be prepared to loosen its grip over satellites.

Some independence of Moscow in both domestic and foreign policy may be allowed to the states which stand in the Soviet shadow, because the successors of Stalin in the Kremlin believe that such concessions to nationalism will alone enable them in present circumstances to keep these states in the Soviet orbit. But there must not be a possible breakaway from Communism. This is summed up in the new doctrine of "different roads to socialism": the roads may differ somewhat, but the destination must remain the same. And the Soviet leaders further believe that liberalization within the state creates basic instability leading eventually to a breakaway. That is why the Polish insurrection representing independent communism was tolerated, but because Hungary took the other direction—towards liberalization—the revolution there met with brutal repression by Soviet tanks and troops.

The nationalist Communism of Tito too does not tolerate liberalization; his Yugoslavia is as tightly controlled a Communist State as can be found. It is essentially a police state. That is why Tito has halted Milovan Djilas' moves towards liberalization. High in the Communist hierarchy, he pleaded for freedom within the State—free elections, a two-party system, freedom of expression. He has been propounding these heretical ideas for the last three years. In the official Communist newspaper itself he wrote several articles arguing that "Yugoslavia's class struggle was over: therefore the enemy was no longer capitalism, but party bureaucracy; bureaucrats were blocking progress by preventing free expression; all forms of despotism, whether Stalinist or Leninist, must be abandoned." Such serious deviations from Tito's own ideas of ideological orthodoxy could not be tolerated by the dictator. He was thrown out of the party, arrested and released on probation. The comparatively mild

reatment that was meted out to him was no doubt due to the fact of his close companionship with Tito in the Partisan conflict and his loyalty to Tito in the 1948 split between Belgrade and Moscow.

Djilas, however, did not stop; he kept on writing in foreign journals, not only against Stalinism, but against the "new look" in Soviet Communism. The latest of his contribution, which led Tito to lock him up was an article in the New York "New Leader," in which he hailed the Hungarian revolution as "a new phenomenon, perhaps no less meaningful than the French or Russian Revolution" and accused Yugoslavia of not condemning wholeheartedly the brutality of Russia. He wrote:

This revealed that Yugoslav national communism was unable in its foreign policy to depart from its narrow ideological and bureaucratic class interests, and that furthermore, it was ready to yield even those principles of equality and non-interference in internal affairs on which all its successes in the struggle with Moscow had been based.

Referring to Gomulka he wrote:

He will have to choose between internal democracy, which has become inseparable from complete independence from Moscow, and the ties with Moscow required to maintain the Communists' monopoly of power. The victory of national Communism in Poland is not the end, but rather the beginning of further disagreements and conflicts inside the country and with Moscow.

The Hungarian revolution, he said, has

placed on the agenda the problem of freedom in Communism; that is to say, the replacement of the Communist system itself by a new social system.

"Freedom in Communism" is too dangerous an idea to be allowed to take root in Yugoslavia or to go abroad: Tito silenced him.

Genocide in Hungary

The U. N. General Assembly on 21st November adopted a resolution presented by Cuba, which in one of its paragraphs mentioned the crime of genocide in connection with the part played by the Governments of Soviet Union and Hungary in crushing the Hungarian people's revolt against Soviet imperialism. The mention was possible because, as the resolution says, both the Soviet Union and Hungary are parties to the U. N.'s Geneva Convention on genocide or group destruction. But this was rather futile because Russia and the states controlled by it have taken the precaution, while ratifying the convention, to repudiate Art. 9 of thereof, which provides machinery for enforcing the compact. This Article provides that "any disputes between contracting parties relating to the responsibility of a state for genocide shall be submitted to the International Court of Justice at the request of any of the parties to the dispute." Russia and the other Eastern bloc countries stipulated that they would not be bound to summons before the International Court and that in each dispute all the parties concerned must agree to submit to that Court before the dispute could be submitted. The enforcement machinery provided by the convention being thus repudiated, Russia cannot be called to account before any tribunal, even assuming that it has committed the crime charged against it.

