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

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[A MONTHLY REVIEW]

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
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SHACKLING OF THE PRESS

THE PUNJAB SPECIAL POWERS (PRESS) ACT

The bill for the control of the press in the Punjab was briefly commented upon by us at p. iv : 161 last month but deserves further comment in view of the more detailed information which has since come to hand. The all-embracing preventive action, which the bill now passed by both houses of the Punjab legislature allows, surpasses all restrictions ever clamped upon a free press either in pre-independence or post-independence periods of Indian history.

The Punjab Government had already enforced pre-publication censorship orders on two newspapers, and though the issue of the validity of these particular orders had cased to be a living issue by the time the Punjab High Court could pronounce thereon, the Government feared that the Supreme Court might on appeal invalidate such executive orders and therefore sought and easily obtained the support of the legislature for a bill which includes not only a provision for prior censorship but other provisions no less objectionable.

Provisions of the Act

The Act empowers the State Government "or any authority so authorized in this behalf" to take four types of action against any newspaper or periodical:

(i) prohibiting altogether "the printing or publication of any matter relating to a particular subject or class of subjects;"

(ii) imposition of censorship in respect of "any matter relating to a particular subject or class of subjects;"

(iii) banning "the bringing into Punjab of any newspaper, periodical, leaflet or other publication;" and

(iv) requiring a newspaper or periodical to publish "any matter covering not more than two columns" and also prescribing "the manner in which such publication can take place," provided the matter is paid for.

While the orders in respect of (i) and (iv) are limited in duration to two months at a time, there is no such limit fixed in the case of orders relating to (ii) and (iii). That is to say, "any" outside newspaper may remain banned under the provisions of this Act as long as the Act itself is in operation, and censorship of any local newspaper may go on also as long as the Act itself is in operation. The censorship orders served on the "Pratap" and "Hind Samachar" and challenged for their validity in the High Court were at least limited in time to two months (though there was nothing to prevent the Punjab Government from renewing the orders at any subsequent period). But the Act saves the Government even from the necessity of renewal of such censorship orders, for they can remain in force without any limit of time.

One other thing may be noted. The Act allows the printer or publisher of any newspaper or periodical who has been prohibited by order from printing or publishing "any matter" relating to a specified class of subjects to make a representation to the State Government against the order. It is provided that the Government may, on consideration of the representation, "modify, confirm or rescind the order." When such a representation is received, it is contemplated (though there is no provision to that effect in the Act) that the Government will place the representation before an advisory board and normally accept the board's advice. The board is to be composed of Mr. J. Natarajan, editor of the "Tribune," and of whomsoever else he might nominate. One would have felt greater confidence about the utility of this safeguard if the person who is to determine the composition of the board were known to be friendly to the freedom of the press. Unfortunately the part he played in the Press Commission clearly disentitles him to be in the role of a defender of press freedom as interpreted the world over. But the point that we here wish to make is that the safeguard, whatever its value may be, is available only in respect of outright prohibition orders and does not seem to be available in respect of censorship or banning orders in (ii) and (iii) above, since the Act does not provide for a representation to be made to the Government in the case of any but prohibition orders in (i). Thus a censorship order, e. g., may continue to be effective for the whole life-time of the Act.

Occasion for Enacting the Law

The Act purports to be " directed solely against the irresponsible section of the press which indulges in the dissemination of false news and pernicious propaganda of a communal nature, " the control of such newspapers being thought necessary because "uncurbed activity of this nature *can* result in serious disorder." Of course, writings in the press can cause disorder, but have they caused it? And what is the strength of such an "irresponsible section of the press" in the province? The Chief Minister explained that, in the Government's opinion, only four or five newspapers are in this category and, on his own showing, " the preaching of hatred and enmity " by these organs of the press have had no effect on the even tenour of Punjab's public life. He prided himself on the fact that while in other States such as Bombay the carrying out of the Government of India's States reorganization plans has encountered serious difficulties resulting in widespread disturbances, in the Punjab nothing like this happened. He said:

> The [four or five irresponsible] newspapers did their worst. Yet the wise and sagacious Punjabees restrained themselves and did not fly at each other's throats as people did elsewhere. I am not happy at all at what happened elsewhere, but it is a matter of satisfaction to me that the Punjab has been saved from any such black deed. This is in fact a tribute to the Punjabees' wider outlook and the spirit of tolerance. You all know what has recently happened in some of the States. The fact that the Punjab remained free from any such ugly scenes shows that people have refused to listen to and be guided by the dangerous teachings of those newspapers who are preaching hatred and spreading poison through their columns.

If this is the public's response to the writings of the irresponsible section of the press (which no one wishes to condone or ignore), then obviously the ordinary provisions of the criminal law should suffice to control the situation. A member suggested the application of sec. 153-A, I. P. C. (even if the recommendations of the Press Laws Enquiry Committee of 1948 and of the more recent Press Commission in respect of this section were to be ignored—and the Chief Minister was not a man to be deterred by any such recommendations; he declared that for him nothing was sacrosanct and that he would not like to be confronted by the Press Commission's recommendations). But the suggestion of the application of sec. 153-A was countered by saying that this would not meet the situation inasmuch as the section would no doubt be efficacious in punishing persons after the crime is committed but would not help in preventing the commission of the crime altogether, as was the purpose of the Act. But if no conflagration was actually feared, why resort to a special measure of prevention?

The Government or any officer so empowered is authorized by the Act to take any of the four types of action detailed above, if the Government itself or the officer concerned is "satisfied [subjective satisfaction is here enthroned, thus ousting the jurisdiction of the courts] that such action is necessary for the purpose of preventing or combating any activity (i) prejudicial to the maintenance of communal harmony, (ii) affecting or likely to affect public order." Thus though the measure is directed against the activity of the press which threatens communal harmony or public order, the operative parts of the Act have no reference to any such activity : a newspaper may be prohibited from publishing "any matter relating to a particular subject or class of subjects;" pre-censorship may similarly be imposed on the publication of " any matter relating to a particular subject or class of subjects;" " any " newspaper may be banned entry into the State; and a newspaper may be required to publish in its columns " any matter " furnished by the Government.

This last provision about compelling the publication of Government-sponsored news or comment is so novel and so demeaning to the press that many members characterized it as the worst feature of the Act. But the Chief Minister made little of the criticism, thinking that since any matter to be compulsorily published would be paid for by Government, there was no kind of unfairness in such compulsion. As a one-time journalist, he asserted that there was " nothing bad in the Bill ; " he declared in none too elegant language, that " he wanted that a situation be created wherein no communal papers would be tolerated and the newspapers which published communal matter would be shoe beaten. "

Criticism in the Legislature

Though the measure met with solid support in both houses of the legislature, it did not fail to encounter strong criticism from members belonging to all political parties and to all religious communities. Of the critics perhaps the most distinguished was Principal Ralla Ram, who owns allegiance to the Congress. He urged that the people of the Punjab would show in the future as they had done in the past their innate good sense in refusing to be provoked by newspaper appeals to public passion, and that there was no reason why the Punjab should ask for such a bill when no other State had asked for it. He could not understand why Government was bent on assuming fascist powers in a regime of democracy and said it would be good service to democracy if the bill was withdrawn. Mr. Bali made a home-thrust at the Government. He said, more communal hatred was created by the allotment of public posts on a communal basis than by any newspapers preaching the gospel of communal enmity. He observed that pre-censorship was condemned throughout the wide world and should not find a place on the Punjab's statute book ; that the provision that a newspaper should be made to publish any matter which an officer of the Government might choose to send to it was a provision the like of which had never been made in the law of any country

and ought to be dropped. He said to the official benches that their heads should hang in shame that such a bill had been brought forward. The opposition of Sikh members was specially to be valued as the measure is supposed to be intended to strike at Hindu journals carrying on an agitation against the Regional Formula supported by Sikhs. Sardar Ramdayal Singh (an Akali) and Ch. Kartar Singh (an Independent) pleaded with the Government not to proceed with the bill on the ground that if it were enforced independent newspapers would be throttled and democracy would go out of existence.

The earlier history of the Press Advisory Committee may be considered while judging of the help to be expected from the advisory body which will be newly constituted in preserving the liberty of the press. When the recent pre-censorship orders were served on certain newspapers—the orders which later became the subject of litigation in the courts—the Advisory Committee protested but because the Government did not heed the protest, the members of the Committee resigned in a body. However, instead of making an announcement of the resignations, the Government announced that the Committee had been dissolved! Referring to this, the Finance Minister explained that the Committee was dissolved because it " had proved ineffective in checking the activities of those papers which were fostering communal disharmony. " This means that the Punjab Government will deal with a body intended to serve as a liason between itself and the press only so long as the body is found to carry out the policy which the Government has in view. If it has no sympathy with the Government's policy, the Government will ignore it. The new body may be as pliable as the Government wants it to be, in which case it will prosper. But if it shows to be possessed of a mind of its own, the Government may be trusted to ignore or even dissolve it as it did in the case of the earlier body, and there is nothing in the Act to cast a statutory obligation on the Government to consult with anyone.

