

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## DETENTIONS IN INDIA

### CONSTITUTIONAL AND STATUTORY PROVISIONS

The U. N. Commission on Human Rights has appointed a four-man special committee, with Mr. F. M. Serrano of the Philippines as the rapporteur, to study "arbitrary arrest, detention and exile" in all the various countries. In response to a request made by the International League for the Rights of Man, which is a consultant agency with the United Nations, the All-India Civil Liberties Council has, as an affiliate of the League, submitted the following Memorandum to the Committee on preventive detentions in India. The Bulletin commented on the committee's interim report at p. iv : 277.

#### 1

### The Constitution

The U. N. Committee to Study Arbitrary Arrest, Detention and Exile will find the provision in the Indian Constitution against arbitrary arrest and detention of particular interest because the relevant Article uses nearly the same phraseology as the corresponding Article in the draft International Covenant on Human Rights. Art. 21 of the Constitution of India says :

No person shall be deprived of his life or personal liberty except according to procedure established by law.

The Article in the U. N. Covenant on this subject says :

No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

And indeed the Article took this form in the Covenant on the motion of the Indian delegate. Originally the Article provided in para. 1 that "no one shall be subjected to arbitrary arrest or detention" and had followed up this provision by saying in para. 2 that "no person shall be deprived of his liberty save in the case of..."—setting forth exceptions in which an individual could validly be deprived of his liberty. Ultimately, however, the exceptions were deleted and a blanket provision substituted therefor, as mentioned above, on an amendment to that effect by the Indian delegate [E/CN. 4/188].

This substitution was sharply criticised at the time and subsequently in debates as placing the most basic right to Freedom of Person at the mercy of the national legislatures. Most striking was the criticism of Lord Macdonald in the General Assembly on 18th October 1950 to the effect that the Article in that form would seem to justify the flagrant violations of personal liberty by the former Nazi and Fascist Governments, as the violations took place "by means of laws which had been valid according to their national constitutions." And he concluded: "Art. 6 as it stood, was, therefore, wholly inadequate." [A/C. 3 SR 288].

The relative Article of the Indian Constitution has an interesting history, and it would be useful for the Committee to take note of it because it helped the Supreme Court of this country to pass on the validity of preventive detention. This Article originally ran: "No person shall be deprived of his life or liberty without due process of law," but later the words "without due process of law" were omitted, to be replaced by "except according to procedure established by law." In the first preventive detention case [Gopalan v. State of Madras, A. I. R. 1950 S. C. 27] that came up before the Court, the effect of the change was canvassed. Counsel for the detenu pleaded that though the words "due process of law" had been omitted from Art. 21, still the word "law" that was left in had the same connotation; it did not mean just any State-made law, but something deeper—the immutable principles of natural justice or what goes by the term "due process of law" in the United States Constitution; it meant not merely *lex* but *jus naturale*. The Attorney-General on the other hand contended that the change in the original phraseology was made for the express purpose of barring judicial review of the Preventive Detention Act, citing in support the Law Minister's statement on 14th December 1948 in the Constituent Assembly when Art. 21 was under debate, viz., that "the question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the... power to question the laws made by the State on the ground that they violate certain fundamental principles." His conclusion was that the phrase "due process" was dropped for the

avowed purpose of preventing the courts from invalidating a law which gave power to the Executive to deprive an individual of his personal freedom. And this conclusion was accepted by the Court. Mr. Justice Mukherjea, referring to the change in the Article made by the Constituent Assembly, said :

It is all a question of policy as to whether the legislature or judiciary would have the final say in such matters, and the Constitution-makers of India had deliberately decided to place these powers in the hands of the legislature.

Mr. Justice Das agreed. Observing that, after the omission of the words "due process," the American doctrine of procedural due process can have no place in our system of jurisprudence in respect of personal freedom, he said :

The doctrine can only thrive and work where the legislature is subordinate to the judiciary, in the sense that the latter can sit in judgment and review all acts of the legislature. Such a doctrine can have no application to a field where the legislature is supreme.

All that can be claimed for Art. 21 is, in the words of Mr. Justice Mukherjea, that it imposes "checks on the high-handedness of the Executive in the shape of preventing them from taking any step which is not in accordance with the law," and even this, he said, would entitle the Article to confer a fundamental right. Mr. Justice Patanjali Sastri observed that the Executive can "only act in pursuance of the powers given by law, and no constitutional protection against such action is really needed." He further said : "It is of the essence (of the conception of a fundamental right) that it is protected by the fundamental law of the Constitution against infringement by ordinary legislation." If, then, a fundamental right, properly so-called, must be immune from legislative as well as executive interference, and particularly from legislative interference, it follows that personal liberty does not rank as a fundamental right at all in India. Speaking in another connection [ A. I. R. 1954 S. C. 112 ], Mr. Justice Das said :

What, I next ask, is the protection which our Constitution gives to any person against the legislature in the matter of deprivation of life or personal liberty? None, except the requirement of Art. 21, namely, a procedure to be established by the legislature itself and a skeleton procedure prescribed in Art. 22.

The placing of the legislature above the judiciary in the Constitution in the matter of personal freedom was likened by the Supreme Court Justices in Gopalan's case to the situation in which Bronson J. was impelled to make the famous observation in *Taylor v. Porte*, 4 Hill 140, that it sounded very much like the Constitution speaking to the legislature that the latter could not infringe any rights unless the statute was passed to that effect; "in other words you shall not do the wrong unless you choose to do

50."

That the Indian Constitution does not prevent and does not seek to prevent legislative infringement of the right to Freedom of Person is fairly obvious, but it was thought best to establish it by pronouncements of the highest court. This will also show that the Article in the International Covenant relating to this right, being modelled on the Indian Constitution and at India's suggestion, will serve as little as Art. 21 of the Indian Constitution to safeguard this most fundamental of all fundamental rights.

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### The Statute

India is, we believe, the only democratic country in the world whose fundamental law sanctions detention without trial in time of peace and in a situation which is not of the nature of an emergency. When an emergency is proclaimed under Art. 352, all fundamental rights are capable of being suspended in virtue of Art. 359, and doubtless personal freedom will be the first to suffer. As long as in the judgment of the Government emergency conditions last, arrests and detentions can be validly effected if only there is a law to permit them. In no other country which places constitutional limitations on legislative power is this possible. In the U. S. A. it is constitutionally incompetent to Congress, and in the constituent units of the Union it is constitutionally incompetent to the states' legislatures, to suspend habeas corpus except in cases of external invasion or internal rebellion, and even in these circumstances except under rigid safeguards. In the United Kingdom, in which the legislature is supreme, Parliament can never contemplate preventive detention except in time of war. In civil law countries like France also the so-called state of siege conferring any extraordinary power on the legislature cannot be enforced unless there is actually present "a foreign invasion or an armed insurrection" or an imminent danger thereof. India is unique in this respect in that its Constitution allows preventive detention to take place in conditions which, even according to the Government, do not amount to a national crisis.

Nor does the law of preventive detention limit the exercise of the power of arresting and detaining suspected persons to a contingency which may not be of the gravity of an emergency within the meaning of Art. 352 but which may yet affect national security to a high degree, when the very existence of the community appears to the Executive to be in danger. The law allows the power to be exercised not merely for securing the defence and security of India or any State in India, but for various other purposes for the attainment of which no other country would ever think of resorting to such exceptional power. The power can be enforced for the sake of "the maintenance of public order."

"Public order" is a term of the widest amplitude and under its guise the Executive is enabled to make short shrift of the personal Liberty of individuals even in minor disturbances where only some police action would be

warranted. The Supreme Court of India had occasion to point out the distinction between what is required in the interests of "security of the State" and in the interests merely of "public order" in *Romesh Thappar v. State of Madras* [ A. I. R. 1950 S. C. 124 ], a case involving freedom of the press. At that time the Constitution permitted ( it has since been amended ) restrictions to be imposed upon freedom of expression in the interests of the security of the State but not in the interests of public order. The Court pointed out that the Constitution itself had in other sections recognized a distinction between "security of the State" and "maintenance of public order," and said :

The Constitution thus requires a line to be drawn in the field of public tranquillity, marking off, more or less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind . . .

We are, therefore, of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under cl. (2) of Art. 19 [ the clause which sets forth permissible restrictions on the right ], although the restrictions which it seeks to impose may have been conceived generally in the interests of public order.