This devitalization of the convention on the part of Russia and her satellites had a powerful reaction on the

United States. As in the matter of the U. N. Covenant on Human Rights the United States Government, seeing that the Covenant was being watered down in all sorts of ways, announced that it would not adhere to the Covenant, so in the matter of the Genocide Treaty it declared in 1953 that the Executive, though all in favour of a good treaty, would not seek the approval of the Senate for it. This gave an occasion to a good deal of propaganda in Russia that the U. S. was indifferent to the crime of genocide. But the stand of the U. S. is that it is no use merely to legalize a moral concept in a convention unless there is some means of enforcing the concept.

Coloureds Put on Separate Roll

Appeal Court's Decision

South Africa's Constitutional Court of Appeal upheld on 9th November what has come to be called the Senate Packing Act, which enlarged the Senate to such an extent that it enabled the Nationalist Government of Mr. Strydom to pass, with the requisite majority of two-thirds in a joint session of both Houses of Parliament, a bill for stripping the Coloured voters of the Cape of their right to vote with the whites on a common electoral roll. The vote of the Court, in which all the Justices participated was 10 to 1. The dissenting member of the Court, Mr. Justice Schreiner, expressed the view that the Act "was part of a legislative plan to create a Senate that would in that way provide

the two-thirds majority required to remove the appellant (a Cape Coloured voter) from the common roll, and it was enacted only for that purpose."

A total of 38,000 Coloured people in Cape Province were placed on a separate voting roll by the enlarged Senate. They have enjoyed this right of voting in common with the whites for the last hundred years, but now in the general elections that will be held in 1958 they will have to vote as an electoral group separated from the whites. The Coloureds will have four whites to represent them in the Assembly and one Government nominee in the Senate. The voters with both white and Negro antecedents have lost their right to elect two Coloured representatives to the Cape Provincial Council. Now they may elect only two whites.

The Appeal Court's decision ends a five-year constitutional struggle during which the Nationalist Government tried one measure after another to get the Coloureds off the common voters' roll and the fight will now pass into the political sphere. The effect of the decision may well be to make the Coloureds throw themselves heart and soul into the resistance movement carried on by the Africans, Indians and Malays against white domination in South Africa.

After the removal of the Coloured voters of the Cape from the common roll, the only non-whites now left on it are about 1,000 Coloured voters in Natal. Their names will remain on the roll, but no more will be added. When they die, the common roll will be all-white.

HUNGARY'S DESPERATE STRUGGLE FOR LIBERTY

A GLORIOUS PAGE IN HUMANITY'S HISTORY

The Hungarian revolt, which was soon militarily crushed but is still in being in the form of passive resistance against foreign masters and their indigenous agents, aimed not only at political independence but at the assertion of the right to national self-determination in its larger sense including freedom of expression and free elections not known to the people under Soviet rule. It started on 23rd October as a peaceful demonstration of students and workers, mainly Communists, demanding redress of their grievances, and it became a revolution when the Soviet Army appeared on the scene and the secret police set its machinery actively in motion. The entire Hungarian nation participated in it, without class or religious discrimination. The revolution was successful for a very brief space of time — till 3rd November. The rebels believed a new era was opening for them. They had obtained a Government of the kind they wanted — headed by Imre Nagy, who had dared to stand up to the Soviet dictator, and composed of leaders of other non-Communist parties, and thus a Government representative of the people at large. The Government had pledged itself to national independence, the exit of the Soviet troops for which active negotiations had just then commenced, the disbandment of the machinery of police terror, and independent foreign policy as a neutral nation free from the ties forced upon the country as a member of the Soviet bloc.

This feeling of elation was, however, short-lived. The revolution became a war when at dawn on 4th November the Soviet Army suddenly bombarded the city of Budapest. It took the Russians only an hour and half of fighting to gain the city. The Hungarian Army could not put up a stiff resistance, particularly because Maj. General Maletar, who had led the fight against Soviet tanks and artillery in the revolt and had been appointed Minister of Defence, and his Chief of Staff, Kovacs, who had gone the previous night, on an invitation by the Russians, to the latter's headquarters to discuss the withdrawal of Soviet troops, were put under arrest — an act of perfidy for which there could be found few parallels in recent history. On account of this loss of leaders, resistance to the Russians was even less organized than had been the original revolution. Premier Nagy himself was deposed and he and the other members of his Government were arrested. (Nagy had time only to send two piteous appeals to the U. N. for intervention on the radio.) The defence of the city was thus paralysed, but the revolutionaries did not easily submit. The booming of tank guns and the heavy cannonading was answered with fire from submachine guns, rifles, and pistols. More than 200,000 Soviet soldiers, organized in fifteen divisions and equipped with 5,000 tanks were battling since early on 4th November against unorganized and, in terms of modern warfare, almost unarmed bands of Hungarian students and workers. Tanks and patrol cars would