Press Commission's Recommendations

The above discussion will convince anyone that the provisions of the law are subversive of the very concept of a free press. But at this point we may consider the recommendations of the inquiry committees set up to report on how the press could be freed from the galling and oppressive restraints that have been laid on the press. First, about sec. 144 of the Criminal Procedure Code, under which pre-censorship orders were issued by the Punjab Government. The Press Laws Enquiry Committee expressed the view that " it was not the intention of the framers of the Code that this section should be applied to the press " and recommanded that " instructions should be issued by Government that orders in respect of newspapers should not be passed under this section. " The Committee, which submitted its report in 1948, was naturally not concerned with the validity of the section under Art. 19 of the Constitution because the Constitution was not then in existence, but the Press Commission considered this aspect of the matter and though it opined that the section might not strictly be inconsistent with Art. 19(2) when applied in circumstances of " likelihood of disturbance of public tranquillity or a riot or an affray," it agreed with the earlier Committee's recommendation that the section should not be applied to the press. The Committee no doubt made this proviso : " If Government consider it necessary to have powers for issue of temporary orders to newspapers in urgent cases of apprehended danger, Government may promote separate legislation or seek an amendment of sec. 144 for the purpose. " The Punjab Government may indeed claim to have the support of the Committee in obtaining the consent of the legislature in respect of the pre-censorship provision of the new Act, but it may be doubted whether either the Press Laws Enquiry Committee or the Press Commission ever contemplated that pre-censorship orders would be covered by the above proviso, knowing full well how prior restraints on publication cut at the root of press freedom. The courts of course are not concerned with such recommendations in judging of the constitutionality of any law ; nor can they go into the fact whether the situation is such that, to use the words of the Press Commission, " there is likelihood of disturbance of public tranquillity or a riot or an affray." On this issue the judgment of the Government or its officers will prevail, however contrary the facts of the situation may be.

Then about sec. 153-A, I. P. C. While preventive action may be taken under sec 144, Cr. P. C., sec. 153-A, I. P. C., only provides for punitive action against actual offenders. And it is just because the Punjab Government is not content with punishing actual offenders but wants to get at potential offenders, it discarded the use of sec. 153-A, I. P. C., and proceeded to enact a special measure conferring extraordinary powers on itself—or any of its officers. But it should be remembered that the Press Commission was in some doubt as to the validity of the section in the context of freedom of the press. It cited some High Court judgments to the effect that the section did not offend the concept of the liberty of the press because it was saved by Art. 19 (2) as amended in 1951. But the Commission could not rule out the possibility of the Supreme Court declaring the section invalid in spite of the 1951 amendment of Art. 19 (2). In order to get over such a possibility the Commission recommended that the operation of the section be restricted " to those cases where there is intention to cause disturbance of public peace or knowledge of likelihood of violence ensuing." And while the Covernment of India goes forward gaily in imposing oppressive restrictions on press freedom, it is very remiss in carrying out the few liberal recommendations of the Press Commission such as those in regard to sec. 124-A or sec. 153-A, I. P. C. The Punjab Government of course has nothing so do with all this, since it does not take punitive action under sec. 153-A, but preventive action under a special Act.

Another Threat to the Liberty of the Press

A further threat to the freedom of the press is impending, likely to have wider and more dire effects than the adoption of a Press Control Act adopted by the Punjab Government can have, because it proceeds from the Government of India. The Union Home Minister, Pandit Pant, called a high level conference of police officers on 21st September to discuss recent events, which in the eyes of the Home Minister menace the internal and external security of the country. One of the incidents—but only one— which led to these confabulations was the unscrupulous agitation conducted by the Muslim League against the publication in India some fifteen years ago of the book "Religious Leaders" first published in the United States, although the Indian publisher, recognizing that it wounded the religious feelings of Muslims, had withdrawn the entire edition from publication in India. The Prime Minister, before he left for Saudi Arabia on 24th September, referred to this incident and said that the Hindu Mahasabha, the R. S. S. and the Jana Sangh were in their turn imitating the Muslim League and inciting people in the name of religion. Attempts were being made to spread communal hatred through newspapers, which he insisted must be stopped. This is quite proper, but the question is whether the present legislation is not adequate for the purpose. On this question Mr. Nehru apparently thinks that it is insufficient and must be strengthened. Indeed, he said he would suggest to Pandit Pant that "legislation be brought forward as soon as possible to stop newspapers from inciting communal passions and spreading communal hatred." But Pandit Pant does not require to be primed in this matter. For a review of the whole series of recent events made at his conference revealed, we are told, "lacunea in the existing law of the land." An unofficial account of the proceedings of the conference says: "The limitless freedom of expression which is permitted to all sections of the community, it would appear, has provided fruitful opportunity to anti-social and anti-national elements to whip up trouble and conduct campaigns which can have no other effect than that of weakening the country and injuring its interests." Thus it appears that in the name of national security freedom of expression, already very narrowly circumscribed by Art. 19(2) of the Constitution, is going to be further curbed in a drastic manner.

REFUSAL TO INQUIRE INTO FIRING

IN BOMBAY AND AHMEDABAD

The Government's refusal to hold an inquiry into the police firings that took place in Bombay and Ahmedabad in the wake of the demonstrations to protest against official decisions in the matter of re-organization of States stands in ironic contrast to the holding of such inquiries by the respective Governments into similar firings at Patna, Hoshiarpur (in this case the inquiry was ordered by the Congress High Command in spite of the disinclination of the local Government to have one) and at Kalka. The inquiries conducted showed in every case that some of the firing resorted to was unjustified and excessive. But in spite of the widespread complaints about the firing in Bombay and Ahmedabad being uncontrolled and indiscriminate, the Government of Bombay and the Government of India (who espoused the Bombay Government's cause) have shown perverseness in refusing to make an inquiry into the truth or otherwise of these complaints. It is not as if the demand for an inquiry arose from the agitators who might be suspected of being merely desirous to keep up the tempo of their agitation under one cloak or another. It originated from those who are held in high esteem in Congress ranks, and it appeared as if they asked for an inquiry not only because the public at large wanted it but because they felt from their personal observation that some of the firing at least was uncalled for and in excess of the requirements of the situation, which the custodians of law and order had to deal with. The loss of life as a result of the firing was heavy, and even if Mahatma Gandhi's command that an inquiry should be ordered by Government whenever the police have to take recourse to firing which results in deaths be disregarded— and there are not many of his precepts to which more than lip service is paid by his professed followers — the circumstances attending firings in Bombay and Ahmedabad were such as could not be left uninquired into by a Government that does not care to be guilty of a grave dereliction of duty.

Mr. C. D. Deshmukh, in his statement in Parliament explaining the reasons which compelled him to offer his resignation of Finance Ministership in the Central Government, revealed that he had urged on the Prime Minister the necessity of the Government of India either itself initiating or persuading the Bombay Government to hold a judicial inquiry into the shootings in Bombay City (firing had not taken place in Ahmedabad at the time). He had also given to Mr. Nehru prima facie evidence which went to show that "the police showed lack of fire control and grossly exceeded their legal powers." The most damaging statement in his speech was what looked like "the deliberate use of tear-gas before intended firing brought out women and children from their rooms choking for breath only to be shot down by the indiscriminate firing of the police, using tommy guns, firing several rounds to the second." If this be proved to be a fact, it would mean that the police firing was not only uncalled for but malicious and vindictive. No Government which cares for its fair name can afford to ignore the demand for an inquiry coming from such a source. But the Government

chose to brush aside the request as deserving no notice. Mr. Deshmukh had charged the Prime Minister and Home Minister that "they are being false to their principles in regard to the safeguarding of civil liberties in helping to hush up such an inquiry" and had said that "in any other country calling itself civilized, with such a carnage, a judicial inquiry would have been compulsory by law." He had also pointed out that at the coroner's inquest the firing of November 1955 was found to be uncalled for and expressed surprise that in spite of such a verdict "there seems to be no intention to inquire into the matter." Mr. Deshmukh is no politician at all and cannot even remotely be suspected of having made such a demand in order to exploit the situation for any ulterior motive, and yet the demand was brusquely turned down.

