Regd. No. B. 5681

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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Office : Servants of India Society, Poona

Annual Subscription : Rs. 5
Per issue : annas 8
including postage

No. 90

March 1957

PRIOR RESTRAINTS ON FREEDOM OF EXPRESSION

THE SPOKEN WORD AND THE WRITTEN WORD

The pre-censorship orders passed on two Punjab newspapers were challenged, it would be remembered, in the Punjab High Court, and because the orders had already expired when the matter came up for consideration, the Court made no ruling on the validity of the orders, saying merely that action under sec. 144, Cr. P. C., which provides for the issue of temporary orders of immediate prevention in urgent cases of apprehended danger, was not necessarily inconsistent with the guaranteed right to freedom of expression, and suggesting that, in order to prevent misuse of the power which the section gave, the principles of the "clear and present danger" test enunciated by the U. S. Supreme Court be applied (vide p. iv : 178 of the BULLETIN). The power to censor the press in advance of publication has now been taken by the Punjab Government by enacting a special press law, the provisions of which have been discussed by us at pp. iv : 167 to 169. We do not wish to return to that subject here, but the question of the application of sec. 144 to the press in contradistinction to the application of the section to public meetings requires further consideration than it was necessary for the Punjab High Court to give in the above-mentioned case of the Punjab newspapers. An authoritative pronouncement on this subject would, it is hoped, be soon available in a suitable case to clarify the issue. What one feels on the subject is that while it might be necessary to stop a public meeting by a preventive order where there is a reasonable certainty of violent disorder breaking out as a result of the meeting, it is difficult to envisage a situation in which an order either to stop a publication or to impose previous restraints on it would be justifiable. In theory it is agreed that either the spoken word or the written word can be interfered with when the threat to public order is serious and imminent and that the "clear and present danger" test is equally applicable to both kinds of utterances. Yet, because the policemen on the spot must make the judgment in emergencies as to what measures are required to preserve the public peace at meetings in public places, the spoken word becomes always more vulnerable than the written word, and though the Constitution safeguards the right to freedom of expression, embracing within its scope both freedom of speech and freedom of the press, with equal meticulousness, the right to freedom of assembly and freedom of speech is in practice more subject to assaults than the right to freedom of the press.

A judicial finding on this question is highly desirable in the sense that the press at any rate cannot be interfered with on account of official apprehension that an intended publication presents an immediate menace to the public peace. Such a power is not known to exist anywhere. But while a regular ruling to this effect is not yet available, it is refreshing to find, in the judgment of the Allahabad High Court in State *v.* Bachoo Lal (reported elsewhere in this issue of the BULLETIN), involving the validity of the Dramatic Performances Act, a dictum which amounts in effect to the proposition that a prior restraint on the press is not justifiable as such a restraint may be justifiable on public speeches and dramatic performances on account of the difference in the result produced by the spoken and the written word. Mr. Justice Mulla, speaking for the Court, said in this case :

> It was contended that if a person cannot be prohibited from publishing a book and can only be subsequently prosecuted if the book is found to be objectionable in some manner, why should an invidious distinction be made in the case of a person who puts a play on the stage? In our opinion this argument is misconceived as it does not take into account the difference between the "written word" and the "spoken word." The written word takes a long time to reach its readers, but the spoken word is conveyed to the audience immediately. The written word can be confiscated before it has done much damage, but the spoken word achieves its object as soon as it is uttered. The spoken word is also far more inflammable and can engender heat and excite passions in a far quicker manner and thus can become a much greater danger to the security of the community. There is also a finality about the written

> word, but the spoken word can be disputed and denied. These and other differences make it necessary that, in the interests of public order and security, the State should have some power to deal in an emergent manner with the spoken word. The Dramatic Performances Act, 1876, is such a preventive measure.

The late Mr. Justice Jackson of the U. S. Supreme Court expressed the same idea in Kunz *v.* New York, 340 U. S. 290 (1951), though he came out more vigorously against any prior restraints being laid on the press. He said on this occasion :

> **Of course, as to the press, there are the best of reasons against any licensing or prior restraint. Decisions such as Near *v.* Minnesota, 283 U.S. 697 (1931), hold any licensing or prior restraint of the press unconstitutional, and I heartily agree.** But precedents from that field cannot reasonably be transposed to the street-meeting field. The impact of publishing on public order has no similarity with that of a street-meeting. Publishing does not make private use of public property. It reaches only those who choose to read, and, in that way, is analogous to a meeting held in a hall where those who come do so by choice. Written words are less apt to incite or provoke to mass action than spoken words, speech being the primitive and direct communication with the emotions. Few are the riots caused by publication alone, few are the mobs that have not had their immediate origin in harangue. The vulnerability of various forms of communication to community control must be proportioned to their impact upon other community interests.