rumble down a street and at the first shot of a sniper would spray the whole area with answering fire. Their strategy was mass destruction. A Communist body described it as "barbarian Fascist mass murder." By 8th November the city had become almost quiet. The rebellion was militarily suppressed. The number of Hungarians who lost their lives in fighting up to 10th November is estimated at 20,000 and up to the end of November the number of dead is estimated at 65,000. Not only were the Hungarian youth at the mercy of shells and bullets but of Soviet patrols, who would arrive in a street, begin house-to-house searches for those suspect politically or militarily, and haul them off.

Rebels, to avoid this rounding up, fled across the border to Austria. It was not fright which made them leave their country, but it was the desire to carry on the fight from a more favourable position. As many as six to nine thousand youth entered Austria daily, but the Soviet-installed Government did everything it could to check the flood; they even destroyed the bridge near the border. The daily flow of refugees then diminished; it became three to four thousand daily. Altogether 100,000 youths thus left the country. The Government thereupon announced that the property of all persons leaving the country would be sequestered by the State. The decree was made operative from 23rd October when the trouble started. While this flood of refugees was being thus checked, house-to-house arrests on the part of Soviet troops patrolling the streets in armoured cars continued and were intensified. They were herded into railroad cars and sent eastwards. The number of those thus forcibly deported cannot be ascertained, but there is no doubt that it was so large as to deserve the castigation by the United Nations that the policy underlying deportations was a policy of genocide. That deportations were taking place has been officially admitted. The puppet Premier Kadar promised to stop them; it was claimed that they were later stopped, but no one outside Russia and the satellites standing in its shadow believed that they were not continuing. To crown all this, Premier Nagy, who had been given asylum in the Yugoslavian Embassy was abducted by the Soviet security police to Rumania; Kadar pretended that Nagy had left the Embassy and gone to Rumania of his own accord. This was contradicted by Yugoslavia. She raised the question in the United Nations on 4th December, saying that the explanation given by Kadar that Nagy went willingly to Rumania did "not agree with the facts." He gave a detailed account of how the Hungarian Government had broken its pledge not to take measures against the former Premier and formally protested against his abduction.

Although active armed resistance of the Hungarians had been largely broken, they used their sole remaining weapon—the general strike. A handful of workers used to go back to their jobs lured by promises of food and threats of punishment. But when they heard first of deportations and then of Nagy being spirited away, their

sullen passive resistance increased in intensity. Workers' councils came into being in almost every community in the early days of the rebellion as workers seized the factories and fortified them as strong points against Soviet tanks. The Budapest Workers' Council which guided them agreed at one time on a twenty-four-hour resumption of work as a test of the Kadar regime's sincerity. But the move failed when Kadar refused to help in restoring Nagy, who has become a popular symbol of revolt, to Premiership. The workers threatened to flood mines and blow up oil wells unless their demands were promptly met—end of deportations and withdrawal of Soviet troops. These were their basic demands, to be followed later by replacement of Kadar by Nagy, complete dissolution of the secret police force, establishment of Hungary's neutrality, and free elections. Kadar threatened the Budapest Workers' Council with deportation if the general strike was not immediately ended. He also ordered that food must be distributed only through Government shops. This action was intended to put a stop to the free deliveries of food that the peasants had been making to striking workers in order that their resistance might be strengthened. But the arrest of members of workers' councils and the threat to cut off food supplies were unavailing and the strike continued. Ultimately workers' leaders ordered a nation-wide 48-hour general strike from the midnight of 13th December. They demanded withdrawal of Soviet troops from Hungary, complete independence of their country, renunciation of the Warsaw Pact, a free press, free elections and a multi-party system of government, only "suspending" for the time being the reinstatement of Nagy as Premier. The Government answered the call for a strike by declaring a state of siege. Yet the strike was highly successful. Workers were transported to some factories in Soviet armoured cars, but they sat idly before their machines in defiance of Government orders to ignore the strike call. Kadar has been completely isolated; the only friends he has are Soviet troops and the secret police, besides some Stalinists. The Hungarians are keeping up the fight.