Two reasons were assigned by Mr. Deshmukh for quitting office : (1) the placing of Bombay City under Central administration while creating separate States of Maharashtra and Gujerat (the decision on this question being arrived at, according to him, in a dictatorial manner, without full consultation even with the Cabinet) ; and (2) the "apathy" shown by the Government in not holding an inquiry into police firings. The Prime Minister tried to explain several times, though with no success, that he had not departed from the conventions observed in reaching a Cabinet decision on the question of the future of Bombay City, but he did not so much as touch on the other question in Parliament but left it alone as if it merited no answer. It appeared later, after it was decided to form a bilingual State of Maharashtra with Bombay included and Gujerat (a solution which Mr. Deshmukh had preferred from the very beginning), that an attempt would be made by Mr. Nehru to prevail upon Mr. Deshmukh to resume his former post of Finance Minister— a post to which he lent such distinction by his almost unparalleled skill and vision in administering the complicated financial affairs of the country. But such an attempt was not made because it was felt in Congress circles that an important position like that of Finance Ministership should not go to one who was not bound by the party discipline of the Congress. But there is reason to believe that if Mr. Nehru had racognized that Mr. Deshmukh was really irreplaceabe and had made an effort to induce him to keep his finance portfolio after the bilingual formula was adopted, still Mr. Deshmukh would have incontinently declined the offer because, although one of his grievances had by reason of the unexpected turn of events been redressed, the other grievance still remained, viz, that police firings in Bombay were not being judicially investigated, and he had attached just as much importance to this issue as to the other. This shows that, in his eyes and in the eyes of the public, failure on the part the Government was a crime not to be condoned on any account.

Mr. Nehru gives this stock answer in justification — that an inquiry into firing would only help to cause further bitterness between Maharashtrians and Gujeratis, and that the need of the moment is to try and heal the wounds instead of reopening them. He had apparently given this reply to Mr. Deshmukh, but Mr. Deshmukh's caustic retort neatly disposes of this plea. He said that Mr. Nehru's view that "such an inquiry will only exacerbate public feelings further is not valid, since truth can never embitter." Indeed, the holding of the inquiry would have gone far to assuage the feelings of those who were aggrieved by the Government's decision concerning territorial realignment and who held mass demostrations to have the decision upset, because they would have been assured that, however wrong that particular decision, Government at least was not high-handed and vindictive in dealing with their demonstrations. But Mr. Nehru now goes on to find other reasons for not holding an inquiry. He says when firing takes place at several places in a city and on very many occasions, it becomes impossible to hold an inquiry into all those firings. How is the committe to collect evidence in such circumstances? he asks. It is difficult to understand how Mr. Nehru can make such a childish statement. In the first place, a committee of inquiry does not collect evidence. The evidence pro and con comes before it ; its function is only to evaluate it. In the second place, to say that unless firing takes place at any single spot no inquiry can be made into its justifiability is practically to tell the police that if they wish to avoid an inquiry they had better go on to shoot at various other places. In the third place, firing in Bombay took place only on one day in November 1955 and for four or five days in January 1956 and on two occasions in Ahmedabad. Moreover, the firing in Bombay of 21st November took place at one spot — Flora Fountain — and similarly the firing in Ahmedabad of 8th August took place at one spot — near Congress House. The difficulties that Mr. Nehru trotted out are therefore purely imaginary.

Failure on the part of the Government to submit the justifiability of firing which has resulted in heavy loss of life to judicial scrutiny is a very grave matter. For a Government which refuses to hold such an inquiry invariably refuses also to produce witnesses in its behalf before a non-official inquiry if one is held, and this failure to produce Government witnesses reduces the non-official inquiry to impotence so far as arriving at any decisive conclusions is concerned. For an unofficial inquiry in such a situation can hear only one side of the story, and all that such a committee can possibly report is that on the strength of the evidence before it the firing was (if its opinion is unfavourable) entirely uncalled for or grossly excessive and that a further inquiry must be held in which those who did the firing should be compelled to offer their explanation in order that a final conclusion be reached. The non-availability of Government witnesses even makes it difficult to persuade jurists of distinction to undertake a non-official inquiry at all. The All-India

Civil Liberties Council which contemplated such an inquiry into Bombay firing in the absence of an official one was faced with such difficulties. These difficulties experienced by the Council when it approached men of high judicial experience are explained in a private letter to a friend as follows:

> We are finding it extremely difficult to persuade suitable men to undertake the inquiry. When we tell them about the heavy loss of life that occurred at the time and the incidents as they are reported to us, they feel convinced that an inquiry is necessary and they are willing to help, but they say that an unofficial inquiry such as we can hold will be futile. Since access to official records will not be made available to the committee and Government will not produce the officers concerned as witnesses before it, as apparently they did at Hoshiarpur, there can be no means of verifying the facts and arriving at proper conclusions. They point out that everything depends upon ascertaining what the situation was at a particular moment at a particular place in determining whether excessive force was used or not, and the situation cannot be determined unless adverse evidence is also forthcoming and cross-examination takes place. All that can happen in present circumstances is that a committee of inquiry will only be able to report that on the evidence before it there is a good case for a proper inquiry to be made in which the inquiring body will have power to require witnesses to appear before them to tender evidence on oath and to produce available records. And the persons whom we approached generally say that it is not worth their while to enter upon a task which will only have this result.
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> We on our part point to the Jalianwalla Bagh inquiry instituted unofficially by our leaders which also suffered from all these drawbacks and say that we all felt at the time that it served a useful purpose. They reply that it served only a political purpose in rousing public opinion against the atrocities then committed; a conclusive inquiry was not required and could not be had at the time. Public opinion could be satisfied on very little evidence when an alien Government was in the dock; now, when directed against our own officials, it would want an iron-clad case to be made out against them. The advent of self-goverment has in this respect made our position much more difficult. To this argument we say: it all amounts to this that a Government, unshakably firm in the saddle, may commit any kind of excess with impunity if it is brazen-faced enough to refuse to hold an inquiry. They answer that it is so, however regrettable it may be.
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> Get the Government to produce evidence in its behalf, our friends say, and then we shall conduct the inquiry. But if the Government can be persuaded to give evidence, why would it not make an inquiry itself? So it comes to this in the result: either an official inquiry (with possibly a safeguard against public opinion being inflamed to the effect that the investigating body be allowed to receive evidence in camera where in its opinion such a course is advisable) or no non-official but worthwhile inquiry.

The refusal of Government not only to institute an inquiry itself but also to produce its witnesses before a non-official investigating commission thus makes it impossible for bodies like the All-India Civil Liberties Council who have a record of fair-minded objective concern for human rights to do anything significant in the matter. The Government can thus escape from any inquiry whatever, but at what cost? The police then is virtually given a carte blanche, as in fact Mr. Deshmukh asserted happened in Bombay. Can any Government thus afford to shut its eyes to injustice and human suffering bound to happen in such circumstances?

SCHOOL INTEGRATION IN THE UNITED STATES

PROGRESS ACHIEVED—SETBACKS ENCOUNTERED

It would be well for us in India to study the manner in which the United States is going to work out what is no less than a social revolution which was inaugurated by the Supreme Court of that country when, having previously declared segregation in public schools unconstitutional, ordered federal district judges last year to enforce its ruling " with all deliberate speed." In the Southern states age-long tradition defies desegregation, and to run afoul of that tradition and completely to abolish segregation in these states by bringing Negro and white pupils together in mixed schools is attended with very serious practical difficulties. The progress achieved in the brief space that has elapsed since the implementation decision was announced is indeed slight and has been accompanied by many setbacks; still it is such as to give room for hope that, at least in states other than those of the Deep South, the ideal of integrated schools will be attained in a comparatively peaceful manner, though full compliance with the Supreme Court's order even there will be a matter of some years.

At the time the Supreme Court held that separate education of the Negroes from the whites was contrary to the spirit of the Constitution, school segregation was required by law in a broad belt stretching from Texas to the Atlantic coast. This area covered seventeen states. In eight of these states of the Deep South (Louisiana,

Mississippi, Alabama, Florida, Georgia, South and North Carolina and Virginia) there is no visible change in the solid opposition to school integration. Three of these states—Virginia, North Carolina and Louisiana—have admitted Negroes to their universities and colleges, but none to their primary or secondary schools. No school board has voted for desegregation or tried to enforce it. Indeed, these states are busy taking legal action to nullify the Supreme Court decision, by forbidding use of state monies for integrated schools, by carrying out pupil assignment plans under which pupils are placed in schools ostensibly on bases other than race, and in other ways. Since these states account for as many as 1,900,000 Negro school children, nearly two and a half times those in the other nine, it is obvious that the problem will not have been solved till these states are persuaded to open their school doors freely to Negro children. But for the present the Deep South has to be ignored. In the other mid-Southern and border states, however, willingness is seen on the part of several school authorities to introduce mixed classes. In the District of Columbia, which is under federal control, the integration process is complete, and in two states — Missouri and Maryland — nearly so. Some 85 per cent. of the Negro children there are now free to attend mixed schools and in a year's time it is expected that the schools will be fully integrated. The number of Negro school children in these states is 35,000. In the remaining seven states, with a total of 550,000 Negro children, desegregation has started and has proceeded to a greater or less degree. Most counties in Oklahoma and West Virginia have begun to desegregate. About one-third of Delaware's Negro children are now eligible to attend mixed schools. In Kentucky, 105 counties have been integrated. In Arkansas and Tennessee on the border of the Deep South only a handful of Negroes can attend mixed classes under local arrangement. Considering that these changes have taken place within slightly more than a year's time, the progress is not altogether negligible.

