

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## SUPPRESSION OF NEWSPAPERS AT OFFICIALS' DISCRETION

### SUPREME COURT'S APPROACH " IN A SPIRIT OF COMPLIANCE "

The Supreme Court's judgment in the "Pratap" and "Vir Arjun" case is so perturbing that we may be permitted to make some more comments thereon in order to make our meaning clear. We feel that the Court in this case approached the question of the plenary authority which the Punjab Press Act confers on officials, for being exercised by them in their "subjective" discretion, to impose pre-censorship, to order total prohibition of publication and to prevent circulation of news or comments on certain matters in the Punjab State, "in a spirit of compliance rather than of independent scrutiny," to use the words of Lord Shaw in *R. v. Halliday* (1917) A. C. 260. It appears to us that the Court failed to exercise that jealous supervision over the actions of officials armed with such powers to interfere with one of the most cherished rights of citizens which it is not only entitled but has a duty to exercise in such cases. We shall state below how we arrived at this conclusion.

First, let us see what would have happened in the courts to a law of this kind in the pre-Constitution days. If the law gives power to an official to interfere with rights of individual liberty on his being satisfied that grounds for such interference exist and if the aggrieved party went to a court of law pleading that the interference was unreasonable and unjustified, the court would have said that the bare certificate of the official concerned that he was satisfied that the person should be interfered with in his enjoyment of liberty was enough to justify the official's conduct; that the satisfaction of the official was personal to him and the reasonableness of it could not be questioned by anyone. It was for the official, the court would have said, to decide, "in the forum of his conscience," whether he should make any restrictive order, and his decision was exempt from challenge or inquiry in a court of law. If the law itself empowers an official to take restrictive action at his absolute discretion, there is nothing to it but for the individual concerned to allow his liberty to be forfeited or abridged without demur; the very fact that the official was satisfied that a restrictive order was required would in itself be a complete defence of that order and the matter was not open to judicial review at

all. Or if the law empowers an official, to use another form of expression to say the same thing, to restrict the liberty of persons in such ways as appear to the official to be necessary or expedient, or if the law says (as, e. g., in sec. 144 Cr. P. C.) that "in the opinion" of the official "there is sufficient ground" for restricting liberty, that again would put an end to any judicial scrutiny. The question can no longer be raised whether the restrictions were in fact necessary or expedient. Against an affidavit that the authority concerned considered the measures taken to be necessary or expedient, the only ground which could avail would be evidence that the measures were mala fide, which it is almost impossible to prove. But provided that the authority acted in good faith and the aggrieved party could not adduce evidence to show that the official did not act in honest belief or did not hold the opinion which he professed to hold, the court could not examine the reasonableness of the action. All judicial inquiry was inhibited if the restrictive order was *ex facie* regular and duly authenticated. It is true that there are instances of a magistrate's order issued in cases of apprehended danger under sec. 144 having been quashed, but that was only on the narrowest of grounds, for instance, that the action was so irresponsible or the order so erroneous or defective that the official could not have applied his mind to it. But otherwise the reasonableness of the action was not subject to legal review; there could be no attack on the validity of the order. The jurisdiction of a court could not be invoked as to the arbitrariness of the official's conduct. The final determination lay with the official; in other words, a subjective test was applied and executive discretion was given an unlimited charter.

But the Constitution changed this. Under it restrictions to be imposed on Fundamental Rights had to be "reasonable." Yet by an oversight this requirement was not made applicable to restrictions to be imposed on the Fundamental Right to freedom of expression under Art. 19 (2). However, the amendment to this Article, made in 1951, required that the restrictions on this right also shall be reasonable. The amendment vastly extended

the scope of restrictions which could be validly imposed on freedom of speech and freedom of the press; but its saving grace was that the restrictions, whatever they were, had to be reasonable, and the "reasonableness" was to be a justiciable matter; that is to say, the courts were to assess the reasonableness of any restrictions imposed on the exercise of freedom of the right to expression. The change made the courts the ultimate judges of what restrictions were reasonable and what were not, whereas formerly, in the case of laws leaving the enforcement and administration of restrictions entirely to the subjective discretion of the Executive, the official's own opinion about the reasonableness of the restrictions he had imposed was to prevail. Thus, he was judge in his own cause. It was because of the jurisdiction which the alteration of the Constitution gave to courts of law that Bhandari C. J. and Falshaw J. in the "Pratap" case of last year (vide p. iv: 178 of the BULLETIN) proceeded at all to consider the validity and propriety of the pre-censorship order issued by the district magistrate of Jullundur, which he was authorized to issue whenever he thought it desirable to do so. They did not pronounce a judgment on this question merely because the order had already expired by the time the case came up and because the Court was "given an assurance that these orders will not be revived or resurrected." However, the Court set forth principles on which the question of the validity or propriety of orders restricting the freedom of the press should be dealt with, suggesting that the "clear and present danger" test should be applied. But the point we wish to make here is that the official imposing restrictions was not the sole judge, as formerly, of the reasonableness of the restrictions, and that the amendment transferred that power to the courts of law which were to decide whether or not any particular restrictive order was warranted in the circumstances of the case.

In *N. B. Khare v. State of Delhi*, A. I. R. 1950 S. C. 211, the Supreme Court laid down, rejecting the contention of the Attorney-General to the contrary, that the Court would have to satisfy itself not merely that the restrictions imposed by a law on the exercise of a fundamental right were reasonable, but further that law imposing the restrictions was itself reasonable; that the Court must be satisfied not only about the reasonableness of the extent and nature of the restrictions, but also about the reasonableness of the conditions under which the right is restricted. In thus stressing both the substantive and procedural aspects in determining whether any particular restrictive order has or has not the attribute of reasonableness, the Supreme Court stated that it must decide first whether the law authorizing imposition of restrictions is valid on the face of it. If it is not, there is an end of the matter, whatever the restrictions may be. If, however, the law cannot be struck down as invalid on its face, the next question that arises for consideration is whether the law is valid as

applied, i. e., whether the circumstances in which the law was put into force were such as to warrant the interference with individual liberty which the restrictive order causes. The Court asks itself first whether the law in question strikes a proper balance between a guaranteed freedom and the social control which on occasions requires interference with the exercise of that freedom, and next whether the limitations imposed on the enjoyment of the fundamental right are, in the particular conditions in which the limitations were imposed, reasonable or arbitrary and excessive. And in deciding the issue of reasonableness the Court applies an objective test. There can be no absolute standard of reasonableness, but the Court constantly tries, as it is not only its right but duty, to assess the reasonableness or unreasonableness of the way in which the restrictive order is enforced.