India's Role in the United Nations

Never since aggression came to be recognized as an international crime to be halted by the united strength of all the nations was a more blatant aggression committed and never was the crime more blatantly defended by the aggressor. Crushed militarily, the Hungarians are heroically battling for freedom by means of passive resistance, fondly hoping that Nagy's two appeals to the United Nations would meet with adequate response from the world organization which offers collective security to all weak and oppressed nations. The U. N. may not be equipped for such a mighty task when the aggressor happens to be a big power, but just when the Hungarians turned to the U. N. for justice a phenomenon had happened which inspired hope that it could successfully bring even big powers to book. The unilateral action of

the United Kingdom and France in Egypt had been unanimously condemned and effectively stopped. The British and French began to land troops around Port Said on 5th November, and two days afterwards, in obedience to the U. N.'s order, they ceased fire. Could the Hungarians not hope that the U. N. would take similar action ordering the Russian troops to cease fire, leading eventually to their regaining their lost freedom? It is true that the U. N., depending in the last resort upon bringing the moral pressure of world opinion on the aggressor, will succeed only to the degree that the aggressor is amenable to such pressure; and it does not follow that because the Middle East crisis could be resolved, the Hungarian crisis too would be. But here the question is whether world opinion was at all brought to bear in the case of the Soviet intervention in Hungary as it was in the case of the Franco-British intervention in Egypt. And the plain answer to it is that it was not; and the main obstacle to the proper handling of the Hungarian question at the U. N. was unfortunately India.

The brutal suppression of Hungary's fight for freedom stirred deep emotions everywhere; the conscience of the world was bitterly offended. The United States took a leading part in bringing the Hungarian question before the U. N. and denouncing the outrage on humanity which Russia had committed by its atrocious use of force. Minutes after the attack of Soviet tanks and artillery the U. S. A. proposed a censure motion against Russia in an emergency session of the Security Council, which of course the Soviet delegation vetoed. Thereafter in emergency meetings and regular meetings of the General Assembly it repeatedly raised the question. One would have expected that India, if only to prove that it is really neutral between the Eastern and Western blocs, would play a leading part in this affair, as it did in the Middle Eastern crisis. But never once did India associate itself with the U. S. A. and other powers who proposed withdrawal of the Soviet army which created such havoc in Hungary. On two occasions did India propose some measures itself, but that was only in opposition to what the U. S. A. and other powers considered ought to be done. India throughout played an obstructive role. First it tried to stave off the question of Russian aggression in Hungary; this happened when the putting of the question on the regular agenda of the General Assembly arose for consideration: India did not vote in favour. And when in special session the Assembly adopted a resolution moved by the U. S. A. deploring the use of force by the Soviet Union, calling upon the Soviet Government to withdraw its forces and to desist from further intervention in Hungarian affairs and instructing U. N. investigators to study the situation brought about by this intervention, India's delegation abstained—deliberately, as Mr. Menon explained later—because some parts of the resolution were unacceptable to his Government. Obviously what India could not swallow was the implied censure of the Soviet Govern-

ment contained in the resolution that the "situation in Hungary" had been caused directly by the intervention of foreign troops. In the next move of the U. N. India voted with Soviet Russia—it was the only country outside the Soviet bloc to do so. Every time India managed by arguments, sometimes plausible and sometimes not even plausible, to avoid being ranged against the aggressor. Soviet Russia could not hope for anything better from a country which was not in its regular orbit.

Mr. Nehru somehow persuaded himself that not to censure the Soviet Union even implicitly would help in easing the situation in Hungary. He described Bulganin as a leader in the fight for peace; he believed that the Soviet Union would withdraw its forces in good time as it had promised to do; he thought that if so much fuss was not made in the U. N. about Hungary, things would settle down. He even believed in the story that the Soviet action in Hungary was prompted by the Anglo-French intervention in Egypt, ignoring the plain fact, as pointed out by Dr. Kunzru in Rajya Sabha, that the Hungarian tragedy had taken place some time before the Middle Eastern crisis. Mr. Nehru equated intervention in Hungary with intervention in Egypt, which of course was wholly unwarranted, and yet proposed a different approach to the solution of the former problem from that to the solution of the latter. The double standard of international conduct that he adopted was neatly exposed by Mr. Pearson in the U. N. General Assembly and his evidence is unimpeachable because Canada went the whole way with India in checking intervention in Egypt. Mr. Pearson said:

I would also remind the U. S. S. R. of the example set by other member States who have recently accepted the intervention of the U. N. in the Middle East. There is of course no parallel between the events in Egypt and the situation in Hungary, but it is of the greatest significance that the United Kingdom and France upon whom the U. S. S. R. has tried to fasten the label of aggressor, have accepted and co-operated with the intervention by the United Nations in regard to certain action they have taken and which was condemned by this Assembly.

Mr. Nehru believes that the "sudden humiliation" of the Soviet Government by censuring it would only result in the postponement of the intended withdrawal of Soviet armies from Hungary, and India now proposes the expunging of all former resolutions adopted by the U. N., dropping the proposal of sending U. N. observers to Hungary (which the Soviet and Hungarian Governments have in any case unceremoniously rejected) and the starting of negotiations afresh with the Soviet Union. Mr. Nehru thinks that thus to start writing on a clean slate, which means after the Soviet Government has already very nearly succeeded in tidying the situation in Hungary, would be a "constructive solution"! Whether it solves anything or not, it will certainly save the face of Russia. (12th December.)

WHAT DOES THE HUNGARIAN NATION WANT ?
" TWELVE POINTS " OF THE " PEOPLE'S CHARTER, " 1848
LET THERE BE PEACE, LIBERTY AND UNDERSTANDING.

WE WANT

1. FREEDOM OF THE PRESS AND ABOLITION OF CENSORSHIP.
2. Responsible Ministry in Budapest.
3. National Assembly every year in Pest.
4. EQUALITY IN CIVIL AND RELIGIOUS RESPECTS BEFORE LAW.
5. National Guard.
6. The burden of taxes to be borne in common.
7. ABOLITION OF SERFDOM.
8. GRAND JURY, REPRESENTATION ON THE BASIS OF EQUALITY.
9. National Bank.
10. The Army to pledge to the Constitution, our Hungarian soldiers must not be sent abroad ; foreign troops should be withdrawn from our soil.
11. Release of political prisoners.
12. Union (with Transylvania).

EQUALITY, LIBERTY, FRATERNITY !

The Hungarian Revolution, which came twelve years after Soviet rule began with the entrance of the Soviet army into Hungary during World War II, is in the tradition which the Hungarians set in 1848 when they battled against the Habsburg Empire and were successful for a time under Louis Kossuth. The present revolt as well as that of over a hundred years ago was not merely a fight for freedom from foreign domination and exploitation and police terror but a fight for constitutional rights like free election and a free press.

The impulse to the current Hungarian Revolution which for the present seems to be suppressed by the massive military onslaughts of Soviet Russia came from a combination of national and radical ideas, precisely as was case with the German and Austrian Revolution of 1848, in which through mass meetings and " storm petitions " the intellectuals carried these ideas to the people. In these petitions the demand for a national Parliament and the grant of a Constitution and the imposition on the State army of an oath of fidelity to it was always accompanied by a demand for freedom of the press and the right of free assembly and the right of petition, and often by a demand for the establishment of equality of rights

between the several religious denominations, equality of all in civil matters, the removal of feudal servitudes, trial by jury, etc.

On 15th March 1848 an enthusiastic popular gathering at Budapest, under the inspiration of Michael Vorosmarty, the poet laureate of the nation, and Alexander Petofi, another eminent poet, and Maurus Jokai, a novelist of world-wide renown, with a number of other writers and youth of the university, compelled the Palatine of Hungary to grant the demands of the " People's Charter, " embodying the " Twelve Points " given above, and thus enacted a bloodless revolution. The revolution was successful only for a very brief period, for in 1849 the Russian army marched in and crushed it, just as the present revolution which started as a bloodless revolution on 23rd October was drowned in blood by Soviet troops and tanks on 4th November. After that the defenceless Hungarians could fight with the only weapon they have—the general strike—and the valiant people, cold and hungry, are still keeping up their resistance. We salute their undying courage and passion for liberty.