The same question arose for consideration in the United Nations when formulating the Article ( Art. 14 ) in the International Covenant on Human Rights relating to freedom of information. This Article, as it stands, includes "public order" as a basis for restricting the right in addition to "national security," giving power to the Governments to arrest the flow of information or opinion when danger of breach of public order is apprehended as much as when they are confronted with the much more serious danger of breach of public safety and security. The United Kingdom pointed out that the introduction of the phrase "public order" into the Covenant with the object of justifying limitation of the enjoyment of human rights "might well constitute a basis for far-reaching derogations from the rights granted." Referring to Art. 14 (3), as well as to Arts. 13, 15 and 16, in all of which the term "public order" appears, Lord Macdonald, the United Kingdom delegate said in the Third Committee of the fifth session of the General Assembly on 18th October 1950 :

The stipulations were . . . so broad and vague that they could be construed as permitting the imposition of almost any restriction on the rights to which they referred and, in fact completely nullified the effect of the Articles to which they applied.

And, specifically referring to freedom of information, the United Kingdom is on record as saying that—

In view of the recorded expression ( in the Commission on Human Rights ) as to the wide meaning to be given to the term "public order," the Article ( Art. 14 ), with the limitations allowed by para. 3, affords no guarantee of the freedoms which are its subjects.

The same criticism holds good in respect of that provision in the Preventive Detention Act of India which permits detention without trial in the interest of "public order."

The law also permits detention to be enforced against anti-social elements like black-marketeers and sheer criminals like thieves and dacoits. These are no doubt abhorrent activities, but surely they should be capable of being checked by recourse to the ordinary criminal law. There are cases on record in which the Government proceeds against the suspect in two ways. Charges are framed against him with a view to putting him on his trial in a court of law, and at the same time he is placed in custody under the Preventive Detention Act. The Government has in such cases two strings to its bow : if it finds it can collect enough evidence to prove the guilt, the detention order is withdrawn; but if on the other hand it discovers that it cannot obtain a conviction in a trial, it stops all proceedings in the court and takes to the easy path of holding him in detention, in which event no proof of the commission of any crime is required to be produced. And when in such a case the detainee goes to the High Court for relief on the ground that the very procedure adopted by the Government proves the mala fides of the detaining authority ( almost the only ground on which an order for detention can be challenged ), the Court decides that the mere fact that the Government first tried the ordinary criminal process before ordering his detention is not an adequate ground for concluding that his detention was not bona fide. It dismisses the petition for a writ of habeas corpus, saying that since the law itself allows the Executive to take preventive action against bad characters, the detention must be held legal. In case after case the courts proclaim their helplessness to give any relief. This is natural enough, since it is outside the power of the courts to pass either on the reasonableness or sufficiency of the grounds adduced by the Government for ordering detention; it is equally outside their power to inquire even into the truth or otherwise of the allegations made against the detenus. The subjective satisfaction of the detaining authority that the person detained has done or is likely to do any of the numerous acts which fall within the purview of the law is enough to keep him in detention. In this respect the majority decision in *Liversidge v. Anderson* (1942) A. C. 206 that the power to detain conferred by Regulation 18 B under the Emergency Powers ( Defence ) Act, 1939, is followed by the Indian courts, though this interpretation, viz., that the power could be exercised on the subjective satisfaction of the Home Secretary, was, it must be emphasized, expressly based on the consideration that the statute was emergency legislation. [ It may be stated in passing that the power to order detention was deliberately limited

in the United Kingdom to the Home Secretary so that he might give personal attention to every case of detention, but this power is exercised in India in the first instance by numerous officials, district magistrates, commissioners of police and so forth; and though the orders passed by these officials have later to be approved by Governments, it is not the same thing as the Home Ministers of States and the Home Minister of the Union of India issuing the orders. Under the procedure in force in India personal scrutiny by the Ministers cannot be ensured, which means that one of the important safeguards devised in England for the protection of personal liberty even in the period when England was faced with the danger of utter national extinction is lacking in India even in normal times.]

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## The Advisory Board

The courts can give the detainee no relief; it is only the Advisory Board before whom a detainee is placed after a preliminary order for detention is passed against him that can give some relief. In order to point out the

deficiencies in the functioning of Advisory Boards it would be well to quote passages from a Memorandum circulated among members of Parliament in 1953, when the working of the Preventive Detention Act, 1952, was about to be reviewed. [Then follow passages about the Advisory Board which were reproduced at pp. iii : 15-16 of the BULLETIN, and the Memorandum concludes as follows.]

In the end, the All-India Civil Liberties Council would heartily endorse the suggestion made by Australia when the Commission on Human Rights entrusted the study of arbitrary arrest, detention and exile to a special committee, viz., that

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

(a) on grounds or in accordance with the procedures other than those established by law [the words at present retained in the draft of the International Covenant on Human Rights]; or

(b) under the provision of a law, the basic purpose which is incompatible with respect for the right of liberty or security of person.

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## PARLIAMENTARY PRIVILEGE AND FREEDOM OF EXPRESSION

BY S. G. VAZE

The admonition administered by the Bombay Legislative Assembly last month to the editor of the "Prabhat," a daily Marathi newspaper of Poona, for contempt of the House brings to the fore the vexed question of the conflict between Parliamentary Privilege and Freedom of Expression. That the editor was not subjected, as recommended by the Committee of Privileges, to commitment to prison till the prorogation of the House—the maximum punishment that is awarded by the House of Commons, whose privileges the legislatures in India follow for the present,—but was merely censured in consideration of his old age does not alter the essential character of the question raised, viz., that parliamentary privilege is capable of being exercised to the grave detriment of the newspapers' basic right of free criticism on public affairs.

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### THE "PRABHAT" CASE

The article in the "Prabhat," for which the editor was declared guilty of a breach of privilege and contempt of the Assembly and of the Speaker, purported to give advice to members of the Assembly elected on the ticket of the Samyukta Maharashtra Samiti, of which the "Prabhat" was a mouthpiece, as to what their course of conduct should be in the legislature. To secure the creation of a separate Maharashtra State in the territorial reorganization that recently took place was the objective of this Samiti, and the "Prabhat" was perhaps the most ardent exponent of it. The editor is a constitutionalist to

his finger tips; he has never advocated resort to the thwarting or breaking of laws. He writes very forcefully on the subjects he treats but never indulges in reckless or irresponsible statements and never swerves from good taste. His criticism is often sharp and occasionally harsh and may be considered right or wrong according to the view one takes of the causes he espouses, but he is never given to casting aspersions on the honour of the men who become the objects of his criticism. He was stung to the quick because the near-unanimous demand of the people of Maharashtra to have a State of their own, which had been brought repeatedly to the notice of Authority in all constitutional ways, was set aside by the Government and Parliament. He recognized that Parliament has been given the power to form what States it likes, but believing as a Parliamentarian that its decisions in this matter as in others must conform to popular will, he felt that a grave wrong had been done to the Marathi-speaking people. And he concluded that the desperate situation created by the forcing of a bi-lingual State upon Maharashtrians required a desperate remedy to set it right.

The policy which he urged the elected representatives of the Samyukta Maharashtra Samiti to follow in the legislature as a means to achieve their aim (these representatives belonged to various political groups and were united only in asking for a United Maharashtra) was, briefly, to postpone every other question, however important in itself, to the to-them all-absorbing question of

the creation of Maharashtra State. No matter what subject came to be discussed, he insisted that they should raise the question to which they had pledged themselves, and raise it in season and out of season. Every time they had an opportunity of speaking, they should ask: "What about putting an end to the present bi-lingual State and forming a separate Maharashtra State? What about the uncontrolled police firings upon peaceful demonstrators that was resorted to, even without making a judicial inquiry as to whether in the circumstances the firings were warranted or not?" The members should never for a moment allow themselves to be deflected from this subject.

We express no opinion, as irrelevant to our purpose, on the wisdom of the policy that the editor counselled his group of the members of the legislature to adopt, or even on the objective which the policy was intended to reach. But it would clear up matters in considering the question of the exercise of parliamentary privilege in this case if we stated at the beginning that the article contained nothing which could be construed as "indignities offered to the character or proceedings of Parliament by libellous reflections" or "assaults, insults or libels upon members" — the main offences which fall under contempt of Parliament—if by these acts are meant aspersions on the personal character or conduct of members or the Speaker, or imputations of unworthy motives to them, or use of offensive expressions. The attack was directed solely against the Central Government's and Parliament's policy underlying the formation of a composite State of Maharashtra and Gujarat instead of setting up these two separate States. The editor thought that the best way to secure a modification of this policy in a peaceful way was for the Samyukta Maharashtra Samiti members to concentrate in the local legislature on the question which was uppermost in their minds to the neglect of every other question. This would draw the pointed attention of the authorities concerned to their grievance as nothing else would.