We have a feeling that the Supreme Court of the United States would have unceremoniously declared a law like the Punjab Press Act authorizing pre-censorship, suppression of news and comments on any specified subject of public interest, and limitation of the circulation of a newspaper to certain areas (not to speak of compelling a newspaper to insert certain matter) to be invalid on its face. We are unable to cite any specific judgments supporting this view, but that is only because such cases have not come up before the Court. To the misfortune of Indians, no state in the U. S. A. has ever had the hardihood to pass such drastic legislation wholly destructive of the freedom of the press, with the result that its voidance by the Supreme Court is not on record. The utmost length to which any state in that country has gone is that it may have enacted a law which savours of pre-censorship. Even in this matter of previous restraints on publication, such restraints have not been openly laid on newspapers or periodicals, but they have indirectly and almost unconsciously crept in while dealing with other matters. Even on such incidental introduction of previous restraints (and, even so, their number is exceedingly limited), the Supreme Court has always frowned. Its opinion in *Near v. Minnesota*, 283 U.S. 697 (1931), written by Chief Justice Hughes, has become a classic. No state will dare hereafter, one may be sure, to enact a statute which will even remotely provide for some kind of pre-censorship. As for interference with the free circulation of books and newspapers, such interference sometimes results from the regulations of the Postal Department; but with such undue meddling with the free operation of the market of ideas too the U. S. Supreme Court has not been indulgent at all.

The fact is that there is no fundamental right of the citizen in the United States which is more jealously preserved than freedom of the press, thanks partly to the ingrained love of the people for a free exchange of ideas and their genuine hatred of any governmental interference and partly to the close vigilance which the

courts of law are known to exercise over cases involving even the slightest abridgment of the right of free expression. The Supreme Court has, by construction of the First Amendment to the Constitution, given a position of pre-eminence to this right. *Thomas v. Collins*, 323 U. S. 516 (1944), not only rejected the "bad tendency" test applied in *Gitlow v. New York*, 268 U. S. 652 (1925), under which it was conceded that a state in virtue of its police power may validly forbid speeches and publications which have a "tendency" to produce results dangerous to the public security, but also for the first time gave to freedom of expression a preferred status in the American scheme of constitutional values. It gave this preferred status by announcing that, contrary to the principle applied in other matters, viz., that the validity of a law should be presumed "until its violation of the Constitution is proved beyond all reasonable doubt," in cases involving interference with freedom of speech or press, the presumption is against the validity of the law and that the burden of proof will rest upon those who defend it to show that the invasion of the right to free expression is amply justified by some "clear and present danger" to the public security. Mr. Justice Rutledge, speaking for the Court, said in this case :

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.

For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction.

We must state in passing that, in the earlier *Pratap* case, the Punjab High Court agreed that the principle to be applied in cases involving interference with freedom

of the press was that "it is the character of the right, not of the limitation, which determines what standard governs the choice," thus giving to the right to freedom of the press in our scheme of constitutional values also a priority which in its turn gives it the character of sacrosanctity.

Could not our Supreme Court have given, by the same process by which the United States Supreme Court did it, a sanctity to freedom of the press making it inviolable unless the state which wishes to take liberties with it could show by evidence that imminent danger to its security would otherwise have resulted? It cannot be pleaded that, unlike the U. S. Constitution, our Constitution categorically enumerates the restrictions which can be validly imposed upon the liberty of the press, and that this fact leaves little elbow-room for courts to adopt an interpretation like that adopted by the U. S. Supreme Court. For, these permissible restrictions are post-publication restrictions and not pre-publication ones. This was the argument put forward by Mr. N. C. Chatterji, counsel for the editors of "*Pratap*" and "*Vir Arjun*": "we are here dealing with, not mere restrictions," said Mr. Chatterji, "but total suppression;" he obviously meant that the restrictions enumerated in Art. 19 (2) would have application only in regard to editorials, etc., already published, in considering whether they fall within or without the metes and bounds of free expression, and that these restrictions could have no application where publication itself is forbidden. The Supreme Court however paid no heed to this argument, saying that the order in question was not an order for total prohibition, since the editors concerned were free under the order to publish editorials on all subjects except the Save Hindi agitation and their papers could circulate everywhere except in the State of Punjab, and that therefore it was not a case of total prohibition. But the objection holds good in all cases of outright prohibition of publication and of circulation, though the prohibition may be limited in its extent. It would, as it appears to us, be an abuse of language to say that mere restrictions such as those contemplated in Art. 19 (2) were imposed by the order and not prohibition altogether.

The Court might also have considered the statements of the Prime Minister and Minister of law in Parliament in the debates on the amendment to Art. 19 (2) to the effect that the insertion of "public order" in the Article would enable restrictions to be introduced which they themselves would regard as excessive, and that this legitimate objection would be met by the legislatures keeping well within the proper bounds of the restrictions when they would adopt specific legislation curbing freedom of utterance. If the Punjab legislature acted contrary to the expectations and in fact the mandate of the framers of the amendment, the judiciary could have been more severe in dealing with it. The Supreme

Court took judicial notice of the intention of the authors of the Constitution in interpreting Art. 21, viz. that in substituting "procedure established by law" for "due process" judicial intervention was barred in the matter of personal liberty, to which the Article relates. Could it not have taken similar notice that the ambit of "public order" in Art. 19(2) was wider than is intended and, with that knowledge, applied the test of reasonableness in appraising the propriety and general expediency of the Punjab Press Act and the orders issued thereunder?

Instead, it has exalted executive discretion to a height unheard of before and has almost declared that it was not within its competence to check it; that it could not make "the exercise of the wide powers conferred by the Act justiciable and subject to judicial inquiry," for "the Court is wholly unsuited to gauge the seriousness of the situation" with which the Punjab authorities were faced. This reminds us of a passage quoted in *Liversidge v. Anderson* (1942) A. C. 206: "It seems obvious that no tribunal for investigating the question whether circumstances of suspicion exist warranting some restraint can be imagined less appropriate than a court of law." In fact the judgment in the Punjab Press Act case follows very closely the reasoning in *Liversidge*. But the precedent becomes wholly inapplicable because Art. 19(2), after the amendment it underwent, substitutes an objective for the kind of subjective test that was applied in the *Liversidge* case. Moreover, it should be remembered that the House of Lords was in no little difficulty in arriving at the conclusion which the majority reached in that case. The interpretation which the majority put upon Regulation 18 B under the Emergency Powers (Defence) Act, 1939, viz., that the power to detain could be exercised on subjective satisfaction of the Home Secretary was expressly based on the consideration that the statute was emergency legislation strictly limited in duration. "We are engaged in the most crucial war in history," they said, "and our national safety is in dire peril." Only one quotation will suffice. Lord Macmillan said:

It is important to have in mind that the Regulation in question is a war measure. This is not to say that the courts ought to adopt in war-time canons of construction different from those which they follow in peace time. The fact that the nation is at war is no justification for any relaxation of the vigilance of the courts in seeing that the law is duly observed, especially in a matter so fundamental as the liberty of the subject — rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which, because of its drastic invasion of the liberty of the subject, the courts would be slow to attribute to a peace time measure.