Progress

Kentucky, a border state with a population of three million, is a good example of the adjustment that is slowly taking place in the South in its segregation tradition. This state like others always stood for school segregation, but now public schools in all but fifteen of Kentucky's 120 counties are desegregated. The greatest achievement yet recorded in any of the border states was witnessed at the opening of the year's school term last month, when the largest city of Kentucky — Louisville — integrated practically all its public schools. The city has a population of 400,000, including 75,000 Negroes. Thus, nearly 12,500 Negro children of the city's total 50,000 coloured children can now sit together with white children in mixed school rooms. And, most important, this transformation has taken place in an orderly way. The credit for bringing this about goes to the School Superintendent, Dr. Carmichael For the last two years he was busy laying the groundwork for integration by creating a friendly atmosphere for the change, meeting civic and business leaders and constantly stressing the importance of complying peacefully with the Supreme Court's ban on segregated education. He first reorganized all the school districts without regard to race. He insisted that there be no creation of unnatural boundaries. Each child was assigned to a school he could reach without excessive travel. Where several schools were close together in a single new district, parents were permitted to choose a school, subject to the availability of space. Compulsory segregation will thus be abolished in all schools, but there will still be a few schools which will in effect be predominantly white or predominantly Negro. In some classes in the predominantly white schools the proportion of Negro to white children will be as low as 1 per cent., while in others it will be as high as 42 per cent. Four hundred white children in the elementary grades (and it is in these grades that desegregation is violently opposed in the South) have been assigned to what were formerly all-Negro schools, and there the white children will be outnumbered by Negroes. White children in these schools showed no feeling of dislike for their Negro classmates when schools reopened. Colour differences seemed forgotten. One teacher remarked: "It's as though we've always had white and coloured children together in class, it's wonderful!"

Setbacks

Where, however, there was lack of preparation for smooth transition like that in Louisville, efforts either to introduce or extend desegragation met in some places with mass protests and even violent demonstrations, and prejudice against integration was generally stronger in the countryside than in cities. As the "New York Times" said about the unruly scenes witnessed in some places, "The real trouble is more likely to arise in communities set back from the main streams of American life, communities relatively untouched by the progressive development of American thought."

In Clay, a mining town of 1,400 souls in Kentucky state, about 125 miles southwest of Louisville, Mrs. Gordon, a Negro, tried to enrol her two children in an elementary school which was all-white before integration had been adopted by local officials. A white mob surrounded her car, threatened to overturn it and forced her finally to retreat. Then the Governor ordered the state police and the National Guard into Clay to enforce integration. They deployed their forces along the roads leading to school; 500 guardsmen escorted the Gordon children into the school. The children attended school for some days with the help of the guards, but then the white children boycotted the school. After some more days the white children also began returning to their classes. Later, however, the Kentucky Attorney General handed down an opinion that

in the absence of an order from a federal district court, local officials had power to determine whether and when their shools would be integrated, and, in response to pressure brought by opponents of integration, the school board of Clay retraced its steps and decided to bar Negroes from its white shool, with the result that the Negro children who had enrolled in the school were turned away at the doors.

In Sturgis, another mining community of 2,200, eleven miles away from Clay, almost the same thing was repeated. Here a crowd turned back seven Negro children who had come to enrol themselves in the local high school which was formerly all-white. In this town 700 guardsmen were kept ready to enforce integration and put down any racial disturbance. Here again, after the Negro children were admitted into the high school white children boycotted the classes in protest. Here again, in a few days the white students were back in class. But later the local White Citizen's Council stepped in to fan the racial fire. In face of such pressure the school board voted to bar Negro students from the school, and when Negro students appeared at the schoolhouse, the principal told them they could not be admitted and advised them to attend an all-Negro high school twelve miles away.

In Clinton, a mountain town of 4,000 persons in eastern Tennessee, the school board had fought integration in the courts for five years, but when the board lost its final legal battle, the town had grudgingly begun to accept the idea of integration. Here twelve Negro children applied and were admitted to the white high school, the first state-supported high school to be desegregated in Tennessee. Then extreme segregationists from outside Tennessee went into Clinton and whipped up violent anti-Negro demonstrations. Mobs began smashing up cars and threatening the Negro community. The Governor then ordered the National Guard into Clinton to enforce the law and keep order. Guardsmen with full combat equipment patrolled the streets, cracked down on public gatherings and guarded the high school while the Negro children went to class. The courts issued a sweeping injunction against interference with desegregation. After some days Clinton was calm again and the guardsmen then pulled out. The school board did not reverse its former pro-integration decision as was done in the Kentucky towns, and the fever induced by unscrupulous agitators from outside happily subsided. Attendance by white students which had fallen at first rose.

The incidents that happened in these small communities are indicative of what is likely to happen without the kind of careful preparation that Louisville had had. But these setbacks are temporary. As the "New York Times" said, "The forces of understanding and order and democracy are moving forward irresitibly. ... And what has happened in the city of Louisville is more indicative of the future than what is happening in the mining town of Clay."

At Texarkana in the state of Texas a different situation arose. The college there was opened to Negroes for the first time by federal court order. When two girls came to enrol themselves in the college at the beginning of the academic year a crowd blocked their entrance to the college and when they asked the Texas Rangers who were on hand to escort them into the college, the Rangers refused, saying they were under orders to stay out of the integration dispute. Here there was official support, unlike in Kentucky and Tennessee, for resistance to the court's integration orders, and when the incident was brought to President Eisenhower's notice, he promised to look into the matter and added that the Justice Department would prepare contempt of court cases against local officials who defied federal court orders.

Another kind of setback—a psychological setback—is being attempted by pro-segregationists in Washington, but it is one which ruffles few integrationists. A House subcommittee has been appointed to inquire into the "reported low standards in the schools" of Washington, the attempt being to show that on account of Negroes being admitted into the public schools of the District of Columbia in obedience to the Supreme Court's decision, the standards of the schools in general have fallen and that integration introduced in the District be therefore discontinued. The president of the sub-committee is a man from the Deep South and all the members are southerners except one. It is very likely therefore that the sub-committee will come to the conclusion that mixed classes are having an adverse effect on education in general. Fearing this result, the president of the Washington branch of the National Association for the Advancement of Coloured People telegraphed to President Eisenhower that the investigation be called off. On behalf of the President a reply was sent that the Congressional hearings "are wholly independent of the Executive Board and are not subject to the desires of the President," but it was added that "no hearings of the sub-committee can impair either desegregation in the District of Columbia or the good sense citizens of the District have shown in the manner of accomplishing desegregation."

As even ardent proponents of mixed schools acknowledge, Negro children tend to have lower records than white children on standard achievement tests. This is due to a number of factors—the poorer educational opportunity Negroes have had in what were formerly all-Negro schools, a lower standard of living, poor school houses, a lower level of cultural background. And the sudden and complete integration of the public schools of Washington where the percentage of non-white children (44·1 per cent.) is higher than in any other large city even of the Deep South is sure to produce initially some unfavourable effects. But these effects cannot last for any length of time. Integration by itself cannot, of course remove all defects, but, as the "New York Times" has said, "integrated education is unquestionably a sine qua non" of reform. It is certain

that the sub-committee's conclusions, however unfavourable they may be, will not set the clock back in Washington.

COMMENTS

Police Firing at Kalka

INQUIRY COMMISSION'S REPORT

The report of Mr. Khanna, district and sessions judge at Ambala, who was appointed to inquire into the police firings of 29th May at the Kalka railway station, has been published.