No one claims even in the United States, whose Constitution does not speak of any permissible restrictions on the right to freedom of speech and of the press in guaranteeing that right against infringement, that all restrictions on the exercise of the right are necessarily unconstitutional. " It is well understood, " said Justice Murphy in Chaplinsky *v.* New Hampshire, 315 U. S. 568 (1942), " that the right of free speech [which is more exposed to the risk of being curtailed] is not absolute at all times and in all circumstances. " The Supreme Court, in interpreting the scope of the right, has to weigh two conflicting community interests—freedom to communicate information and opinion on the one hand and preservation of peace and good order on the other —and to judge according to what in the circumstances it considers to be the overriding claim of one interest or the other. As Justice Frankfurter said in the Kunz case supra, " The Constitution [which enshrines free speech as a fundamental right] is not unmindful of other important interests, such as public order, if interference with free expression of ideas is not found to be the overbalancing consideration. " The safeguarding of peace is undoubtedly the duty of Government officials, but it must be carried out in such a way as not to militate against their duty to allow free expression of opinion to everyone. A speaker of course must not incite a riot ; if he does he will be liable to the penalties of law. In Cantwell *v.* Connecticut, 310 U. S. 296 (1940), the Supreme Court said :

> The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty [for this was what was involved in the case] connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions.

The police of course have, and must have, power to prevent breaches of the peace, but they can properly step in only when there is a clear and present danger to the protection of peace. In the case of C. I O. *v.* Douds, 339 U. S. 382 (1950), the Supreme Court insisted upon the application of this Holmesian doctrine. It said :

> [The " clear and present danger " philosophy of Holmes and Brandeis] means that, under the First Amendment the public has a right to every man's views and every man has the right to speak them. Government may cut him off only when his views are no longer merely views but threaten, clearly and imminently, to ripen into conduct against which the public has a right to protect itself.

But we are concerned here not so much with stopping a speaker who incites his audience to violence as with suppression of public meetings *in advance* for fear of violence breaking out. Sec. 144, Cr. P. C., gives a blanket power to district magistrates to prohibit meetings when it is feared that they will result in a breach of the peace. The principle is now accepted in countries like the U. K. and U. S A. that when the threat to the preservation of order is likely to come from a hostile audience, the duty of the police, even when the danger to peace is real and not merely speculative, is to protect the speaker and not to prohibit the meeting on the ground that such action is necessary in order to prevent lawless elements at the meeting from precipitating a riot. The English case of Beatty *v.* Gillbanks, 9 Q. B. D. 308 (1882) established this principle. The American counterpart of this case is that of Sellers *v.* Johnson, 163 F. 2d. 877 (certiorari

denied by the Supreme Court). In this case a prior attempt by Jehova's Witnesses to speak in a public park had resulted in their being attacked by a crowd. When the Witnesses planned to meet again the police blockaded the town and turned away all strangers including the Witnesses. The Circuit Court of Appeals granted the Witnesses equitable relief, stating that "there is no evidence that it was beyond the competency of the Sheriff and the Mayor to secure enough police officers to police the park." But what if the rioting likely to follow is so serious as to be uncontrollable? Can one lay down the law that no meetings ought to be prohibited because of apprehension of disorder, however genuine and well-founded? Must we not rather give power to the officials to prohibit a proposed meeting if this is necessary to avoid a clear and present danger of real disorder? The theoretical validity of this last propositon must be conceded, but as the Bill of Rights Committee of the American Bar Association pointed out in its brief in Hague *v.* C. I. O., 307 U S. 496 (1939)—Professor Zechariah Chafee, who died recently, was a prominent member of the Committee—the practical situation is almost always different. The Committee said:

> The instances in which the police force of a city, ... would be unable to suppress any attempted disorder at a public meeting would be so rare as to furnish no justification for arming any official with power to pass judgment in advance to the effect that the police force of the city would be unable to cope with such a situation.

Anyhow the power conferred by sec. 144, Cr. P. C., is so broad as cannot but lead, unless very narrowly interpreted by the courts, in many instances to an unwarranted abridgment of freedom of speech and freedom of assembly. Of course the easiest way to preserve law and order may be to suppress a meeting before the apprehended riot occurs. But it was just against such suppression that the Supreme Court spoke out in Hague *v.* C. I. O. supra. In this case the Court held the ordinance of Jersey City to be void on the face on the ground that it gave a public official the power "to refuse a permit [to speak in a public park] on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.'" Mr. Justice Roberts, speaking for the Court, said:

> It (the ordinance) can thus be made an instrument of arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking would undoubtedly "prevent" such eventualities. But uncontrolled official suppression of the privilege [of free speech] cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.