Our Supreme Court has not only relaxed its vigilance but has very nearly failed to exercise it at all, though the measure it had to consider is a permanent peace time measure!

The test of reasonableness gives wide power to courts to assess, by objective tests, whether the restrictions imposed were in the circumstances necessary. The Supreme Court in the instant case did not in terms deny that the impugned restrictions are a justiciable issue, but it so completely waived the use of the power it has to look into them that the issue became in practice non-justiciable. It says:

The prevailing circumstances which led to the passing of the statute, the urgency and extent of the evil of communal antagonism and hatred which must be combated and prevented, the facility with which the evil might be aggravated by partisan news and views published in daily newspapers having large circulation and the conditions imposed by the section itself (sec. 2) on the exercise of the power conferred by it [we deal with the conditions in the next article] must all be taken into consideration in judging the reasonableness or otherwise of the law and, so judged, sec. 2 must be held to have imposed reasonable restrictions on the exercise of the rights guaranteed by Arts. 19(1)(a) and 19(1)(g) in the interest of public order and is protected by Arts. 19(2) and 19(6).

We have said above that the Court might have held the Act itself to be void on the face of it, considering that the restrictions which it permitted executive authorities to impose were in the nature of prior restraints. But even if the Act be held valid on its face, how was the necessity for enforcing the restrictions on the two newspapers proved so as to make it valid in its application? All that the Court has said about enforcement is that the mala fides of the enforcing authority are not proved. This was a good enough ground for judicial non-intervention in the pre-Constitution days when the subjective test was applied, but when the application of the objective test becomes the rule, surely there should be a more specific showing that the publication of editorials would so embitter communal feelings as to cause an imminent danger to the public peace. In this connection the difference in nature between the spoken and the written word should be borne in mind. A publication is hardly ever known to result in an instantaneous conflagration which it would be beyond the power of the police to control as a harangue conceivably might, and unless there are good grounds to anticipate such a result, there can be no justification for the forbidding of publications. The Court does not seem to have given consideration even to what was required in the matter of application of sec. 144, Cr. P. C., to newspapers, viz., "the causal connection between the articles to be published and the alleged

danger of disturbances of public tranquillity.' It was enough for the Court that the official acted in good faith, or rather that the contrary could not be proved.

There must be some technicalities not apparent to laymen like us which may make the Supreme Court's decision legally correct, but we cannot help saying that it clearly violates what appear to us to be the dictates of substantial justice. The decision means in effect that whenever a topic comes to be hotly discussed and large masses of people range themselves on one side or the other, inevitably creating a tense atmosphere, an official may suppress all newspapers, irrespective of the quality of their editorials, provided there is a law on the statute book permitting him to do so. Similarly, he may stop circulation of all news concerning probably the only matter in which the public at large at the moment takes any interest. We feel that the judiciary ought to be able, under a Constitution which recognizes freedom of the press as a fundamental right, to put an end to such a state of things, and we feel that if the Supreme Court has not done so it can only be because it considered itself to be under a disability to exert the power of supervision which belongs to it as a matter of right and duty. Nothing is farther from our mind than to ascribe to that august body a conscious bias in favour of the Executive, but there is such a thing as a general social outlook which makes some people keen on the preservation of civil liberties and some others not so keen. It is but natural that this outlook should imperceptibly but irresistibly colour even judicial opinions. And we cannot say that the present decision of the Supreme Court in respect of a law of a most draconian kind imaginable will be regarded as an outstanding example of a pronouncement jealously safeguarding civil liberties.

### — "Safeguards" in the Punjab Press Act

The Supreme Court, in its decision in the "Pratap" and "Vir Arjun" case (commented upon at p. v:1), upheld the validity of sec. 2 (1) (a) of the Punjab Special Powers (Press) Act authorizing prohibition of publication of any matter relating to a class of subjects, because the section provides for three safeguards, viz., (1) the prohibitory order can be enforced only if the authority concerned is subjectively satisfied as to the necessity of such order and that the order cannot be enforced if it is not so satisfied; (2) the order can remain in force for a limited period only; and (3) the order is liable to be rescinded by the Punjab Government at its discretion on a representation being made by the aggrieved party. And the Court invalidated sec. 3 (1) of the Act, prohibiting the entry of any outside newspaper into Punjab, because, although the section provides for the first safeguard, viz., "the positive requirement of the existence of the satisfaction of the authority as to the necessity for making the (prohibitory) order," it lacks the other two safeguards

contained in sec. 2 (1) (a), i. e., "there is no time limit for the operation of an order made under this section, nor is there any provision made for any representation being made to the State Government" for the rescission of the banning order. The presence of the three safeguards, in the opinion of the Court, makes the restrictions imposed upon freedom of the press "reasonable" within the meaning of Art. 19 (1) (2) and the absence of two of them makes the restrictions unreasonable.

Their Lordships in their judgment cited an earlier case, *N. B. Khare v. State of Delhi* (A.I.R. 1950 S.C. 211), in which Dr. Khare's externment from Delhi under the East Punjab Public Safety Act was upheld by a majority of the Supreme Court, Justices Mukherjea and Mahajan dissenting. "Even in his dissenting judgment Mukherjea J. conceded," said Their Lordships in the instant case that in emergent circumstances a district magistrate could be authorized to pass an initial order for externment on his "own personal satisfaction and not on materials which satisfy certain objective tests." But, conceding so much, Justices Mukherjea and Mahajan, allowed Dr. Khare's application for a writ of habeas corpus, holding that the restrictions imposed by the Act on the right of free movement were unreasonable. The majority of the Court did not agree with this view, but it may be interesting to consider the circumstances which in their opinion made the restrictions reasonable and compare them with the circumstances in which the Court held the order prohibiting publication in the "Pratap" case to be reasonable.