The unfortunate developments of that day, in which as a result of two firings on a crowd of demonstrators, five people were killed and several injured, started when the local railway workers decided to present their demands to Mr. Pande, Chairman of the Railway Board, while he was travelling from Delhi to Simla. Mr. Khanna in his report expressed the view that for the "grim tragedy" of that day "a fair share of responsibility devolves on the workers and their leaders." The workers' leaders raised the passions of the crowd to such a pitch that the peaceful demonstration that they claimed they had intended was in actual practice far from peaceful.

Mr. Khanna was appointed to a commission of inquiry to determine (1) whether the police firing was justified and, if justified, whether it was excessive, and (2) whether, if the firing was unjustified or excessive, any police employee committed any offence. The judge came to the conclusion that, although the Additional Superintendent of Police, Sardar Bawa, handled the situation well till the time of the firing, it was not handled properly at the time of the two firings and that the first firing was called for "by the situation, though "not well controlled and directed," and that the second firing was not called for.

Referring to the first firing, Mr. Khanna expressed the opinion that at the time of the firing there should have been express direction to the members of the firing squad to fire only at that part of the crowd which was advancing towards the squad on Platform No. 1 and avoid as far as possible shooting at those present on Platforms No. 2 and 3.

In Mr. Khanna's opinion, if proper precautions had been taken the lives and security of persons who were merely present on Platforms No. 2 and 3 would not have been jeopardized. He said: "I am also of the view that if the policemen showed keenness to avoid firing towards either the saloon or the members of the firing force guarding that saloon, it was equally essential that they should have acted with some circumspection and shown regard for the lives and safety of the members of the general public present on Platforms No. 2 and 3."

About the necessity of the second firing it was contended that after the first firing the crowd re-formed itself and again advanced towards the firing squad. This view, in the judge's opinion, was not correct and the real reason for the second firing was that on seeing the crowd retreating from Platform No. 1 and going towards Mr. Pande's saloon, the A. S. P. inferred that the crowd was going to attack the saloon and force entry into it. In doing so, the A. S. P. made a grave error of judgment. Mr. Khanna stated that the police officer's assumption was "without any real basis" and that the error in this respect was very grievous indeed, for it resulted in the order of firing without sufficient cause.

Mr. Khanna's general conclusion thus was:

> There was excessive use of force at the time of the first firing inasmuch as it was not well controlled and directed and resulted in injuries to some innocent persons. The second firing was due to a grievous error of judgment on the part of the Additional Superintendent of Police.

Mr. Khanna held that there was no excessive use of force in the case of the lathi charge on Platform No. 6 except that some policemen, whose identity has not been established, gave more lathi blows to a man named Dalip Singh than were called for in the circumstances.

Punjab's Press Act

CIVIL LIBERTIES COUNCIL'S PROTEST

The Punjab chapter of the All-India Civil Liberties Council passed the following resolution at the meeting of its executive committee on 29th September:

> (a) The Punjab Civil Liberties Council condemns the Punjab Special Powers (Press) Bill recently passed by the Punjab legislature as being unconstitutional, undemocratic and a menace to the fundamental right of freedom of expression guaranteed by the Constitution. The Council respectfully requests the Governor of the Punjab to withhold his assent to this retrograde measure.
>
> (b) The Council appeals to the All-India Newspaper Editors Conference, the All-India Working Journalists Federation, various political parties and all the Bar Associations in the Punjab State to take up the matter strongly, without further loss of time.
>
> (c) Resolved further that a conference of the Punjab Civil Liberties Council be convened in the month of November 1956 to consider this question.

Provincialism in Public Employment

The "Statesman" points out how the fundamental right to equality of opportunity in matters of public employment is being disregarded in practice by State Governments. Art. 16 (1) lays down:

> There shall be equality for all citizens in matters relating to appointment to any office under the State.

And Art. 16 (2) provides:

> No citizen shall, on grounds only of . . . place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

The editorial says (in part):

> Some States not merely give, and require private employers to give, preference to the people of the State, but virtually exclude from employment people from other States, in clear violation of the Fundamental Rights. Other States, which have been more hospitable to outsiders, are tending to retaliate. Whatever the effect on efficiency, it is certain that the nation will get further compartmentalized if the process continues. It is wholly imaginary to suppose that the personnel of a strong State or a few strong States could establish a monopoly, if not of political, at least of senior secretarial, appointments at the Centre. If, to get a job, it is not enough to be an Indian, but necessary to be some special sort of Indian, the value of the wider description will diminish and the only way one not belonging to the elite may be able to find work or carry on business will be the " visé " of some powerful personality.

A Separate Constitution for Kashmir

PROTEST BY THE JAMMU CONFERENCE

At a special conference held at Jammu on 23rd and 24th September to protest against the proposed framing by a constituent assembly of a separate Constitution for Kashmir State, a demand was made for the application of the Indian Constitution in its entirety to the State. Pandit Premnath Dogra, who opened the conference, said that the only argument that could be advanced for allowing Kashmir State, unlike every other State, to have a Constitution of its own was that because Kashmir had a Muslim majority, it needed a separate Constitution. But this argument, he observed, only revealed the communal mentality of those who put it forward and was wholly untenable. It was " extremely ridiculous, " he said, that on the one hand, the National Conference leaders were stating that Kashmir was as much a part of India as any other State, and on the other, that they were formulating a separate Constitution for the State. Pandit Dogra demanded the extension of jurisdiction of the Auditor-General of India, India's Election Commissioner and the Supreme Court to Jammu and Kashmir State and the election of members of Parliament from the State by the direct vote of the people. He said that people in the State should enjoy the same rights and privileges as were being enjoyed by those in other parts of India.

CURRENT TOPICS

Shift in Communist Policy

U. S. Communist Party's Resolution

In line with Mr. Khrushchev's " revelations " at the twentieth Congress of the Soviet Communist Party, the American Communist Party has published a statement indicating a shift in its policy, which will be placed for adoption before a convention in next February. The statement confesses past errors both in its ideology and practical policy and makes proposals as to how the party should conduct itself in future.

Mr. Eugene Dennis, general secretary since 1945, mentioned that the party membership which was at its peak then had dwindled from 80,000 in 1945 to " somewhat between 20,000 to 25,000. " The reason for this given in the statement is its " isolation " from the main currents of American life. The party was wrong, it is stated, in its views on the " imminence of economic crisis " in the U. S. A. The resolution says:

> Repeatedly since 1945, the party has erred in assessing economic developments in the United States. In 1945, in 1949 and in 1954, it predicted that the current declines would develop into crises of major proportions.

But the predictions have been falsified, which means that capitalism in the U. S. A. has produced relatively high standards of life instead of progressively impoverishing the workers as predicted by Marx. A " dogmatic application of Marxist theory to the American scene " and " an oversimplified approach to and an uncritical acceptance of many views and ideas of Marxists and Marxist parties in other countries " are now to be given up.

The statement notes that some corrections have already been made. It says:

> We have aleady discarded as obsolete Lenin's thesis that war is inevitable under imperialism. We have long since discarded as incorrect Stalin's thesis about the alleged law of inevitable violent proletarian revolution.

That is to say, the party claims even now to advocate the following only of " the peaceful constitutional path to socialism. " But further changes are required. Though it stands by " international working class solidarity, " it must not be subservient to Communist parties in other countries.

The point that directly concerns civil liberties bodies is the declaration in the resolution that the Communists of the United States owe allegiance to their own country. The resolution says that the Party " is not subject to any external allegiance or discipline either of an organizational or political character " and that it is a lie to say that it is " the agent of a foreign power. "

The Smith Act which is enforced against the Communists (so far 160 indictments have been brought against them, resulting in 114 convictions) prohibits conspiracy to advocate overthrow of the Government by force and violence; and the Internal Security Act passed in 1951 assumes that the Communist Party is not an ordinary political group but a conspiracy; that it is a group which is willing to act as the agent of a foreign power. The preamble to the latter Act recites that " there exists a

world Communist movement;" that the Communists in the United States "are in fact constituent elements" of such a movement and promote the objectives of the movement "by conspiratorial and coercive tactics;" and that those who participate in the world movement "in effect repudiate their allegiance to the United States and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement," viz., Soviet Russia.

The question is whether the declaration now made will bring about a change in the U. S. Government's attitude to the Communists. Indications are that it will have very little effect. The "New York Times" thinks that "international working class solidarity," in which the Party still believes, is only a "euphemism for subservience to and co-operation with the international Communist conspiracy." What the "Statesman" of our country remarks about the declaration may be taken to reflect the opinion that will generally be held at the present moment. It says:

> On the specific issue of allegiance, a whole sequence of Communist leaders, in country after country, was obliged (unless the whole thing was an almost unimaginable coincidence) to declare that in the event of war the support of the "working class" would be given, not to its own Government, but to the Communist Powers. The anti-Communist investigations in the U. S. A., though undoubtedly they often fell into most questionable hands and were often directed against people only implicated by remote association, were therefore not without original excuse. The present Communist attempt to live this record down will have to prove sincerity, not merely against prejudice but against a formidable body of precedent.