If these members on every occasion brought up the question of reorganization of States even when the subject under debate was something else, there would necessarily be a babel of tongues in the legislature. He seemed to say, "Let there be such a babel; if the Samiti members were asked to stop they should still go on speaking; and if ordered to leave the House they should stay in their places till they are necked out by the Sergeant-at-arms." If a large number of members followed this course (and in view of the fact that no member actually did so the Legislative Assembly might have considered whether any action against the editor of the "Prabhat" was worth its while at all to sustain its dignity), confusion would inevitably arise in the legislature and its normal proceedings would be hampered. The confusion and obstruction of regular business that would thus be caused would

appear to be the main charges against the editor, and because these in their turn would tend to "lower the authority and dignity of the House in the estimation of the people" (to use the words of the Committee of Privileges), contempt of the House and the Speaker, the Assembly held, had been committed. No doubt, according to the letter of the law governing enforcement of parliamentary privilege, the Assembly was within its right to punish the editor. We say this because the House of Commons has on occasions held a writer guilty of contempt of the House though, judged by ordinary standards, his writing did not constitute such an offence. So loose is the House's interpretation of parliamentary privilege that the "Times" of London recently remarked: "A forceful pamphlet on parliamentary reform might be thought to reflect upon the working of either House in such a way as to lower it in the public eye." But even if the Bombay Assembly's decision was correct, the point that should be considered here is this. If a member actually followed the policy recommended by the editor, he would soon find himself out of the House; he would be punished in that way. But he would not be liable to be proceeded against for contempt of the House or the Speaker, because of this passive non-compliance with the orders as distinguished from active obstruction. And if a collection of members followed such a course, they, too, would not be held guilty of contempt as lowering the dignity of the House in the estimation of the public, though to a certain extent this might be the incidental effect. If members themselves who carried the policy into effect, either at the instance of some one else or otherwise, would be free of the charge of contempt, it seems odd that an editor who preached the policy should be punished on that charge. In the days of non-co-operation or "non-violent coercion," as it is aptly termed, those who broke the law suffered punishment for disobedience of the law, but they were not hauled up for contempt of the Government. The question arises whether in the matter of parliamentary privilege a different code should obtain.

#### GENERAL CONSIDERATIONS

We have already referred at p. iv. 262 to the remark of the Attorney General of the United Kingdom made in 1947 as to the true basis of the exercise of parliamentary privilege. He said on that occasion:

The real test is that nothing ought to be done which is calculated to put a member in such a fear of consequences if he speaks or acts in a particular way that he will refrain from speaking or acting that way.

This test, if applied, will maintain the authority, independence and dignity of Parliament without any risk of impairment of the right of free expression. When the editor of the "Sunday Express" was found guilty of contempt by the House of Commons in January last, the "Economist" expressed such a sentiment, Referring to

"indignities offered to the character and proceedings" of Parliament and "assaults, insults or libels upon its members," which are treated as the core of the offence of contempt, it said :

But it has to be asked all the time why these powers have arisen. They grew as the defence of Parliament's members against outside intimidation or interference. They are, for M. P.'s, the safeguard that they will be able to speak their mind and speak for their constituents without fear or favour. They embody, in our parliamentary democracy, not so much a right of the politicians as a right of the people whom politicians represent. They are not, either rationally or historically, a privilege in the ordinary sense of the word. (This is true, too, of the press, its freedom is a right not of newspapers but of their readers.) . . . The issue now, to detached devotees of the parliamentary system, is whether freedom from popular criticism, however irresponsible or inaccurate, is a proper application of the ultimate, and essential, privilege of Parliament.

There does not seem to be any reason why libels upon Parliament should be treated differently from libels upon the Government or the head of the State; why seditious libels should be construed narrowly while giving a much larger connotation to libels upon Parliament or contempt of Parliament. Seditious libels were formerly recognized by the English courts as misdemeanours at common law, but with the growth of toleration and political rights the present tendency of the courts in England is to ignore the common law of seditious offences, and to punish only those seditious libels, or attempts to bring the Government or the head of the State into hatred and contempt, that are accompanied by a seditious intent. And it has been authoritatively laid down that "an intention to show that Her Majesty has been misled or mistaken in her measures or to point out errors or defects in the government or Constitution as by law established, with a view to their reformation, is not a seditious intention" (Stephen's "Digest of Criminal Law"), and this is embodied in Explanations to sec. 124 A, Indian Penal Code, which is our law of sedition. Even, so interpreted, the law is regarded as unnecessarily oppressive and the Indian Press Commission, an extremely conservative body as it was, felt compelled to recommend repeal of the section as "not only ultra vires of the Constitution but opposed to the concept of the freedom of the press." When, in 1886, John Burns, later a cabinet minister, was prosecuted for uttering seditious words at a meeting of the unemployed in Trafalgar Square, which was followed by rioting, Judge Cave, in his charge to the jury, adopted Stephen's definition of seditious intention, and Burns was acquitted. In the United States, Professor Zachariah Chafee says, "the common law offence of sedition has probably been abolished by the free speech clauses of the federal and state Constitutions" and suggests that while the United

States Constitution provides for the more dangerous offences defined as treason, it is doubtful if a law providing for the punishment of minor acts as seditious offences would stand up under a judicial test since "the government is limited by the free speech amendment to the Constitution, which was historically directed against the existence of seditious offences."

Parliamentary privilege corresponds to the Royal prerogative, and the latter is indeed anterior to the former. "From the time of the Norman Conquest down to the Revolution of 1688, the Crown possessed in reality the attributes of sovereignty." But while the discretionary authority of the Crown, which goes by the name of prerogative, has been successively cut down either by Acts of Parliament or by constitutional conventions, the discretionary authority of Parliament called privilege has still remained indefinite. There is no prerogative still left to the Crown of which it cannot be deprived by Acts of Parliament, and what remains is regulated by constitutional understandings as to the mode and spirit in which the Crown shall exercise its discretionary powers. Why should Parliament be left in the enjoyment of powers which by an extended application of privilege are capable on occasions of impinging on the fundamental rights of citizenship, which after all it is the primary objective of a parliamentary democracy to secure? Acting as a court of law, Parliament is given the power to adjudge whether any breach of privilege has been committed and to punish offenders by censure or commitment. The causes of such commitments cannot be inquired into by courts of law, nor can prisoners be admitted to bail. In *Burdett v. Abbott*, which in 1811 incontestably established Parliament's right of commitment, Lord Ellenborough said :

If a commitment appeared to be for a contempt of the House of Commons generally, I would neither in the case of that Court (i. e. the House of Commons), nor of any other of the Superior Courts inquire further,

and said that courts of law could look into the commitment only if it were for some matter "which could by no reasonable intendment be considered as a contempt of the Court committing," i. e. Parliament. Another feature of the enforcement of privilege is worthy of notice: if the party accused of contempt quietly admits his offence, without seeking to justify his conduct, he is usually forgiven (which accounts, as the "Times" says, for the "unfailingly obsequious" attitude of latter-day offenders), but if he should offer any justification he is additionally blamed for aggravating his offence. (In the "Prabhat" case itself, the editor's initial defence very much incensed the Committee of Privileges; "instead of being apologetic," it said, "he has tried to aggravate the offences he has committed by writing the article in question." And, as for the explanation he offered after he was censured by the Assembly, the Speaker

ordered it to be expunged from the record as much of it appeared to him to be "irrelevant and unimportant" and forbade newspapers to publish it.) The question that is at present agitating the public in England because of the case of the "Sunday Express" is whether, in the words of the "Economist," the "process of trial by parliamentarians" is the best means of maintaining the dignity of Parliament. And we would again draw the attention of our readers to the suggestion of the "Times" that parliamentary privilege be enforced through courts where the normal protection will be available for accused persons, viz., public hearings, legal representatives and the right to cross-examine. The "Times" says:

The House of Commons is not, in law, a court and is not, in practice, adapted to the exercise of functions of a judicial nature. A recognition of this fact led in 1868 to the transfer from the House to the courts of jurisdiction over disputed elections. Could not this course be followed in matters of privilege? The basis of the rules which relate to breach of privilege is clear enough—whether an alleged breach tends to obstruct the functioning of the House. This is a question with which the courts could well cope. Would it not be well for the dignity of Parliament if affronts to its authority were either clearly seen to be assessed in accordance with judicial standards or ignored as unworthy of notice?