*Time Limit.*— This was one factor which, in the opinion of the Supreme Court in the instant case, constituted such a safeguard as to make the section in the Press Act authorizing prohibition of publication reasonable. The section limits the duration of the prohibitory order to two months, but it should be remembered that the period of duration of the order is limited to two months at a time. There is nothing in the Act to forbid the State Government or its delegate to extend the period by a fresh order on the same grounds. This limitation of the period of the operation of the order is not like that provided in sec. 11A of the Preventive Detention Act, under which the maximum period of detention is placed at one year. A man could be detained again after his release but only on new grounds which might have come into existence after his being released. This point came up in Dr. Khare's case. Under the Act a district magistrate could in his own authority extern a person for three months, but the State Government could extend the order to any length of time. To the minority of the Court this was a fatal defect in the Act. The majority saw the force of the objection that "the further extension of the externment order beyond three months may be for an indefinite period," but they reconciled themselves to it by the consideration that the life of the Act itself was limited; it was to remain in operation only till 14th

August 1951. The Court considered the Public Safety Act on the footing that it was frankly emergency legislation, and that conferment of extraordinary powers may be justified by exigencies for a temporary period. In contrast to this, the Punjab Press Act is a permanent measure; no limit of time is set to its duration; its operation will cease only when the State Government chooses to repeal it. One might have thought that different standards would be applied to a permanent measure from those which are applied to a measure enacted to meet a temporary emergency, though one would agree with the "Times of India" that a law authorizing prohibition of publication should not be allowed to be in force even for a day.

*Right of Representation.*—Next, in the "Pratap" case, the Supreme Court laid much store by a provision in the Act allowing an aggrieved person to "make a representation to the State Government" praying that the order prohibiting publication may be cancelled. How such a right merely to make a representation can be regarded as anything like a safeguard is incomprehensible to us. We suppose even without such a provision nothing would prevent a person from making such an application, and if the Act does not prescribe the manner in which the Government can dispose of the application which he is entitled to make, the mere right of making an application can be of little avail to him. The Act does not impose the slightest limitation on the State in the matter of disposal of the application. Sec. 144, Cr. P. C., which permits the issue of temporary prohibitory orders in urgent cases of apprehended danger, provides at least for some limitations. As Chief Justice Bhandari of the Punjab High Court in the earlier "Pratap" case (decided on 26th August 1956) involving the enforcement of pre-censorship orders, said:

A magistrate is at liberty to alter or rescind any order made by him either suo moto or on the application of any person aggrieved, but if an aggrieved person applies for the cancellation of the order, he is entitled to be afforded an opportunity of appearing before the magistrate either in person or by pleader and showing cause against the order. If the magistrate rejects the application wholly or in part, he is required to record in writing his reasons for doing so.

So far as the application (the right to make which is regarded by the Supreme Court as a valuable safeguard, so valuable as to make the Court declare sec. 3 of the Act invalid because of want of it) is concerned, all that may happen to it is a very courteous reply by the Government that it sees no necessity to modify the order.

The Public Safety Act, under which action was taken against Dr. Khare, provided not only for the right of making a representation against the order but also for reference of the representation to an independent tribunal, called the Advisory Tribunal like the Advisory Board

under the Preventive Detention Act. This might be regarded as a kind of safeguard since in the consideration of the representation an independent mind comes into play. But the Supreme Court in Dr. Khare's case found some difficulty even in treating this provision as an adequate safeguard. For the provision was so worded as to render it liable to the construction that while it was mandatory in the case of a person externed for more than three months it was optional in the case of one who is externed for three months or less. The word "shall" was used in the former case and "may" in the latter. The Supreme Court, i. e. the majority, could get out of this difficulty only "by reading the word 'may' . . . as having the meaning of 'shall' ". And the Chief Justice who spoke for the majority said: "I do not think in putting the meaning of 'shall' on 'may' in the clause I am unduly straining the language used in the clause." This argument was not acceptable to the minority, but in any case it shows that an opportunity to apply, without more, cannot be regarded as such a safeguard that the affording of it should make prohibition of publication reasonable and the lack of it should make the banning of entry of a newspaper unreasonable.

We have not referred above to the Supreme Court's first safeguard. We suppose that in no other case any court, whether in our country or elsewhere, has described the very power given to officials to impose restrictions or enforce prohibition of publication at their sole discretion as a safeguard. It is against the evil effects of the use of such absolute power that safeguards are devised. But our Supreme Court chooses to say that the fact that the officials are enjoined not to use the power even when according to their own belief the use of it is not required is in itself a safeguard! That the other two safeguards are wholly illusory will be obvious from what we have said above. The safeguards that will be of some practical value in mitigating likely injustice are like those that were provided in Regulation 18B (enforced in Britain in the last World War) which corresponds to our peace-time Preventive Detention Act. First, the Regulation could be enforced only against persons of hostile origin or associations. Secondly, its life and indeed that of the whole Act was expressly limited to the duration of the war. Thirdly, detention could be ordered only by the Home Secretary "and not some minor official holding a subordinate position," as Lord Romer said. (In the "Pratap" case the official who in fact issued prohibitory orders was the Home Secretary, but he might as well have been, under the statute, any minor official). Fourthly, detention cases were inquired into by an advisory committee. Fifthly, the Home Secretary was required to report to Parliament at least once in every month the action he had taken. The so-called safeguards in the Press Act will not bear comparison with any of these.

But these, after all are small points. Our main quarrel is that the Supreme Court in the present "Pratap" case failed to apply the Holmesian test, which in the earlier "Pratap" case the Punjab High Court suggested should be applied, viz., "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that (a legislature) has a right to prevent." Not only this, but the Supreme Court did not strictly apply even what the Punjab High Court regarded as a less satisfactory test in the application of sec. 144,

that the power to interfere with the liberty of the press should be used sparingly and for good cause shown; that restrictions should be imposed on that liberty only if the facts clearly make such restriction necessary in the public interest; that no restriction should be imposed which goes beyond the requirements of the case; that there must be causal connection between the articles to be published and the alleged danger of disturbance of public tranquillity.

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## COMMENTS

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### Punjab Press Act

#### SEC. 3 BANNING ENTRY AMENDED

The Punjab Government has lost no time in adopting legislation to amend sec. 3 of its Press Act, which empowers "the Government or any authority authorized by it" to impose a ban on any outside newspaper from entering the State of Punjab on the basis of the "subjective satisfaction" of the authority that such action is necessary for the purpose of maintaining communal harmony. The amendment was sought to remove the constitutional infirmity which the Supreme Court found in the section, by introducing two "safeguards" in it such as those which sec. 2 contains, viz, that the banning order can be in operation for two months (at a time), and that the publisher can make a representation to the State Government "which may on consideration thereof modify, confirm or rescind the order."