In this connection what Mr. Nehru said at Alipore on 7th October about the Communist Party of India is interesting. He observed that the Indian Communists had chosen the path of violence and hatred and wanted to promote civil war in the country to create what they regarded as the essential condition for revolution, because the Russian Revolution had been preceded by widespread destruction and civil strife. They possessed closed minds and ignored the developments that had taken place since Marx wrote Das Kapital in the latter half of the nineteenth century, although his theories had long been outmoded. On another point also he echoed the view widely held in non-Communist countries, viz., that though the present Russian leaders have repudiated Stalin, the blood-baths and other crimes committed in Stalin's time could not be separated from the very Communist theory which Stalin was trying to implement. Mr. Nehru said that today the Russian leaders were admitting that grave mistakes had been committed by Stalin. Earlier he had been deified. Now all the mistakes resulting in the deaths of lakhs of people were being fastened on him, but he (Mr. Nehru) felt convinced that the mistakes flowed inevitably from the system based on violence and hatred. They were not the doings of one man. We do not believe that Mr. Nehru had previously expressed this view in such an outspoken and blunt manner.

Racial Non-Discrimination

World Methodist Conference's Resolution

Representatives of 18,000,000 Methodists the world over who met in North Carolina for twelve days in the ninth World Methodist Conference committed their church to erase from society discrimination based on race, colour or creed. The resolution passed at the conference says:

> The conference, composed of representatives from many national and ethnic groups united in fellowship in Christ, deplores the embittered strife which bedevils human relations. The conference is entirely convinced that the church is committed by its very nature to the establishment of a human society in which discrimination based on race or colour will no longer exist. The conference expresses its active concern for those of any colour or race who are suffering from political, economic, educational, social or religious discrimination or segregation and the earnest desire that Methodists themselves will initiate, contend for and foster within their own societies a genuine and all-inclusive fellowship.

"Blood Apartheid" in S. Africa

The South African Medical and Dental Council has agreed to "blood apartheid"—to separate labelled bottles for blood from whites and non-whites.

This follows protests by certain whites that in blood transfusions whites should not be given blood taken from non-white donors.

The Council agreed that a "white circular label shall be attached to the container of blood of European origin." The decision was forced on the Council by a Government regulation stating that blood from non-Europeans should bear a black label to prevent the possibility of its being transfused into a European patient.

Dr. M. Shapiro, Director of the blood transfusion service, said it was tragic that there should be discrimination in South Africa between the blood of whites and non-whites. The proposal had received unfavoucable worldwide publicity.

Dr. Shapiro said that the "blood apartheid" move could not be justified on scientific grounds. "So far as we are aware, no such provision is contained in any Government regulation for blood transfusion anywhere in the world."

A leading Johannesburg doctor describes the move as "laughable." He said that gamma globulin, a serum protein, was prepared from the blood of African mine-workers. Probably hundreds of European adults and children had been injected with a preparation made from so-called "black blood" over the past few years.

Hundreds more would continue to have such injections unless the Government decided to introduce apartheid into gamma globulin production as well.

"Just how far can this thing go?" he asked. "There is no scientific basis for blood apartheid. There may be social prejudices, but if the Government wish to take cognisance of these prejudices, the Medical Council, a scientific and professional body, should leave the matter alone."

Forced Confessions

TO BE OUTLAWED IN RED CHINA

At the eighth Chinese Communist Party Congress held in Peking last month, the Minister of Public Security, General Lo Shi-ching said (he had repeated the statement at the National People's Congress in June) that the party absolutely forbade forced confessions by torture or semi-torture "because such forced confessions can only lead us to make a mistake and does not help us in winning over our enemies." He stressed the need for supervision over public security organizations by party and people and the need for intensive research and investigation so that innocent people should not be wrongly arrested or condemned.

PRE-CENSORSHIP OF THE PRESS

Order Served on Two Newspapers

Under Sec. 144, Criminal Procedure Code

On 24th June last the district magistrate of Jullundur served an order under sec. 144, Cr. P. C., on two newspapers of Jullundur—the "Partap" and the "Hind Samachar"—directing the editors of the papers to abstain from publishing without his previous scrutiny any articles, comments, news, etc., relating to agitation in connection with the Punjab Regional Formula, the language controversy and matters calculated to cause communal disharmony in the Punjab State for a period of two months from the date of the order. [The case was referred to by us in the last month's issue at p. iv.: 161.] The validity of the order was challenged in the Punjab High Court as violating the liberty of the press guaranteed by Art. 19 (1) (a) of the Constitution.

The High Court on 27th August dismissed the petition, but it did so without pronouncing on the validity or propriety of the order, because by that time the pre-censorship order had expired. However, the Court considered the contentions put forward on behalf of the newspapers against which the restrictive order was issued. Chief Justice A. N. Bhandari, who wrote the judgment of the Court, said: "The district magistrate was satisfied that these two papers had indulged in communal propaganda of a virulent nature, that they had fanned the flame of communal hatred between Hindus and Sikhs, . . . that they had created an immediate danger of obvious magnitude to the well-being of large sections of our population. It was in this state, it is alleged, that the impugned restrictive, order was passed."

On the value of freedom of the press to democracy, His Lordship said:

> Ever since the dawn of civilization political reformers have been struggling for freedom of speech, for it has long been recognized that the maintenance of welfare of democracy depends upon a market place in which freedom of speech is allowed and where ideas can be bought, sold or exchanged without let or hindrance. Freedom of the press is such an important element of liberty and is so essential for the preservation of the other freedoms that any restriction on the exercise of this right is viewed with concern in all civilized societies. Freedom of the press means principally the right to publish without any previous licence or censorship. As long ago as the year 1644 John Milton protested against censorship or previous restraint.

Counsel for the petitioners cited the cases of Romesh Thapar and Brij Bhushan (A. I. R. 1950 S. C. 124 and 129) to show that the provisions of sec. 144, which empowers the district magistrate to impose pre-censorship on newspapers, are inconsistent with the provisions of Art. 19 (1) (a). In these cases the Supreme Court took the view that a law restricting the freedom of speech would be ultra vires even though it related to public order or incitement to an offence provided there was no question of the security of the State being jeopardised. But the judgments in the cases were delivered in 1950, and Art. 19 was amended in 1951. Referring to the effect of the amendment, the Chief Justice said:

> It must be remembered that this contention, however substantial it might have been before the enactment of the Constitution First Amendment Act 1951, when public order was not one of the purposes for which freedom of the press could be restricted, is at the present moment wholly devoid of force.

Constitutionality of the Order

The Court rejected the contention that sec. 144 was not covered by the amended Art. 19 (1) (2), which specifies the restraints that can validly be laid on freedom of speech, on the ground that the impugned restrictive law was wanting in the attribute of reasonableness. His Lordship said:

> Sec. 144 provides for the issue of temporary orders in urgent cases of nuisance or apprehended danger,

It confers full power on certain magistrates to take prompt action in cases of emergency when immediate prevention or speedy remedy is desirable.

Except in cases of emergency an order under this section can be passed only after service of a notice upon the person against whom the order is directed. A magistrate is at libety 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. No order under this section can remain in force for more than two months, unless the State Government by notification in the official Gazette otherwise directs.

It is true that the authority to decide whether a particular order should or should not be passed has been vested in the district magistrate, but as pointed out in 1950 S. C. R. 533 the vesting of authority in a particular officer to take prompt action under emergent circumstances entirely on his own responsibility or personal satisfaction is not necessarily unreasonable. The power of a district magistrate to make temporary orders restricting the liberty of the press in urgent cases of nuisance or apprehended danger has been upheld both before or after the inauguration of the new Constitution (A. I. R. 1940 Bom. 42 ; A. I. R. 1942 Lah. 171 ; A. I. R. 1952 Mad. 60).

Sec. 144 is a powerful weapon in the armoury of the State and can be employed effectively in defence of public order in times of stress and strain. It is true that like all other instruments it is capable of being misused, but that fact alone would not justify us in allowing this weapon to be so rusted and blunted with constitutional construction as to be rendered practically useless.