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## U. S. A.'S EQUAL RIGHTS FOR NEGROES BILL

### ONE CLAUSE DELETED: ANOTHER EMASCULATED

President Eisenhower's civil rights programme announced in his State of the Union Message in 1956, which was intended in particular to confer on Negroes equal civil rights with the whites, was put before Congress in the form of a bill. The bill embodied four elements, two of which were non-controversial. They consisted of (1) a proposal for the establishment of a six-man bi-partisan Commission on Civil Rights, armed with the power to subpoena witnesses to testify, for the purpose of investigating civil rights violations and recommending reforms, and (2) a proposal for the appointment of a new Assistant Attorney General to supervise the Justice Department's activities in the field of civil rights.

But the other two parts of the bill were crucial, and the fate of the bill depended on how much support it would win in the Senate. Briefly, they sought to enforce the provisions of the Fourteenth and Fifteenth Amendments to the Constitution adopted in the aftermath of the Civil War for the benefit of Negroes. The Fourteenth Amendment provides that "no state shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United State..." and the Fifteenth Amendment, which deals specifically with the right to vote, says that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, colour, or previous condition of servitude."

That a proposal for such a radical change in the exercise of parliamentary privilege should have proceeded from such a non-radical quarter shows how bitter is the discontent caused in England by some of the recent decisions of the House of Commons in this respect, and we in India ought to take note of it. In England it may be difficult to bring about the change because of the hoary traditions surrounding the exercise of privilege, but in India it should be easy both to define privilege more narrowly and to guard its enforcement in such a way as not to threaten the basic rights of citizens. Moreover, with us Parliament is not a sovereign body. We have deliberately given up the idea of the omnipotence of Parliament; we have always intended that our legislatures should be subordinate and subservient to the principle of preserving the freedom and dignity of individual citizens. For this purpose we have imposed constitutional limitations on legislative power and seen to it that the inalienable rights of men be preserved. One such right is that of freedom of comment on the doings of the legislature as well as the executive. And when that right is seen to be in grave danger of erosion, we must take up the question of defining parliamentary privilege in right earnest and eliminate from the process of its implementation all those characteristics which are causing concern to thinking minds in England. While the legislatures must be given full authority required for discharging their legislative functions unhindered and unmolested, they must not be allowed in any manner to override the Fundamental Rights enshrined in the Constitution.

The Amendments authorized Congress to enforce the rights by appropriate legislation, but though the Amendments were ratified as early as 1868 and 1870, no such legislation was in fact passed. Time and again the House of Representatives has passed bills to back up the provisions of the Fourteenth Amendment on the privileges and immunities of citizens, and of the Fifteenth on the right of every citizen to vote regardless of his colour. And invariably, since the end of the Reconstruction period a decade after the Civil War, the legislation has died in the Senate because the South possesses there, through the right of unlimited debate, the filibuster. Thus the rights conferred by the Amendments have to this day remained right

without a remedy to enforce them. For every aggrieved person to sue in each instance all the way up to the Supreme Court was obviously no effective remedy. The means proposed in the present bill for the enforcement of "equal privileges or immunities under the laws" and for the protection of the Negroes' voting rights was the adoption of an old Reconstruction era statute on civil rights permitting the Attorney General to go into a Federal court seeking "preventive relief" including an injunction against anybody who was violating or might violate another person's rights. The bill provided against racial discrimination generally in one part—Part III—and discrimination against Negroes in the matter of voting in particular in another part—Part IV. This Part was included probably because if there was implacable opposition to Part III, at least Part IV could be saved and the Negro community would be assured of the "master right" to vote in Federal elections, a right which, it was expected, would in course of time enable the community to secure other rights.

Part III would permit the Department of Justice to intervene, in the name of the United States, against actual or threatened civil rights violations, either with or without the consent of the victim. This would be done by obtaining an injunction from a Federal judge against the violation or threatened violation of any civil right, such as the right to attend a racially integrated school. Persons accused of violating the injunction could be tried by the judge, without benefit of jury, and could be fined or imprisoned for contempt.

Similarly Part IV provided for injunctive process in the matter of the voting rights of Negroes in Federal elections. It empowers the Attorney General to act as plaintiff, on his own motion, in any instance where he believes an exercise of the voting privilege has been interfered with, or there is an intent to do so, and to apply to the Federal courts for an injunction against the persons so charged. If the judge decides that an injunction he has granted is disobeyed, the persons will be cited for contempt, tried without jury and, if convicted, be liable to prison sentences. The injunctive power was intended to be used chiefly against registration officials who, it was proved, deliberately omitted to include qualified Negroes in the voting lists in many areas and thus deprived them en masse of their voting rights.

The bill passed the House of Representatives on 18th June by a large vote, 286 to 126, and, for a wonder, it succeeded in by-passing the Senate's Judicial Committee, where last year's bill to the same effect was killed, and on 16th July the Senate voted 71 to 18 to put the bill directly on its calendar as pending business. This was an important opening victory which measurably advanced the prospect for the first fundamental legislation in the field of Negroes' civil rights in the Reconstruction era that followed the Civil War nearly a century ago. But the

victory was short-lived. The Southerners were determined to defeat the bill; this time they did not launch a filibuster, as formerly they used to do, but attacked the bill on merits. They concentrated their attack on Part III of the bill and they used very clever manoeuvres in doing so. This section of the Bill made mention of an antiquated and little-used law passed in the Reconstruction days immediately after the Civil War as the then Government's means of dealing with the conquered South. It empowers the President to use military forces to enforce the civil rights decrees of the Federal courts, and, curiously enough, Part IV of the bill designed to extend Federal protection to the Negro right to vote did not mention this law though both Parts invoked Federal injunctive sanctions. This enabled the die-hard Southern Senators to argue that the whole purpose of the bill was to force commingling of races on the South at the point of the bayonet. Since the use of military forces was not really intended in the protection of any civil right, the promoters of the bill themselves moved an amendment to delete any reference to the old law, and the motion was carried unanimously. But the feelings roused by a threat to use the army, if required, in racial desegregation matters were so bitter that the opponents of the bill succeeded in knocking Part III out of the bill altogether. This happened on 24th July, and the vote was 52 to 38.

That the bill was stripped of injunction sanctions in the matter of racial integration generally was no doubt a major defeat for the civil rights forces, but, taking a practical view of the matter, this was not a very serious loss. For, after all, the judicial process of injunction could hardly have been invoked in many cases to force school integration on the South. This question is concerned so deeply with the ingrained habits of a large mass of Southern whites that this mode of enforcing desegregation cannot be resorted to on a mass scale without undergoing grave risks. Gradualness, as envisaged in the Supreme Court's decision of 1954, will be found in the end the quickest method to reach the goal, though it would certainly have been very useful to have injunctive sanctions in the reserve to be used in suitable cases. Nor need it be supposed that the process of integration in schools will be completely halted because of lack of power of direct intervention which the bill sought to confer on the Attorney General. The matter is being actively pursued in the Federal courts, and in a good many cases effectively. Close to 100 suits have been instituted seeking desegregation of public schools at the secondary, primary and college levels. Of some forty-five decisions handed down till March last, the majority favoured integration. And there school desegregation will have to remain for the present.

When Part III dealing with the broad band of civil rights embraced by the Fourteenth Amendment was eliminated from the bill, the latter become in effect a right-to-vote bill, a measure designed to assure to the



Negroes the right to register and vote on the basis of the Fifteenth Amendment guaranteeing voting rights to all citizens without distinction of race or colour, and the President had rightly placed the greatest stress on this aspect of the bill. In this matter he declared that there could be no compromise, first because the right of free access to the ballot-box is elemental in a democracy, and secondly because there has been mass disenfranchisement of the Negro in the South, which cannot be tolerated. Enforcement of the Negroes' voting rights was sought to be secured in the bill by giving the Attorney General authority to seek Federal court injunctions against Southern officials who tried to interfere with these rights. That such injunctive sanctions would be brought into effect without jury trial was the very heart of Part IV. The old remedy by criminal process and trial by jury of one's peers has been found by experience to be altogether futile.