The Government could have had little objection to enacting such an amendment if that was all that was required to place the validity of the section on a sure foundation. It knew well enough that it sacrificed nothing of substance by accepting these so-called checks on its authority and indeed it might well have thought that the amendment gave it a good opportunity of displaying how liberal and responsive to public opinion it was.

One may doubt whether the Supreme Court itself would have thought of these "safeguards" at all if two sections had not come before it at the same time, one providing for the safeguards and the other lacking them. But though neither of the safeguards is of any practical value, the Supreme Court could show how alert it was to

civil liberty by invalidating the section which did not contain them. The public, however, is concerned more with substance than with shadow and one may feel certain that the public will not be mollified by the insertion of the amendment. Indeed, the Opposition members of legislature, recognizing that the safeguards now introduced were futile, condemned sec. 3, in its amended form, as no less destructive of freedom of the press than sec. 2.

It almost looks as if the Supreme Court will be persuaded to concede validity to any provision conferring discretionary power on officials if its use be limited by some condition. The Press Act in sec. 2 provides not only for pre-censorship or total prohibition of publication, but also for something entirely unheard of even in countries riding roughshod over the liberty of the Press: it empowers the Government or any official to whom it may delegate the authority to require a newspaper to publish any matter which the Government or the official may like to see published in it! When one thinks of the freedom of the Press, one thinks in terms of not being prevented from giving publicity to an opinion or news about public policy to which one would like to give vent. Freedom of the Press is supposed to be assured when the press is not subjected to any inhibitions. But the Punjab Government has shown that freedom of the Press is liable to attack also in another direction: a newspaper may be compelled against its wishes to give the hospitality of its columns to some matter which the Government wants for some reason to have published therein. Freedom of the Press thus means for a newspaper freedom not only to publish what it likes but also freedom from not being forced to publish what it does not like. The Punjab Act takes away that freedom in both respects.

In the "Pratap" and "Vir Arjun" case the use of the latter kind of coercive power was not the subject-matter of the litigation. Even so, the Supreme Court went out of its way to take it into its consideration, and it appears to have reconciled itself even to such an unprecedentedly drastic provision. It sees merit in this provision of the Act because "there are several conditions" attached to such compulsion; "namely, that the matter required to be published must not be more than two columns; that adequate remuneration must be paid for such publication; and that such requirement cannot prevail for more than one week." We suppose the Court would be prepared to find some defect in the law only if a newspaper were obligated to fill all its columns with some matter of Government's choice, and to go on doing so for all the 52 weeks of the year, and that too without any compensation. In any case one is glad to see that, in the Supreme Court's view, even the plenary powers of officials cannot be wholly unlimited but must be exercised within certain limitations if they are not

to be mercilessly struck down as something that the judiciary will not permit.

One hears sometimes that some words in a statute or the Constitution are held judicially to bear a meaning which those who wrote the words into the statute or the Constitution had probably not intended. Some such thing seems to have happened to the amendment that was made in 1951 to Art. 19 (2) of the Constitution setting forth permissible restrictions on the exercise of the right to freedom of expression. The amendment added "public order," "incitement to an offence" and "friendly relations with foreign States" as heads of restrictions to those that the Article as it originally stood had permitted. And while doing so it changed the form of the Article as it originally stood. The original Article had saved all laws "relating to" the heads of restrictions. The amended Article saved laws enacted "in the interest of" public order, etc. One might have thought the drafters of the amendment might well have used a different form of expression: laws passed "for the maintenance of public order" instead of laws passed "in the interest of public order," and that it chose the latter form of expression rather than the former was a mere matter of accident. But it is only laymen innocent of law that can take such a simple-minded view. To experts the two forms of expression convey different meanings. The Supreme Court has in this case told us what a substantial difference there is in their meaning. It says, "The words 'in the interest of' are words of great amplitude and are much wider than the words 'for the maintenance of public order.' The expression 'in the interest of' makes the ambit of protection very wide"—protection not of freedom of expression, but protection of its suppression. We are sure that the Government will be very grateful to the Supreme Court for an interpretation which gives its officials armed with power to impose restrictions on freedom of the Press a protection which probably it had never thought of giving them.

#### India at the U. N.

##### HER CONCERN ABOUT AGGRESSION

Expressing the view that time was not ripe for a formulation of the definition of "aggression" and that a hasty attempt so to define it would not promote international peace but would only accentuate existing tensions in international relations, India's representative at the Legal Committee of the U. N. General Assembly still displayed much concern about aggression, showing that even in the absence of such a definition India very well knew what, broadly speaking, aggression was. For the representative went on to say:

We believe that the United Nations should be vigilant in cases of aggression wherever it may occur as quickly as possible. Any compromise with

aggression will not only stultify the United Nations and defeat its primary object, but will also encourage the aggressor into committing further aggression and will serve as an encouragement to others who may otherwise be restrained.

These are unexceptionable statements, but one may well ask whether India did not in substance compromise with aggression when she refused to support the only action which the U. N. Assembly could take against the recent aggression against Hungary. The Security Council being stymied by the veto of the aggressor nation itself, all that it was possible for the Assembly to do was done—to collect facts about aggression and on their basis to call for the condemnation of the aggressor. What part did India play in this business? She would not give support even to the appointment of an impartial inquiring body for the gathering of authentic information, and the support was withheld expressly on the ground that no judgment should be passed on what had happened. And when the inquiring body laid bare the facts, pointing in unmistakable terms to the aggressor, India refused to join in condemnation on the plea that mere condemnation would not ease, but would only increase, international tensions. India's position in effect was: "If you cannot, by the use of physical force, stop the aggressor, you had better leave him alone." But will not this have the effect of "encouraging the aggressor into committing further aggression" and will it not "serve as an encouragement to others who may otherwise be restrained"? To say the least, India did not in this instance help the U. N. in exercising that vigilance against aggression on which her representative at the Legal Committee justly laid so much emphasis.