Propriety of the Restrictive Order

" Clear and Present Danger " Test

The Court then proceeded to consider the propriety of issuing the pre-censorship order. The *Chief Justice said :*

But a question at once arises what are the tests for determining whether a particular restriction goes too far, for all restrictions are not unconstitutional. The authorities in India are unanimous in holding that the wide powers conferred upon a magistrate under sec. 144 should be exercised with discretion and discrimination ; 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 restrictions necessary in the public interest ; that no restriction should be imposed which goes beyond the requirements of the case ; that there must a causal connection between the articles to be published and the alleged danger of disturbance of public tranquillity (A. I. R. 1940 Bom. 42 ; A. I. R. 1942 Lah. 171) ; and that there must be emergency in the matter (23 C. W. N. 145 ; A. I. R. 1931 Mad. 236 and A. I. R. 1924 Pat. 767). But they have not laid down any conclusive test for determining whether a particular order curtailing the freedom of the press is or is not justified.

His Lordship then referred to the *Holmesian* " clear and present danger " test enunciated by the U. S. Supreme Court in the Schenck case, 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 Congress has a right to prevent." On the applicability of this test His Lordship said :

> I am of the opinion that a Court which is required to pronounce upon the propriety of an order passed under sec. 144 of the Code of Criminal Procedure should enquire whether the " words used are used in such circumstances and are of such a nature " that a reasonable man would anticipate the evil result. This enquiry should be made in the light of the following principles, namely,
>
> (1) That the Constitution has given an honoured place to the great democratic freedoms secured by Art. 19.
>
> (2) That the power of the State to abridge freedom of speech is the exception rather than the rule.
>
> (3) That the character of the right, not of the limitation, determines the propriety of the restrictions.
>
> (4) That, however complete may be the right of the press to state public things and discuss them, that right as every other right enjoyed by human society is subject to the restraints which separate right from wrong-doing.

After considering the arguments advanced on behalf of the petitioners, the Court remarked that it would not interfere on the revision application, saying :

> The restrictive order, the validity and propriety of which have been challenged in the present case, came into being on 24th June 1956 and died a natural death on 23rd August 1956. We have been given an assurance that this order will not be revived or resurrected. It is the settled practice of the Patna High Court to decline to interfere in revision with an order under sec. 144 when the order has already expired or is likely to expire in a few days' time. Following this practice, I would decline to pronounce upon the validity or propriety of this order or to interfere with the decision which has already been given.
>
> As this petition raises substantial questions of law, I certify that this is a fit case for appeal to the Supreme Court.

HABEAS CORPUS PETITIONS

Preventive Detention Act

Interpretation of " Forthwith " in Sec. 3 (3)

The Constitution Bench of the Supreme Court on 17th September dismissed the habeas corpus petitions of Mr. K. N. Joglekar, a Communist leader, and six others who had been ordered to be detained by the Commissioner of Police, Bombay, in January last in connection with the United Maharashtra agitation.

Orders for detention were passed on 13th January 1956 ; arrests were made on 16th January ; the grounds of

detention were formulated on 19th January and given to the petitioners the following day. The fact of the orders and the grounds were reported to the State Government by the Commissioner on 23rd January.

Two points were raised on behalf of the petitioners. The first point was that the grounds on which the detention orders were made, as forwarded by the Commissioner to the Government under sec. 3 (3) of the Preventive Detention Act (which provides that the detaining authority shall report to the State Government the fact of detention "together with the grounds on which the order has made and such other particulars as have a bearing on the matter"), were not the same as supplied to the petitioners under sec. 7. The Court negatived this contention, saying :

> Our conclusion is that the failure on the part of the district magistrate to send along with his report under sec. 3 (3) the very grounds which he subsequently communicates to the detenus under sec. 7 is not a breach of the requirements of that section and that it is sufficiently complied with when he reports the materials on which he made his order.

The other point that was raised in connection with sec. 3 (3) was that since the orders for detention were passed on 13th January, but the fact of detention was reported to the State Government only on 23rd January, the Commissioner failed to comply with the requirements of the section, which says that the detaining authority "shall forthwith report the fact" of detention to the State Government. It was contended that while sec. 7 (1) provides that the detaining authority "shall as soon as may be" communicate to the detenu the grounds on which the order is made, sec. 3 (3) requires the detaining authority to report detention "forthwith," and that the use of different expressions ["as soon as may be" and 'forthwith"] in the two sections was clear indication that they did not mean the same thing. As the words "as soon as may be" implied (it was argued) that the act of furnishing the grounds to the detenu might be performed in a reasonable time, the word "forthwith," which was more peremptory, should be construed as excluding such an implication.

Referring to this argument, Mr. Justice T. L. Venkatarama Aiyar, who delivered the judgment of the Court, said that they agreed that "forthwith" in sec. 3 was more peremptory than "as soon as may be" in sec. 7. The difference between the two expressions lay, in their opinion, in that while under sec. 7 the time that was allowed to the detaining authority was what was reasonably convenient, under sec. 3 what was allowed was only the period during which he could not, without any fault of his own, send the report. The question under sec. 3 was whether the report had been sent at the earliest point of time possible, and whether, where there was an interval of time between the date of the order and the date of the report, the delay in sending the report could have been avoided.

The Court accepted the statement in the affidavit filed by the Commissioner explaining why the reports were not sent till 23rd January though the orders themselves had been made as far back as 13th January. His Lordship said :

> What happened on 16th January and the following days, are now matters of history. The great city of Bombay was convulsed in disorders which were among the worst that this country had witnessed. The Bombay police had a most difficult task to perform in securing life and property and the authorities had been working at high pressure in maintaining law and order. It is obvious that the Commissioner was not sleeping over the orders which he had passed or lounging supinely over them. The delay, such as it is, is due to causes not of his making but to causes to which the activities of the petitioners very largely contributed.

The Court held that the delay in sending the report could not have been avoided by the Commissioner and that when the report was sent by him, it was sent "forthwith" within the meaning of sec. 3 (3) of the Act.

PARULEKARS' PETITION DISMISSED

The petition of Mr. Shamrao and Mrs. Godavari Parulekar was similarly dismissed by the Supreme Court. They were arrested on 27th January 1956 and detained under the order of the district magistrate of Thana on charges of inciting and instigating the Adivasis of the Thana district to violence and arson.

The petitioners challenged their detention first on the ground that the grounds of detention furnished to them were vague. Mr. Justice Venkatarama Aiyar held that the grounds were sufficiently definite to apprise the petitioners of what they were charged with and to enable them to give their explanation therefor.

The second ground of attack was that the requirements of sec. 3 (3) of the Act had not been complied with in that the grounds had been sent to the State Government by the district magistrate not along with his report on 28th January but on 6th February after the State Government had approved of the order. On this point the judgment held that the failure on the part of the district magistrate of Thana to send along with his report the very grounds which he later communicated to the detenu was "not a breach of the requirements of the sub-section and that it was sufficiently complied with when he reported the materials on which he made the order."

Sec. 3 (3) requires the authority to communicate the grounds of its order to the State Government so that the latter might satisfy itself whether detention should be approved. Sec. 7 requires the statement of grounds to be sent to the detenu so that he might make a representation against the order. His Lordship said :

> It is obvious that the communication that has to be served on the detenu under sec. 7 of the Act is a formal document setting out the grounds for the order and the particulars in support thereof, whereas the report to the State under sec. 3 (3) of the Act is a less formal document in the nature of a confidential inter-departmental communication, which is to contain particulars on which the order was made. It could not have been intended that the contents of the two communications which are so dissimilar in their scope and intendment should be identical.

Mr. Chitale Released

Mr. V. D. Chitale, a Communist leader of Poona, was arrested and detained in January last in connection with his activities in the United Maharashtra agitation, the allegation against him being that since August 1955 he

had been delivering violent speeches inciting people to indulge in illegal acts and to commit acts of violence. Mr. Chitale challenged the detention order in the Bombay High Court on a habeas corpus petition.

Mr. Justice Chainani and Mr. Justice Shah on 8th October allowed the petition and set aside the detention order. In their judgment Their Lordships referred to two of the grounds of detention. In these it was stated that Mr. Chitale had asked people to rely on actions and not on mere propaganda. This, according to an affidavit of the detaining authority, the district magistrate of Poona, amounted to a suggestion that the people should show their might if the demand for United Maharashtra was not granted by the Government.

Their Lordships said that in asking the people to show their strength, it could not be said that the petitioner incited the people to commit acts of violence. They added that in a democratic form of government, the people who elected members to the legislature were powerful, for the ultimate power was vested in them. Mr. Chitale, therefore, could not be said to have done any act prejudicial to the maintenance of public order.

As in Their Lordships' opinion, the grounds had no bearing on the maintenance of public order, the detention order was bad. They therefore directed the release of Mr. Chitale.