The Southerners, having succeeded in throwing Part III out, next turned on Part IV and tried to draw teeth from it. The pressure of national public opinion on this question is so great that they dared not make a frontal attack on this section but they made a flank attack which, however, would completely destroy the effectiveness thereof. They insisted that when the Attorney General initiates injunction proceedings against those election officials who have engaged or are about to engage in acts depriving Negroes of their voting rights, the resulting contempt cases should be tried by jury. When it was pointed out to them that these contempt cases, being equity proceedings under the bill, are usually without jury, they divided contempt actions arising out of vote deprivation cases into civil contempt actions and criminal contempt actions and proposed that while civil contempt cases would be tried by a judge without a jury, criminal contempt cases should be tried by a jury. They explained their proposal thus. If a Southern election official refused to register a qualified Negro voter, he could be enjoined to do so and put into jail for an indefinite period by a judge sitting without a jury if the official disregarded the court decree. If he then relented he could obtain his release simply by agreeing to carry out the original order of the court. If that official, however, persisted in his defiance, he could, if the judge so decided, be held to be in criminal contempt. At this point the case against him would not be to make him perform the desired act but simply to punish him for wilful obstruction of a court. In such a case trial by jury would be required. A maximum fine of \$1,000 and a maximum imprisonment of six months would be awarded for criminal contempt.

It was contended by the sponsors of the bill that few Negroes serve on juries in Southern states, so that a jury trial requirement in civil rights cases would be a mockery of justice. Senator Paul Douglas pointed out that jury lists in the South were composed "by law in five states and by practice in many others of those who are on the

voting lists." He put the dilemma thus: "The great proportion of Negroes are denied the right to vote. Because they are denied the right to vote they are ineligible to serve on juries. Because they are ineligible to serve on juries they would be unable to protect their right to vote by jury action." This objection was met by the opponents of the bill by providing that the jury trial provision would not take effect in any Federal district court jurisdiction where jury panels were drawn exclusively from registered voters. They stipulated that uniform qualifications would be provided for service on Federal juries, thus overriding a section of the Federal code that permits Negroes to be excluded from Federal court jury service wherever state law excludes them from service on state court juries. Thus it would be ensured that Negroes were nowhere in the South excluded from the right to serve on Federal juries. They also tried to woo organized labour by providing for jury trials not only in cases of criminal contempt growing out of deprivation of the voting right but in all criminal contempt cases, as for instance in cases arising out of injunctions in labour disputes. The Norris-La Guardia Act required jury trial of contempt charges in such cases but later the Taft-Hartley Act narrowed this provision, and labour has resented it.

On 2nd August the Senate by a vote of 51 to 42 wrote a jury trial guarantee into Part IV of the bill, and, thus mutilated, the bill passed the Senate on 7th August by a vote of 72 to 18. It will now go back to the House of Representatives. The House cannot possibly agree to the weakened measure, but if it does it will very likely be vetoed by the President, who had warned the Senate before that a jury trial should not be interposed in contempt of court cases arising out of violations of the Federal court orders, as such a procedure would "make largely ineffective the basic purpose of the bill—that of protecting promptly and effectively every American in his right to vote." Thus the biggest attempt ever made within the past eighty years to give meaning to the Fourteenth and Fifteenth Amendments has been foiled. Part III intended to enforce the provisions of the Fourteenth Amendment has been taken bodily out of the bill and Part IV intended to implement the Fifteenth Amendment has been so diluted as to render it almost wholly ineffective. As the "New York Times" has said, "the Fifteenth Amendment will remain where it has been for two generations or so, gathering dust on the shelves."

#### Hungary

#### Hungary and Egypt

##### U. S. A. Charged with Instigation—and India

Soviet Russia, believing probably that an offensive is the best form of defence, charged the United States in the U. N. with instigating the Hungarian uprising. The United States welcomed a U. N. inquiry into the charge, but nothing came of it. Now Kadar himself has come for-

ward to lodge a similar complaint in the U. N. Who does not know that Kadar can now speak only with the Soviet's voice? And an accusation does not gain in weight because it proceeds from two instead of one complainant. Its substantiation depends on the supporting evidence the accuser has in his possession. What evidence has Kadar? But in this respect India should be of great help to him.

For Mr. Nehru declared, immediately after the publication of the report of the U. N.'s special Committee on Hungary, that the Hungarian revolution had some foreign support. He made this assertion in spite of the Committee's finding that "the Hungarian uprising was not only nation-wide, but also spontaneous in character," and that it "collapsed because of the Soviet armed intervention and because no support was forthcoming (for the insurgents) from abroad," and it added: "The thesis which alleges that the uprising owed its origin to such support from abroad did not survive the examination to which the Committee subjected it."

In spite of this Mr. Nehru repeats what he was saying before that the revolution was due in part at least to outside inspiration and assistance. He must have derived this knowledge from the mass of records assiduously collected by the Indian embassies, which material, however, he did not choose to place (as other countries did) at the disposition of the Committee. If he has not been saying this only in order to mitigate the enormity of the Soviet aggression against Hungary, he now ought to make the material available to Kadar. We are sure he will realize that he owes this to himself, having gone clean in the face of the Committee's clear finding on the subject. For our part, we shall be glad of any turn of events which will at last make India come off the fence where she has ensconced herself in this tragic affair.

#### Soviet's Reply to the U. N. Report—Assasinations

A writer says:

Arrests, beatings, executions and deportations in Hungary today at least equal anything that happened during the worst of the Stalinist and Rakosi oppressions. Now the purge is directed mainly at intellectuals and workers who joined the factory councils during and after the revolution. Twenty of the leading members of the Writers Association have been arrested, and a number sentenced to death. Others have been mercilessly tortured.

The 27-year-old playwright Josef Gall and the young journalist Gyula Obersovszky have been sentenced to death for writing leaflets stating that the Hungarian uprising was a spontaneous democratic rebellion against Soviet colonial oppression. Their death sentence is the Soviet reply to the U. N. report on Hungary.

The poet Gyula Illyes is in the Harshegy mental home after a nervous breakdown produced by two days of Security Police "hearing." Tibor Tardos, the young novelist, went mad and is now in the lunatic wing of the prison hospital. Laszlo Kardos, the essayist, after attempting suicide in jail, is in the prison hospital. Tibor Dery, the novelist, and Julius Hay, the well-known playwright, are still bearing up under the brain-washing.

#### Budapest's Mood of Sullen Resignation

After the terror represented by death sentences inflicted on the leading insurgents, it is but human that open defiance should have gone out of the Hungarian insurgents. Against the overwhelming power of the Soviet Union they know that they cannot stand alone. Their refuge is a sullen rejection of all that Kadar does. Budapest is a city of terror, of "people's judges" in open-throat shirts droning out death sentences at "No. 74," where the heroes of the revolt are held and tried in the prison-court.

Are the sensational purges effected in the Soviet likely to affect the Hungarian Government? The following is the reply of a competent observer:

The leadership changes in Moscow this week must inevitably affect the Hungarian picture. Premier Kadar is reported to have private qualms about the present blood purge in Hungary, the crowded prisons and concentration camps and the virtually automatic death sentences.

As a victim of Stalinism, who spent four years in jail for the crime of "national communism," he also is depicted by some as fretting about his future.

He may now have a small opportunity to prove that he stands for something better than unlimited, murderous repression. But real liberalization in Hungary would almost certainly bring the downfall of his regime.

The latest news from Hungary is that a group of Roman Catholic priests are under arrest on a charge of having aided the rebels in the revolt of last October. The Primate, Cardinal Mindszenty, who is still in asylum in the United States Legation after having been released from a life prison term by the rebels, is accused of having instructed the priests to loot a Government office during the revolt. It is alleged that the priests shipped secret documents from the office to the Cardinal, and the Cardinal's secretary is charged with taking part in the looting at the head of an armed group. Several other Church leaders are charged with printing and distributing large quantities of leaflets and propaganda material in centres of the uprising. Minister of State Marosan said: "We are arresting those in whom the foreign supporters of our counter-revolution (i. e. the October revolt) put their hopes."