#### Force Used "Excessive and Indiscriminate"

##### BEATING UNPARALLELED IN THE HISTORY OF JAILS

Mr. Justice S. B. Cooper, a Judge of the Punjab High Court, who was appointed to inquire into the incidents which culminated in August last in a lathi-charge on the under-trials locked up in the Ferozepur Jail for offering passive resistance in connection with the Save Hindi agitation conducted by the Arya Samaj, has submitted his report to the Punjab Government. The Government has published brief extracts from the report which shows that, apart from the death of Sumer Singh, 309 under-trials received injuries, and 29 suffered grievous injuries. It was quite possible, Mr. Justice Cooper says, that the situation in the jail could have been handled with tact and without resort to a lathi-charge. He further says that the force used was "excessive, indiscriminate and indeed out of all proportion to the needs of the situation" and that there was incontrovertible evidence that the Arya Samajist under-trials were beaten inside the barracks and even in the bathrooms, which was unparalleled in the history of the jails in the Punjab. He also said that the use of excessive force was contravention of jail rules and



could in appropriate cases be an offence under the criminal law. He added: "To my mind any person responsible for hitting the under-trials in this case has committed a criminal offence." The Deputy Superintendent of the Ferozepur Jail has already been in suspension and other officials responsible for excesses are being charge-sheeted.

#### Administrative Tribunals

At the All-India Speakers' Conference held in Jaipur last month, the Speaker of the House of the People called attention to the need of the legislatures exercising vigilance over the proposed constitution of administrative tribunals and the use by the executive of rule-making powers so as to resist executive encroachments on the power of the courts and legislative bodies. He referred to the fact that Parliament in recent years had been voting large funds for various so-called autonomous corporations over whose operations neither the Auditor-General nor Parliament had any control. Commenting on this matter, the "Hindu" says: "This is a problem that has to be tackled properly to ensure, on the one hand, that public funds are spent wisely and well, and, on the other, to bring operations of publicly-financed bodies under the scrutiny of one or other organ of the legislature." Speaking of the Estimates Committee and Public Accounts Committee, the paper says that their inquiries and reports "have brought to light numerous instances of ministerial extravagance and waste of public funds."

## GUARANTEE AGAINST DOUBLE JEOPARDY

### Double Jeopardy Plea Rejected BY THE SUPREME COURT

Dana, a Cuban national, and Frey, an American, were arrested on 23rd June on suspicion under the Sea Customs Act, 1875, as their car was about to cross the border between India and Pakistan. On a personal search Frey was found in possession of a pistol and later the Customs authorities recovered Rs. 8,50,000 in Indian currency and \$10,000 in U. S. currency from a specially designed chamber of Dana's car. The Collector of Customs proceeded against them under sec. 167 (8) of the Sea Customs Act and sec. 23 (b) of the Foreign Exchange Regulation Act and, after giving them notice, receiving their explanations and giving them a hearing, ordered the confiscation of the money and the other articles and imposed a personal penalty of Rs. 25 lakhs on each of them. This happened on 24th July.

Thereafter, on 12th August, the Customs authorities filed a complaint on the same facts before the Additional District Magistrate under sec. 167 (8) of the Sea Customs Act, sec. 23, read with sec. 8, of the Foreign Exchange Regulation Act and sec. 120 (b) of the Indian Penal Code,

alleging that Frey and Dana were guilty of criminal conspiracy to smuggle money out of India in contravention of the law. Frey and Dana appeared before the trial court, but as they were unable to furnish bail they were remanded to custody.

Subsequently they filed habeas corpus petitions in the Supreme Court on the plea that their detention was illegal in view of the provision of Art. 20 (2) of the Constitution that "no person shall be prosecuted and punished for the same offence more than once." It was contended that the confiscation of the money and goods and the imposition of a penalty amounted to a prosecution and punishment and hence the petitioners could not be tried again for the same offence.

In the course of the hearing the Court drew the attention of counsel for the petitioners to the case of Maqbool Hussain, wherein the Supreme Court had held that the proceedings by a Customs Collector were administrative in nature, and did not bar a subsequent prosecution. Counsel was asked whether it was his case that the proceedings held by the Collector and resulting in the order of confiscation and imposition of penalty on the petitioners should be considered a "prosecution and punishment" for the purposes of Art. 20.

In reply, counsel submitted that the proceedings by the Customs authorities holding the petitioners guilty of the offence of contravening the Sea Customs Act and imposing a deterrent penalty of a fine of Rs. 25 lakhs each were essentially judicial in nature. It was urged that the facts upon which the Collector had based his findings and those which were set out in the complaint before the court were identical, and it followed that the petitioners were being prosecuted for the same offence in violation of Art. 20.

The Attorney-General, appearing for the authorities submitted that the mere fact that the proceedings held by the Collector were judicial or quasi-judicial in nature was not a relevant consideration. In order to avail of the benefit of Art. 20(2) the petitioners must show that their previous trial was a "prosecution" before a court of law and that a "punishment" had been inflicted upon them. He submitted that the proceedings held by the Customs authorities were based on considerations relating to revenues and were wholly different from criminal proceedings before a court of law. The Attorney-General stated in conclusion that the petitioners had failed to show that they had already been prosecuted, and hence their present trial at Amritsar was in accordance with the law and the petition should be dismissed.

The Chief Justice of India, who delivered the judgment of the Court on 31st October, said that Art. 20 (2) of the Constitution protected persons from being prosecuted and punished for the same offence more than once. The question that had to be answered was whether the

petitioners had previously been prosecuted and punished for the same offence for which they were now being prosecuted before the Additional District Magistrate.

The offences with which the accused were now charged, His Lordship said, included an offence under sec. 120 (b) of the Indian Penal Code, the offence of criminal conspiracy, whereas the Collector did not try them for any such offence and had no jurisdiction to do so. His Lordship said :

The offence of criminal conspiracy is a different offence from the crime that is the object of the conspiracy, because the conspiracy precedes the commission of the crime and is complete before the offence is attempted. They are therefore, quite separate offences.

The contention of the petitioners' counsel that the words used in Art. 20 (2) of the Constitution were sufficiently wide to protect a person against a further prosecution and punishment in cases in which he had already been tried penalized as a result of some judicial or quasi-judicial proceeding was left open by the Court.

The Chief Justice stated that the Court did not find it necessary for the purposes of the present case to express any opinion "whether the words in Art. 20 do or do not contemplate only proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal as ordinarily understood."

The Supreme Court held that Art. 20 (2) had no application to the facts of the present case and accordingly dismissed the petitions.

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## IMMUNITY FROM SELF-INCRIMINATION

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### Compelled Testimony under sec. 540 Cr. P. C.