PERSONAL LIBERTY

Socialists Released from Detention

SEC. 112, CR. P. C., NOT COMPLIED WITH

The socialist party and the Hind Kisan Panchayat of Mathura district held a workers' training camp in the Bairagis' Garden in the village of Chanmula in the Chhata sub-division on 6th August and were to hold public meetings in the garden on the two following days. However, the Minster of Revenue of U. P. was to address a meeting on 7th August in the garden, and the district magistrate, police superintendent and sub-divisional magistrate of Chhata requested the organizers of the training camp not to hold a public meeting at that place on that day. The request was refused. Thereupon, according to the organizers, the station officer of the Chhata police station came upon the scene, snatched away the mike and shouted that no public meeting in the garden would be tolerated when a Congress meeting was going to be addressed by the Minister of Revenue close by. The police then arrested the secretary of the socialist party, Mr. Radhe Sham Joshi, the president of the Hind Kisan Panchayat and six others and confined them in a small cell. On 9th August they were taken out of the police lock-up sent to the district jail, Mathura, and were admitted in jail

Applications were made for the release of the eight persons on the ground, among others, that they had not been produced before a magistrate although more than 24 hours had passed after they were arrested, and that the detention was illegal as contravening Art. 22(2) of the Constitution. When the matter went up to the Allahabad High Court Mr. Justice Bhargava and Mr. Justice Sahai found (13 September) that the arrested persons were dispatched from Chhata police station before the expiry of 24 hours from the time of arrest and that therefore there was no illegal detention at Chhata. The validity of the arrest itself was also challenged on the ground that the detenus had done nothing which could cause any reasonable apprehension of a breach of the peace on their part and that the arrest was thus mala fide. It was argued on behalf of the police, however, that the acts which had been committed by the detenus on the morning of 8th August were such that there was imminent danger of a breach of the peace taking place, which required proceedings being taken against the detenus under secs. 107 and 117 Cr. P. C. Their Lordships ruled on this point that such questions of fact could not be investigated by them in a petition under Art. 226 of the Constitution. On the basis that the allegations made by the police might be correct they were unable to hold that the police were unjustified in arresting the detenus on 8th August.

But the subsequent detention of the detenus in the district jail on the order of the sub-divisional magistrate was held by Their Lordships to be illegal. When the detenus were produced before the magistrate, the report of the police indicated that they had been taken into custody for the purpose of taking proceedings under sec. 107. The magistate should have then and there made an order in writing under sec. 112 and served a notice on the detenus. Until he had done so, his power of remanding the detenus to custody did not vest in him and could not be exercised by him. Even after communicating the contents of the order under sec. 112 to the detenus, it was incumbent on the magistrate to come to a finding that immediate measures were necessary for prevention of the breach of peace or disturbance of public tranquillity and thereupon to direct the detenus to execute a bond for keeping the peace. After the magistrate had done all this he could then direct all these persons in custody until such bonds were executed or until the conclusion of the inquiry in case no such bonds were at all executed. Even till to-day, Their Lordships said, no order in writing under sec. 112 was made by the magistate and thus the detention continues to be illegal. Their Lordships allowed the petition and directed the release of the detenus.

CIVIL SERVICE REGULATIONS

Pensioners and Political Activities

WRIT PETITION DISMISSED

Mr. Gurdut Singh, who was in the service of the U. P. Government and who when he retired as city magistrate of Faizabad in 1950 was in the rank of a deputy collector, stood in the last general elections to the State Assembly against a Congress candidate but was defeated. In 1953 he participated in the satyagraha launched by the Bharatiya Jan Sangh at Delhi and was convicted for defiance of a prohibitory order promulgated by the Delhi State Government and was sentenced to four months' rigorous imprisonment and a fine of Rs. 1,000. In February, 1955, the State Government reduced his pension by Rs. 70 for unsatisfactory record of service and conviction.

Mr. Gurdut Singh challenged the order of the State Government through a writ petition contending that the order was mala fide and actuated by political motives in order to victimize him. It was also argued that Civil Service Rule 470, which gave power to the Government to reduce the pension, was ultra vires of the Constitution as it gave unfettered discretion to the State Government either to reduce or not to reduce the pension and thus

violated Art. 14 of the Constitution guaranteeing equal protection of the laws.

The writ petition was heard by Mr. Justice Mehrotra of the Allahabad High Court. Dismissing the petition, on 21st September, His Lordship observed that the right to claim pension was regulated by rules and when an employee entered Government service he undertook to abide by the conditions of service laid down in those rules and those rules were in the nature of terms of contract entered into between the employer and the employee. No statutory authority for those rules had been pointed out. They could not be regarded as law within the meaning of Art. 14 and, therefore, they were not rendered void by reason of Art. 14 of the Constitution.

As regards his contention that the order of the Government was intended to victimize him on account of political differences, His Lordship said :

> There are a number of parties in the country Petitioner owes allegiance to a party, the political ideology of which is different from that of the Congress. But this fact itself does not establish that the present act of reducing his pension was motivated by mala fide considerations. Unless petitioner is able to establish that the order passed by the State Government is beyond the ambit of the rules or that it is wholly arbitrary and capricious, it is an administrative order and cannot be quashed on the ground that petitioner belongs to a party, the political ideology of which is different from that of the Congress.

The ruling of the Court thus was that Civil Service Regulations could not be regarded as law within the meaning of Art. 14 of the Constitution which guarantees equality before the law and, therefore, they were not rendered void by reason of Art. 14.

INDUSTRIAL DISPUTES

Interpretation of " Concession " and " Amenity "

The Supreme Court dismissed last month the appeal of the managements of tea estates in Assam against the I. N. T. Union Congress from a decision of the Labour Appellate Tribunal.

The managements of the tea estates were issuing their employees foodgrains at concessional prices in addition to their wages. On the introduction of control and rationing the quantum of foodgrains issued to the workers was reduced but they were given compensation in the form of a regular payment in cash.

In 1952 the Government of Assam issued a notification under the Minimum Wages Act fixing the minimum wages of the workers employed in tea estates and provided that these rates were " exclusive of concessions enjoyed by the workers in respect of supplies of foodstuffs and their essential commodities and other amenities which will continue unaffected."

The interpretation of this clause gave rise to an industrial dispute between the managements and their workmen, in which the workers claimed that they were entitled to a continuation of the payment of compensation in lieu of the reduced supply of foodgrains, and the managements asserted that on the fixation of the minimum wage the said compensation was no longer payable.

The appellants argued that the terms "concession" and "amenity" in the Government notification did not cover compensation payable in lieu of foodgrains which were no longer being issued and hence the workers were not entitled to any such payment. The workmen contended that the compensation was in lieu of a withdrawn concession of foodgrains and therefore was itself a " concession. " Alternatively the compensation was also covered by the term "amenity" as it was a facility granted to the workmen in addition to wages.

The Industrial Tribunal decided in favour of the managements, but the decision was reversed by the Labour Appellate Tribunal which held that the compensation was an amenity and was therefore to continue unaffected. The Supreme Court agreed with the Appellate Tribunal.

SALES TAX

Punjab General Sales Tax Act

HELD VALID BY THE HIGH COURT

A Ludhiana firm dealing in tractors and agricultural machinery was, under the Punjab General Sales Tax Act of 1948 as amended by the Punjab Act 19 of 1952, subjected to a sales tax on the machinery sold by it. The firm challenged the levy of the tax in the Punjab High Court, contending that agricultural machinery was exempt from sales tax. This petition was however dismissed by Mr. Justice Kapoor on the ground that the petitioner had not exhausted all remedies under the Sales Tax Act before coming to the High Court. Thereupon the petitioner firm filed a letters patent appeal against that order, maintaining that it was not necessary to exhaust all remedies under the Act when the validity of any Act was challenged, as was done by the firm.

A division bench of the Court consisting of the Chief Justice, Mr. Justice Bhandari and Mr. Justice Khosla dismissed the appeal on 13th September. Their Lordships observed that the amending Act (Punjab Act 19 of 1952) provided that the upper limit of two pice in a rupee shall be deemed to have been included in the original Act (of 1948) from the very beginning and the defect, if any, was therefore removed with retrospective effect. The removal of the defect did not mean that the Act was enacted at the time the amendment was made. The Act which sanctioned the impositin of sales tax had existed since 1948 and the policy of imposing sales tax had been declared and legalized in 1948. The tax had been levied from traders and had been paid by them regularly without protest. The validity of the Act was never challenged and in 1952 the defect, if there was any, was removed.

Their Lordships held that it could not be said that by virtue of the Central Act 52 of 1952 the Punjab General Sales Tax Act of 1948 became invalid. They held that the Act was intra vires and that the levy of the tax from the appellant could not be held to be illegal merely because of the provisions of the Central Act 52 of 1952. The appeal was dismissed with costs.

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