Egypt**Democracy in Egypt**

President Gamal Abdel Nasser opened on 22nd July Egypt's "People's Parliament," the first since the revolution of five years ago when King Farouk was deposed. Nasser began the proceedings by reading what he called the "people's speech" in contradistinction to the "speech from the throne" which King Farouk used to deliver. He claimed that this Majlis al Amma, or National Assembly, was "the beginning of Parliamentary life in the country;" it was well that he claimed it as only a beginning. For we know that the Assembly has been elected from a list of candidates carefully handpicked by Nasser's military junta, and that the list was being purged on the very eve of elections. The members elected were pledged by oath to uphold the aim of Nasser's revolution. None was expected to try to set up any effective opposition to those aims, and if they did President Nasser was empowered by his Constitution to dissolve Parliament at will. In fact he frankly acknowledged that turning the legislative branch of the Government over to civilian representatives was an experiment in a controlled effort to broaden the base of his revolution. Commenting on this, the "Statesman" says: "The claim made that for the first time they (the members of the Majlis) truly represent the people is thus not based on any trust in the people to choose its representatives unfettered; on the contrary, the junta is still supposed to know the best, and the delicate plant of democracy has probably not received the last of its attentions from the hands of these particular nursery-men."

**Blockade of Israel**

It would appear from President Nasser's statement in the Assembly that Egypt is now prepared to accept the mandatory jurisdiction of the World Court in the matter of the blockade of the Suez Canal, which is specifically outlawed by the 1888 convention even in Egypt's own self-defence, but she is not prepared to do so in the matter of the blockade of Israel though the right of innocent passage through the Gulf of Aqaba has been upheld by the United Nations.

Egypt has quietly allowed passage of a number of ships chartered by the Israelis through the Gulf of Aqaba to the Israeli port of Eilat, but this she did because she has no longer power to block the passage. The Egyptian guns which used to block the gulf to Israeli shipping were knocked out by the Israelis last November and when the Israelis withdrew the U. N. force set up a patrol at Sharm el Sheikh, which Egypt could not defy. Though Nasser has not since tried to rearm the area, he is now trying to do so through Saudi Arabia, who is putting up gun emplacements on her side of the gulf, which is not under the jurisdiction of the U. N.'s emergency force! This area is under the control of the joint Egyptian-Saudi Arabian command headed by Egypt's Minister of War. By making his minister do on the Saudi-Arabian side of the gulf what he could

not do on the Egyptian side, Nasser is getting around his acceptance of the presence of United Nations troops on the Egyptian side! President Eisenhower has appealed to King Saud to recognize the right of innocent passage of Israel's and other nations' ships and not to permit the use of force, or at the least to take the case to the World Court.

India's repeated denial of this right, which could be explained only by her anxiety to retain Egypt's friendship, impelled us to examine international law on the subject, and we have set forth the law at length at p. iv: 278. The law is perfectly clear. Sir Hirsch Lauterpact, Judge of the International Court of Justice, in his edition of Oppenheim's "International Law," states:

All gulfs and bays enclosed by the land of more than one littoral state, however narrow their entrance may be, are . . . part of the open sea, the marginal belt [territorial waters] inside the gulfs and bays excepted. They can never be appropriated; they are in time of peace and war open to vessels of all nations.

Since the Gulf of Aqaba is approximately seventeen miles wide at its widest point, it is clear that part of the gulf would still be high seas, even if Egypt's claim to six-mile belt of territorial waters instead of the usual three-mile limit be accepted. And, for this reason, the right of innocent passage through the Strait of Tiran which connects two parts of the high seas must be recognized for all nations even though the strait itself comprises Egyptian territorial waters. In the Corfu Channel case the International Court of Justice declared that a country enclosing a strait used for navigation between two parts of the high seas had no right to prohibit the passage of foreign shipping through the strait so long as the passage was innocent. Will India at least suggest to President Nasser that he refer the matter to the Hague Court?

**COMMENTS****Administrative Tribunals to be Established****Judicial Review to be Barred**

Adverting to a suggestion emanating from high official quarters that more use should be made of the French system of "droit administratif" for the early disposal of writ applications against tax assessment orders and labour awards, by establishing a separate set of tribunals to deal with administrative matters over which they are intended to have exclusive jurisdiction, completely ousting the jurisdiction of the regular judiciary on such matters, the "Statesman" in its leading article of 22nd July points out the danger of this resulting in abrogation of the principle of "rule of law." The establishment of such administrative tribunals would obviously require an alternation of

the Constitution, and, concerning this, the "Statesman" says:

Whether India possesses the most brittle Constitution in the world is a matter of opinion. Others, notably that of the U. S. A., also received quite a number of amendments in their early years. But there the trend was almost consistently to provide the public with further safeguards, in the form of justiciable rights against abuse of authority. Here it has been equally consistently to remove them—and now the Central Government apparently proposes to do it again. The Union Finance Minister's recent reference to the virtues of French Droit Administratif (not always perceptible to the French, let alone to those with English traditions of jurisprudence) was seemingly no idle remark. The proposal is to establish a wide network of administrative tribunals, and in general to deprive the courts of the right to review their decisions. There is no doubt whatever that, if these powers are granted, they will be used quite possibly to an even wider extent than report now suggests.

Then the paper refers to Lord Chief Justice Hewart's book, "The New Despotism," and says that the criticism it contained is not properly appreciated. It proceeds:

This is not that any profound objection exists to administrative tribunals of first instance—for instance, in matters of taxation or labour; but that no man can always be trusted to be ultimate judge in his own cause. If anybody ever doubted whether this statement applied to officials, the Government of India, under both the old and the present regimes, has given repeated evidence to the contrary. Time after time, when one of its own tribunals has announced unwelcome decisions over anything from pay scales to responsibility for a railway accident, it has merely declared that it is not going to accept them. Yet this same Government now apparently considers unjustifiable any desire by others for independent means of appeal in such fields as taxation or disputes with its own servants, in both of which it is an obviously interested party. In the circumstances it is not surprising that trade union spokesmen are also hopeful of limiting the jurisdiction of High Courts and the Supreme Court in industrial disputes.

Admitting the need for quick decisions, the paper says: "But the remedy is surely a serious attempt, not to override the law, but to reform it."

The "Times of India" has commented in the same sense. It writes:

Mr. K. M. Munshi rightly observed at a recent meeting in Bombay that the setting up of administrative tribunals outside the supervisory jurisdiction of the High Courts and the Supreme Court would be "a decisive" step away from "democracy." Mr. Munshi

in fact went a stage further and warned that if the ordinary citizen failed to appreciate and safeguard the three aspects of democracy, namely the rule of law, parliamentary government and democratic decentralisation, totalitarianism would enter with "padded feet" if it had not already done so. While the case for expediting the disposal of writ applications cannot be lightly disregarded, there is a danger that short-cuts like the establishment of administrative tribunals and the removal of powers from the Courts will pave the way for an increasingly authoritarian form of government. The issues involved here, therefore, are of a fundamental nature, and in fact affect the fundamental rights of the country's citizens. They concern not merely the business community but also all those who wish to preserve democracy and democratic institutions in this country. Instead of taking a drastic step such as the one now proposed by New Delhi, the prudent course for the Government would be to go into the root causes of the existing delays in the disposal of writ applications and take effective remedial measures.

### Punjab's New Press Act

#### PRE-CENSORSHIP POWER ENFORCED AGAINST NEWSPAPERS

Under sec. 2 (1) of the Punjab Special Powers (Press) Act of last year, which we analysed in great detail at p. iv: 167, three daily papers of Jullundur, viz., the "Pratap," "Vir Arjun" and the "Hind Samachar," have been prohibited from printing and publishing any article, report, news item, letter or any other material relating to or connected with the so-called "Save Hindi" agitation for a period of two months since the issue of the order, i. e., till 14th September.

This agitation is being carried on by the Hindi Raksha Samiti under the leadership of Swami Atmanand Saraswati, and in important Punjab towns like Amritsar, Ambala, Jullundur and Ludhiana it has assumed quite big proportions, marches of volunteers and hartals being frequently resorted to. The language problem of the Punjab is being sought to be settled by demarcating different areas for the official use of Punjabi and Hindi, but there is a dispute as to which area should go to which language in this regional division. But the main complaint of the Hindi Raksha Samiti appears to be that Gurmukhi has been prescribed as the sole script of the Punjabi language, in which administrative work up to the district level is to be carried on. Hindus, speaking Punjabi at home, never use the Gurmukhi script and they feel it as a hardship that in official correspondence they should be compelled to use that script. The Punjab University leaves it to the students to answer question papers in Hindi in either of the three scripts, viz., Urdu, Devanagri and Gurmukhi, and one fails to understand why the State should in any region force Gurmukhi on Punjab Hindus.

The Samiti claims that its agitation is purely cultural, but being confined to Hindus and being led by Arya Samaj leaders, it has assumed a political character and has resulted in badly splitting Hindu and Sikh communities. Naturally, the feelings between them have become very tense, leading to a very serious deterioration in communal relations to the point of threatening peace and order in urban areas.