#### HIGH COURT QUASHES CRIMINAL PROCEEDINGS

Mrs. Hyder, Principal of the Girls' College of the Aligarh Muslim University caused a plot adjacent to the premises of the College to be ploughed up with a tractor with the object of utilising it as a playing field for the College. One Mr. Abdul Rahman, who claimed to be a tenant of the plot, filed a criminal complaint for trespass against the farm superintendent of the University and two others who had taken part in ploughing up the plot. The proceedings started and the accused, in course of their examination, stated that Mr. Abdul Rahman had no concern with the land and that they had done the ploughing under instructions from Mrs. Hyder.

Then the trial magistrate ordered the examination of Mrs. Hyder under sec. 540, Cr. P. C., which authorizes the court to "summon any person as a witness . . . if his evidence appears to it essential to the just decision of the case." To a question put by the magistrate Mrs. Hyder admitted that the ploughing of the land had been done under her directions. In view of the admission Mr. Abdul

Rahman applied for Mrs. Hyder being made an accused person, The magistrate took cognizance of the charge against Mrs. Hyder and impleaded her as an accused in the case. Mrs. Hyder then made a revision application against this order, and on the additional sessions judge dismissing it, filed a revision in the Allahabad High Court.

Mr. Justice James on 14th October held that the magistrate's order arraying her was manifestly wrong. His Lordship said that when the magistrate decided to summon her under sec. 540, Cr. P. C., he had presumably come to the conclusion that Mrs. Hyder's evidence was essential to the just decision of the case. Every question put to her she answered without demur and in an honest and straightforward manner. If therefore the magistrate asked her a question which was likely to implicate her it was but fair for him to give her an appropriate warning before demanding her reply. But he did nothing of the kind, and from an examination of the entire proceeding before him it became difficult to resist the conclusion that his intention was to trap her. This was something to be strongly deprecated, especially when they bore in mind that as a court witness she had no counsel to protect her interests. The magistrate committed a clear breach of the law by utilising her compelled testimony for taking cognizance of the charge against her and arraying her as an accused in the case. His order could not be sustained for a moment.

His Lordship said the proviso to sec. 132 of the Evidence Act unequivocally laid down that no answer which a witness was "compelled" to give could be "proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer." It would appear that neither the magistrate nor the additional sessions judge was aware of this provision of law. Moreover, sec. 14 of the Oaths Act enjoined that every person giving evidence on any subject before any court shall be bound to state the truth on such subject. That is to say, sec. 14 "compels" a person who had taken the oath to answer correctly any question put to him. This section coupled with the proviso to sec. 132 of the Evidence Act was thus found to give full immunity to Mrs. Hyder in respect of the self-criminatory statement she made when examined as a witness by the magistrate, and indeed under the law no action against her was possible except a prosecution for perjury (which no one suggested should be done). His Lordship rejected the contention that since Mrs. Hyder had raised no protest against the magistrate's question when it was put to her, she could not at that stage seek the protection of the proviso to sec. 132 against the "compelled" testimony. No such narrow or restricted construction should be placed, His Lordship observed, on the term "compelled" in the proviso. His Lordship said that the majority of witnesses who appeared in India were laymen and therefore ignorant of legal technicalities or fine points of procedure. It would be against the principles of justice, equity and good conscience to expect them to protect their rights when in the witness-box. They would deem it an impertinence to raise an objection to a question put to them by the court.

His Lordship said that the circumstances of the case irresistibly drove him to the conclusion that it would be

an abuse of the process of the criminal court to allow the present proceedings to continue any longer and, utilising the inherent power of the High Court, under sec. 561-A, Cr. P. C., "to prevent abuse of the process of any court or otherwise to secure the ends of justice," quashed the proceedings against all the accused. His Lordship incidentally observed that subordinate courts must realise that in cases like the present they must exercise extreme caution in issuing process for accused persons and that such process should not be issued unless the complainant had produced some documentary evidence, which prima facie supported his claim for title or possession. This wholesome rule was totally ignored by the magistrate.

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## INDUSTRIAL DISPUTES ACT

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### Dismissal of Workmen

UPHELD BY THE SUPREME COURT

A dispute arose in December 1955 in the Modern Mills, Nagpur, in connection with the working of calender machines. Previously three persons worked on each machine, but when the management deputed only two workmen to work one machine they refused, raising the objection that the management had increased work-load on them. Seven other workmen of other departments also stopped work in sympathy. The management considered their action as an illegal strike and contrary to the provisions of the standing orders of the Mills and on that ground dismissed the nine workmen.

The workmen made an application under the C. P. and Berar Industrial Disputes Settlement Act to the Assistant Labour Commissioner, who declined to interfere with the orders of the management, holding that even if it was assumed that the Mills had reduced the number of workers on a calender machine, the action of workmen in going on strike or refusing to work was unjustified and illegal when legal remedies were open to them to ventilate their grievances. The workmen then filed a revision before the State Industrial Court which, after examining the evidence, came to the conclusion that the management was not justified in effecting a change in the working of calender machines, which had clearly increased the work-load of each employee, without following proper procedure, i. e., without giving notice, etc. It also held that the refusal by two of the workmen to work the machine was not a strike and the refusal of the other seven to work, although strictly speaking it came within the term, the punishment of dismissal was not merited in the circumstances.

The management appealed against the order of the State Industrial Court to the Supreme Court, which on 25th October allowed the appeal. Mr. Justice Imam, who delivered the opinion of the Court, observed at the outset that "under the provisions of the Act an appeal from the orders of the Assistant Labour Commissioner is expressly prohibited and the Industrial Court is vested only with revisional jurisdiction. It follows from this that the power of revision should be exercised by the State Industrial Court on a point of law and not merely because the State Industrial Court takes a different view to that of the Labour Commissioner on questions of fact."

His Lordship remarked that the State Industrial Court had adopted a wrong and erroneous approach to the legal questions involved in the dispute before it. He said that so far as the workmen who were not working on a calender machine were concerned, their strike was

undoubtedly an illegal strike. So far as those who were allotted to work a calender machine, their strike would also be illegal according to sec. 40 (1) (c) of the Act which provided that a strike shall be illegal if it was commenced or continued only for the reason that the employer had not carried out the provisions of any standing order or had made an illegal change. Thus all the nine workmen, those that were to work a calender machine and those who were not so employed, had gone on an illegal strike.

It was unnecessary, His Lordship continued, to decide whether in fact there had been a change in any industrial matter on the part of the employer of the workmen because, even if it was assumed that there had been a change and an illegal change at that, the strike would be illegal if it was commenced or continued merely because the employer had made an illegal change. The appellant had, therefore, acted within his jurisdiction under the standing orders of the Mills in dismissing the workmen.