We can therefore understand the Punjab Government taking all reasonable police measures that may be required for the maintenance of law and order, but we cannot for the life of us understand why censorship should be one of the those measures, nor how it would be useful, seeing that the kind of propaganda that the papers put under a ban were perhaps carrying on can be carried on and probably is being carried on at numerous public meetings. Suppression of newspapers cannot in such a situation be an effectual remedy unless it is accompanied by suppression of other media of expression, to which even the Kairon Government seems to be unequal.

When the Press Act of a truly atrocious nature was passed by the legislature in spite of the strenuous opposition of men like Mr. Ralla Ram, the Chief Minister said that he must have such a weapon in his armoury, but that there would hardly ever be any occasion to bring it into use. We do not suppose that any appreciable number of persons believed in this. But Mr. Kairon at the time made also another promise, viz., that he would not apply the Act to any newspaper except with the approval of some arbitrator, and he named the editor of the "Tribune" in this connection. What has happened to this promise, made probably with the intention of mollifying the press generally? We cannot believe that Mr. J. Natarajan could have been so untrue to the tradition of a free press as to give his consent to the enforcement of the Press Act against the above-mentioned three newspapers. The fact of the matter is that Mr. Kairon and his colleagues in the Ministry have no appreciation for the principles on which the basic values of public life such as Freedom of Expression depend.

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## HABEAS CORPUS PETITIONS

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### Socialist Party's Satyagraha

#### LEADERS ORDERED TO BE RELEASED

Three members of the U. P. Socialist Party, Messrs. Prabhu Narain Singh, Ram Dulare and Sadanand of Banaras, who were arrested in connection with the satyagraha launched by the Party, were ordered on 22nd July to be released by Mr. Justice Asthana and Mr. Justice Tandon of the Allahabad High Court.

On a report made by the station officer of the Banaras Cantonment police station, the city magistrate of Banaras issued on 15th May a non-bailable warrant for the arrest

of the three leaders under sec. 114, Cr. P. C., and on 17th May the magistrate passed another order, much to the same effect but adding that he had been informed by the station officer that the persons concerned had started a movement in the court of the collector, Banaras, for disturbing proceedings of the court and offices working therein and on account of such activity they were likely to commit a breach of peace and public tranquillity or do some wrongful act which might in all probability cause such a breach of peace and in his opinion there were grounds for proceedings against them under sec. 107, Cr. P. C. Their Lordships observed, on a habeas corpus petition, that the magistrate issued the later order because he realised that the earlier one did not comply with the requirements of sec. 112, Cr. P. C., which lays down that the order shall set forth the substance of the information received by the magistrate, and the order of 17th May was apparently intended to remove this defect.

Their Lordships said :

From a perusal of sec. 117 (3) Cr. P. C. it appears that before an action could be taken under this sub-section, it was necessary for the magistrate to satisfy himself that immediate measures were necessary for prevention of breach of peace and record reasons for the same in writing and it was only after such satisfaction that he could take action under this sub-section and ask the persons concerned to execute bond and in default send them to jail. It does not appear from the record that the learned magistrate applied his mind to this question and passed an order as required under sec. 117 (3) Cr. P. C. to the effect that he was satisfied that there was immediate apprehension of breach of peace from the side of the petitioners and give reasons for the same. In the absence of any such order he was not competent to send the petitioners to jail after they were produced before him in execution of the warrant issued under sec. 114 Cr. P. C. He could send them to jail only after he had complied with the provisions of this sub-section and was satisfied that there was immediate apprehension of breach of peace from the other side which could be avoided only by their detention in person.

The Court issued a writ of habeas corpus directing the release of the petitioners.

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## BOMBAY'S ANTI-BIGAMY ACT

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### A Clause Held Void

#### PRONOUNCEMENT ON "DOMICILE IN A STATE".

Mr. Narayandas Mangilal Dayame was first married in Bombay in 1948. On 16th May 1955, he married a second wife at Bikaner, then a Native State. The first wife lodged a complaint against Mr. Dayame before the Magistrate at Sholapur. The Magistrate held that inasmuch as the prosecution was launched after the Bombay Bigamous

Marriages Act, 1946, was repealed by the Hindu Marriages Act, a Central Act which came into force on 18th May 1955, Mr. Dayame was entitled to an acquittal. The Government appealed against this order, and the question of law involved being important, the matter was referred to a Full Bench of the Bombay High Court consisting of the Chief Justice, Mr. Justice S. T. Desai and Mr. Justice K. T. Desai.

The question before the Full Bench was whether, under by sec. 4 of the Bombay Bigamous Marriages Act, the State legislature could declare a bigamous marriage void even if the marriage was contracted outside Bombay State, and whether the contracting of such marriage outside Bombay State was punishable as an offence by a court in Bombay State. This section provides that a bigamous marriage contracted outside Bombay State is void if either or both the contracting parties are domiciled in Bombay State.

In dismissing the appeal on 5th July, Their Lordships said that under the Government of India Act, 1935, laws dealing with crime, marriage and divorce could be passed by the State legislature, but the Central legislature had overriding powers and could make such laws for the whole country. Under the present Constitution, Parliament had absolute territorial powers, but the State legislatures had no extra-territorial power at all, and their jurisdiction had been confined to the boundaries of the State. In Their Lordships' opinion, the subject-matter being marriage, the State legislature could only legislate with regard to that marriage which was contracted in the State.

Their Lordships said that admittedly the marriage contracted in Bikaner was valid according to the Bikaner law, but the Bombay legislature solemnly purported to declare that marriage void and made it punishable in the State. The territorial nexus suggested was that the marriage was void under the Bigamous Marriages Act and was a crime only in the case of those persons who were domiciled in Bombay State.

In this connection, Their Lordships said that a person could only be domiciled in India as a whole as in India there was only one citizenship, the citizenship of India, and one domicile, the domicile in India. Therefore the utmost that one could say about a person in a State was that he was a permanent resident of a State. Their Lordships added that the mere fact that a man's home might be fixed at a particular spot within the country did not make him domiciled in that spot. He was really domiciled in the whole country. Therefore the expression "domicile" used in any State legislation meant only "permanently resident."

What Their Lordships had said about marriages applied even more strongly to the question of crime, for crime was local and it was difficult to conceive of a territorial nexus in the case of crime. They added that it was entirely untenable that the Bombay legislature should legislate and declare that a particular act done outside the State should be a crime and that the person committing it should be punished if the person happened to reside in Bombay.

Their Lordships, therefore, held that sub-sec. (b) of sec. 4 of the Bombay Hindu Bigamous Act (now repealed) was ultra vires and that Mr. Dayame could not be prosecuted. In the result the appeal failed.

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## BOMBAY TENANCY ACT

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### Interpretation of Sec. 88 (1 A)

#### LAND BEING REQUIRED FOR PERSONAL CULTIVATION

A full bench of the Bombay High Court consisting of the Chief Justice, Mr. Justice S.T. Desai and Mr. Justice K. T. Desai held on 12th July that under sec. 34 read with sec. 88 (1 A) of the Bombay Tenancy Act, even though a protected tenant owning lands fell within the category mentioned in sec. 88 (1 A), still a landlord is not entitled to possession of his lands from such a protected tenant unless the landlord proves that he requires the lands bonafide for his own cultivation and unless he gives one year's notice.

A landlady filed an application before the mamlatdar for possession of certain lands from her tenant on the ground that she bonafide required them for personal cultivation. The mamlatdar allowed possession. In appeal to the Prant officer by the tenant, the Prant officer held that the lady did not require the lands bonafide and rejected her application. The landlady went in revision to the Revenue Tribunal and the Tribunal confirmed the Prant officer's decision, but in view of sec. 88 (1 A), it remanded the case to the Prant officer to ascertain whether it fell under sec. 88 (1 A) of the Act.

The tenant challenged the remand order in this petition. His contention was that since the Prant officer and the Tribunal held that the landlady did not bonafide require the lands, her petition should have been dismissed and not remanded.

In giving judgment, Their Lordships said that sec. 34 of the Tenancy Act had imposed a restriction upon the landlord with regard to his terminating the tenancy and this section applied to all tenants, whether they were protected tenants or unprotected tenants.

Under sec. 34 (1) the landlord was given the right as against protected tenants to obtain possession of his lands if he required them for cultivating them personally and if he gave one year's notice.