In the result the Court, allowing the appeal, set aside the order of the State Industrial Court and restored the order of the Assistant Labour Commissioner.

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## NOTES

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### Soviet Non-cooperation with Prince Wan

It will be recalled that the U. N. General Assembly, while adopting the report of its special committee on Hungary, had given its retiring President, Prince Wan Waithayakon of Thailand, the task of finding out what could be done to implement the resolutions of the U. N. However, both the Soviet and Hungarian authorities have refused Prince Wan all co-operation, as the Kadar regime had previously excluded Mr. Dag Hammarskjöld, the U. N. Secretary General, and refused to have anything to do with the committee itself. They took this attitude on the ground that the U. N. was meddling in Hungary's internal affairs. They claim that the Hungarian uprising was the work of foreign reactionaries, and that the Red Army intervened at the request of the Hungarian Government to help the Hungarian "people" resist foreign aggression. These claims have been proved by the committee to be utterly without foundation, and, moreover, even if Russian help was asked for by the lawfully constituted Government of Hungary, the intervention would still amount to "aggression," under the Soviet Union's own definition of that term.

### First Anniversary of the Hungarian Revolution

#### HARSH POLICE MEASURES

The "Times" had occasion recently, when commenting on the threat of a war in the Middle East, to refer to Russia's record in Hungary during the revolution of last year. It said:

Just twelve months ago, the Russians were already alerting their troops inside Hungary and over the Hungarian frontier, and were moving some of them towards Budapest. These precautions were taken some days before the students' meetings on October 22 and the large demonstration in Budapest on October 23 which sparked off the great revolt. The weeks of heroism, anguish, deceit and brutality surge up again in memory when the Russians preach to the United Nations on texts of independence and democracy. . . .

It is not simply a year-old memory. After the Russian troops had done their work, the Kadar regime took over, and it remains clamped on the Hungarian people. . . . How many have gone to the gallows cannot be known. In Budapest the most frequent estimate is 3,000, though some put the toll higher. And the prisons and camps are full. Thus, in the Communist jargon, are the people defended from reactionaries.

As October 23, the first anniversary of the outbreak of the Hungarian revolution, approached, the Kadar regime took increasingly harsh measures against any disturbances among the population. On October 16, Minister of State Marosan ordered students to set upon those who appeared on the anniversary date wearing a black armband. Anyone who failed to turn up at the University as a demonstrator would, he said, be expelled for ever. The previous day another Minister, speaking at Szeged, referred to "depraved people who, even to-day, prepare to 'celebrate' the anniversary of their rising." He went on: "We will strike down these people even more severely than before," and reminded his audience that "our army and police force are much stronger nowadays." The general reaction to the tightening up police measures is that now they are worse than they ever were under Mr. Matyas Rakosi. For instance, on October 16, the official press declared that anyone heard complaining in trams or buses should be treated as severely as the strikers were last December. It will be recalled that summary execution was the means by which passive resistance was put down then.

The Kadar Government made elaborate arrangements to prevent demonstrations and displays of mourning to commemorate the outbreak of Hungary's heroic revolt. A much larger force of uniformed police was in evidence in the streets of Budapest, and as a result all was quiet, though the sullenness of the people and their refusal to forget the brutalities of last year were apparent. The streets of Budapest were plastered with posters carrying a picture of a Russian soldier and the words, "The True Friend." But it was evident that the Hungarians were not in the least deceived by this propaganda.

### India's Attitude to the Syrian Crisis

#### CONTRASTED WITH THAT ON HUNGARY

India's opposition to the appointment of a U. N. committee to study the situation in Hungary and her subsequent abstention from a resolution passed by the General Assembly endorsing the committee's report stand out in bold relief against her enthusiastic support to a resolution brought forward in the Assembly by Syria for appointing a committee to study her complaint that Turkish military concentrations along the Syrian border presented an imminent danger to her security. The committee was not to be composed of neutrals but was to be loaded up to half its membership with Soviet-Syrian nominees. When such a complaint is made, Mr. Menon said, we must heed it. Why, then, did he not

lend his support to the appointment of a wholly neutral fact-finding committee on Hungary? Would it be too far amiss to infer that he did not want a committee on Hungary because his support would have offended Russia and on the contrary he was keen on a committee on Syria because that would very much please Russia?

For it should be remembered that though the complaint against Turkey stood in the name of Syria, it really proceeded from the Soviet Union, who first started the crisis scare. Gromyko had indeed named 27th October as the date on which Turkey and the U. S. A. together planned to launch aggression against Syria. The Soviet theme was the immediacy of the attack. If the onslaught was to take place in the immediate future, one would have thought that the issue would be raised in the Security Council, which is the only body which could take action to prevent threatened aggression. The matter was brought before the Assembly, however, which showed clearly that the object was to carry on a cold war propaganda campaign to whip up a crisis atmosphere. However, the propaganda failed miserably: the Soviet ardour cooled and Syria herself withdrew the complaint at least for the time being. This must have put Mr. Menon in a sorry situation.

The U. S. A. for its part welcomed the inquiry because the commission would throw light not only on precautionary Turkish troop dispositions but also Soviet subversion of Syria including the recent pro-Soviet coup d'état, and generally the Soviet's designs in the Middle East. Comparing the Soviet attitude towards the alleged threat by Turkey to Syria with the Soviet action a year ago in the suppression of the Hungarian revolt, the U. S. delegate said:

Here is the chronic law-breaker not only seeking to be regarded as a good citizen but actually trying to sit in the judge's seat and sentence the whole law-abiding community to jail. Here is the arsonist trying his best to start another fire and demanding the right to lead the fire brigade. Here is the man in the parade who cannot keep step, exclaiming "Everybody is out of step but me."

Commander Noble of Britain said about Gromyko's charges:

To the best of my knowledge, such formidable accusations have in the whole of U. N. history rarely been erected on so flimsy a basis of evidence. The only recent parallel which comes to mind is the attempt to persuade the world that the events in Hungary a year ago were the result of a plot by the U. S. A. It is not a coincidence that the authors of that discredited piece of horror fiction are the same men as those who try now to persuade us that a similar plot has been laid against Syria.

He said the two-week debate had proved of value inasmuch as it had demonstrated "quite clearly" the real source of the "artificial" crisis in the Middle East: the source was, he said, the Soviet Union which had "inflated" the Syrian-Turkish dispute as a means of Communist penetration in the area.