Then sub-secs. (2) and (2a) again restricted the landlord's right under sec. 34 (1) and conferred certain rights on the tenants.

In 1952, by an amending Act, sec. 88 (1 A) was enacted and it provided that if a protected tenant, besides being a tenant of some lands, also owned and possessed certain lands, then the landlord who claimed possession of his lands from such a tenant would be entitled to such possession.

The question for decision before Their Lordships was whether in view of the enactment of sec. 88 (1A) a landlord would be entitled to the possession of his lands from a tenant whose case fell under sec. 88 (1A), even though the landlord did not require his lands bonafide and even though he did not give one year's notice,

Their Lordships held that reading sec. 34 (1) with sec. 88 (1A), the effect was that no landlord, even though the case of the protected tenant fell under sec. 88 (1A), could obtain possession of his land under sec. 34 (1) from a protected tenant unless he required the lands bonafide for personal cultivation and gave one year's notice. Thereafter, if it was established that the protected tenant possessed lands of his own, the landlord would be entitled to possession.

In the present case since the Prant officer and the Tribunal held that the landlady did not require the lands bonafide, there was no question of remand at all.

The order of remand was, therefore, set aside by Their Lordships.

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## U. P. TENANCY ACT

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### Ejectment of Trespassers

#### A RULING OF THE HIGH COURT

A ruling of considerable importance to several thousand ex-zamindars of the U. P. State who had filed ejectment suits against trespassers in civil courts under sec. 9 of the Specific Relief Act was given on 3rd August by a division bench of the Allahabad High Court consisting of Mr. Justice Desai and Mr. Justice Takru. Thousands of trespassers on agricultural land are likely to benefit by this ruling.

Their Lordships held that in view of sec. 242 of the U. P. Tenancy Act no suit for recovery of possession of agricultural land could lie in a civil court under sec. 9 of the Specific Relief Act. If any relief could be given in respect of the cause of action under the provisions of the U. P. Tenancy Act in the revenue court, the jurisdiction of the civil court would be ousted.

Their Lordships were delivering judgment in the revision application of Jagnarain Mallah against Bhagwati Prasad Pandey, a zamindar of tehsil Bansi in district Basti, against the order of the Munsif, Bansi, ejecting Jagnarain Mallah from certain agricultural plots on the suit of Bhagwati Prasad Pandey under sec. 9 of the Specific Relief Act. Their Lordships allowed the revision, set aside the decree of the Munsif and dismissed the suit of Bhagwati Prasad.

Bhagwati Prasad in his suit filed some years ago had alleged that Jagnarain Mallah had taken forcible possession of some of his agricultural plots.

This was a test case in the U. P. State and renders thousands of ejectment decrees passed by Munsifs relating

to agricultural plots as being without jurisdiction and the throwing out of thousands of other pending ejectment suits regarding agricultural plots filed by zamindars. In Bansi tahsil alone about 8,000 suits are pending in the Munsif's court.

The zamindars had alleged that the Communists had forcibly dispossessed them en masse of their land some years ago while the kisans' version was that they were already in possession of these agricultural plots but their names were not entered in the revenue papers.

As some years ago in anticipation of the Zamindari Abolition Act in the State the Government had stayed the title suits of zamindars in revenue courts for the ejectment of trespassers under sec. 180 of the U. P. Tenancy Act, thousands of zamindars had resorted to the legal device of filing suits for ejectment under sec. 9 of the Specific Relief Act in civil courts.

This section permitted any person to eject a trespasser without raising the question of his title in the suit. The period of limitation for filing a suit under sec. 9 of the Specific Relief Act is six months from the date of the plaintiff's dispossession.

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## THE CINEMATOGRAPH ACT

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### Refusing a Licence on Religious Considerations

#### WRIT PETITION ALLOWED

Mr. Justice Mehrotra of the Allahabad High Court, allowing a writ petition by Mr. Om Prakash Bharadwaj, proprietor of Amar Talkies, Banda, on 23rd July quashed the order of the State of U. P. and the district magistrate of Banda and issued a writ of mandamus to the State and the district magistrate of Banda to grant a cinema licence to the petitioner.

The facts of the case are that the petitioner applied for a licence to run a cinema in Banda on a temporary basis but the district magistrate rejected the application on the ground that the proposed site was in the vicinity of a mosque and that Muslims of the locality objected to the screening of films there. The petitioner appealed to the Government of U. P., but his representation was rejected.

His Lordship held that there was nothing in the Cinematograph Act and rules to debar the petitioner from being granted a licence. The rejection of application was nothing short of an unreasonable restriction on the right to carry on business.

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## NOTES

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### A Memorial to Magna Carta

An inspiring ceremony of the United States bar dedicating a memorial to the Magna Carta on 26th July on the edge of a green meadow at Runnymede in Surrey

beside the Thames, where in the year 1215 this great "Charter of Law and Liberty" was sealed by King John in the presence of Archbishop Langton and twenty-five feudal barons. The memorial was built by funds contributed by the American Bar Association as a symbol of the faith of Anglo-Saxons in the rule of law. The retiring president of the Association, Mr. Gambrell, said :

To-day, the 250,000 lawyers of America, represented by the American Bar Association, have returned in devout pilgrimage to our ancestral home, to the well-spring of our profession, to the fountain-head of our faith,

America exalted the fundamental tenets of the Magna Carta by embodying them in a written Constitution. The American Bill of Rights still wears the crest of Runnymede.

The president-elect of the Association, Mr. Rhyne, said :

We honour here an idea ; not the idea of man, but the idea of a people and an idea for all people ; the idea of a permanent law of the land preserving and safeguarding the fundamental rights and liberties of every individual.

Sir Hartley Shawcross, chairman of the Bar Council of England, said :

The best way to commemorate the Magna Carta is to look to the future and see to it that the great human values, of which in the law the Magna Carta has become the symbol, are protected and promoted in the world in which we live.

The charter was no doubt feudal in its inception, but in its broader implications it constitutes a charter of government under law and defence of the rights of the individual against any usurpation.

### Investigative Power of Congress

#### THE WATKINS JUDGMENT FOLLOWED

Soon after the Supreme court reversed the conviction of Mr. John T. Watkins for contempt of Congress for refusing to answer questions of a Congressional committee, two other cases involving the same principle came up and they were decided on the basis of the Watkins' decision. This decision, it will be recalled, held : (1) that the scope of an investigation must be clearly delineated by the committee's parent body—the House of Representatives or the Senate ; and (2) that the questions asked must be pertinent to the legislative purpose behind the investigation.

Mr. Seymour Peck, a newspaperman, was called as a witness in the Senate Internal Security sub-committee's investigation of Communist influence in the press. He testified freely that he had been a Communist until 1949. Though he answered all questions about himself, he challenged the sub-committee's authority to ask him to identify other persons as Communists, asserting his rights under the First Amendment. He was convicted and fined. Following the Watkins' decision, the Court of Appeals remanded the case to the court of Judge Youngdahl. The judge acquitted Mr. Peck, holding that the Supreme Court's ruling on pertinency in the Watkins case applied equally in the Peck case. About the requirement of a clear definition of the scope of investigation, he said :

The major defect in the investigations of the Internal Security sub-committee is the vagueness of the resolution pursuant to which they were conducted. . . . In Watkins the Supreme Court found that the authorizing resolution of the Un-American Activities Committee . . . is of "confusing breadth" and that "its boundaries are so nebulous" that it is impossible for courts to determine when the committee has exceeded its authority. . . . It seems manifest that the vices to be found in the House Un-American Activities Committee's authorizing resolutions are equally present in the charter of the Senate Internal Security sub-committee.

As Mr. Peck was a newspaperman, Judge Youngdahl showed how freedom of the press was affected. He said :

It is difficult to draw the line between investigations of the political beliefs of newspapermen and investigations of newspapers. . . . To inhibit the freedom of thought and association of newspapermen is to impinge upon the freedom of the press. It is also a temptation to those investigating newspapermen to wander into the field of press content and at times during these hearings the sub-committee was unable to resist even this direct invasion.

The other case was that of Professor Marcus Singer, who was called before the Un-American Activities Committee in 1953 and questioned about his political affiliations. He admitted having been a Communist in 1948. However he refused to name Communists he had known, taking his stand on the Fifth Amendment. He was convicted and fined. In April last the Court of Appeals upheld the lower court by 2 to 1. On 9th July the court announced it had reversed itself. It remanded the case to the lower court with an order for a judgment of acquittal.