We now come back to the Kunz case, in which similarly the Court declared the New York ordinance void as giving an administrative official discretionary power to control in advance the right of citizens to speak on religious matters. Justice Jackson dissented from this opinion, holding that officials must have the power to prohibit meetings in emergencies. He said:

> Emergencies may arise on streets which would become catastrophes if there was not immediate police action. [The crowd may become angry.] If the situation threatens to get out of hand for the force present, I think the police may require the speaker, even if within his rights, to yield his right temporarily to the greater interest of peace. Of course, the threat must be judged in good faith to be real, immediate and serious. But silencing a speaker by authorities as a measure of mob control is like dynamiting a house to stop the threat of a conflagration. It may be justified by the overwhelming community interest that flames not be fed as compared with the little interest to be served by continuing to feed them. But the kind of disorder does not abridge the right to speak except for the emergency.

However, what we are here concerned to point out is that Justice Jackson, who envisaged situations in which prior restraints on freedom of assembly and freedom of speech (in the narrow sense of the "spoken word") could be justified, stoutly denied in the same dissenting judgment that prior restraints on the "written word" or the freedom of the press could be justified in any circumstances because of the very difference in nature between the spoken and the written word. Cannot one hope for a judicial pronouncement that, whatever latitude may be left to officials in the application of sec. 144 to public meetings, the application of that section to the press, imposing prior restraints on publications, cannot be constitutionally permitted?

COMMENTS

Hope of a Settlement in Kashmir

THROUGH THE JARRING MISSION

It is devoutly to be wished that the mediation of Mr. Gunnar V. Jarring, the February President of the Security Council, will at any rate bring the Kashmir question, which has been at an impasse since the United Nations arranged a cease-fire in 1949, nearer to a settlement, if it cannot be settled altogether. On 21st February the Security Council asked, by a resolution adopted by 10 to 0 votes (Soviet Russia abstaining), Mr. Jarring to go to India and Pakistan to seek a solution of this long-standing dispute, and Mr. Jarring has already arrived in Karachi for the purpose. The authority of the Security Council behind the mission, and also Mr. Jarring's reputed diplomatic skill and the close acquaintance he has obtained with the intricate complications of the Kashmir dispute on account of his occupying the position of Swedish Ambassador to India from 1948 to 1951 at the

height of the crisis and later that of Ambassador to Pakistan in 1951–52, have aroused lively hopes that a decrease in the present Indo-Pakistani tension will result from the mission's efforts and will produce an atmosphere in which substantial progress will be achieved towards bringing about a peaceful solution acceptable to both sides. That Mr. Jarring will have the co-operation in this peace-making of Dr. Frank Graham who did so much in the past in narrowing the differences between India and Pakistan and of the Secretary-General of the U. N. who has made such a valuable contribution in breaking the deadlock between Israel and Egypt over the Gaza Stripand the Gulf of Aqaba is a factor that must be given full weight in judging of the potentialities of the mission's success in arriving at a constructive solution, though the task of the mission is undoubtedly exceedingly difficult.

This resolution of 21st February deleted from the resolution of the previous day (which, being vetoed by the U. S. S. R., had become ineffective) all mention of either a plebiscite in Kashmir or the temporary use of a small United Nations force to facilitate demilitarization on which all previous attempts at an amicable settlement had foundered. This earlier resolution had asked the President of the Security Council to examine proposals for " the achievement of demilitarization " and specifically the proposal for " the use of a temporary U. N. force " for the purpose. That resolution had aroused vehement opposition of India. Mr. Nehru described the attitude underlying it as "one of deliberate hostility to India" and the proposal to send a U. N. force to Kashmir as " an act of hostility," going so far as to characterize the resolution as " collective aggression or collective approval of aggression." The resolution, he said, was "a threat to India," "an attempt to humiliate India." He also saw in it a conspiracy on the part of Western powers to make the Indian Government deflect from its settled policy of non-alignment.

This emotional outburst could only be attributed to the fact that the suggestion about the U. N. police force had emanated from Pakistan, which the sponsors of the resolution adopted as one of the ideas deserving consideration. But really the United Kingdom, the U. S. A. and the other sponsoring nations could adopt it in good faith and with quite friendly feelings towards India, whatever India might think of it. The only stumbling-block to a plebiscite to which both India and Pakistan had agreed appeared to be the problem of demilitarization. It was Pakistan's refusal to pull out of Kashmir that was the real obstacle. And when Pakistan itself now proposed that a U. N. force should be sent to Pakistani-held territory and that Pakistani forces would then leave, after which India might be asked to do the same, the sponsoring powers might naturally have thought that Dr. Graham's idea that demilitarization should be effected in "a single continuous process" would be realized without any difficulty on the part of Pakistan and the way would then be open for a solution of the whole problem. The idea could not materialize, because India declared that she would not allow any " foreign " troops (i. e., troops which are contributed by member states of the U. N. and are under the U. N. flag and under U. N. command) to enter even Pakistan-occupied part of Kashmir and the idea had to be given up, because, as Dr. Walker of Australia said, " no one had suggested that U. N. troops should be used to force the holding of a plebiscite in Kashmir." But one would think that the U. S. A. and U. K. could entertain it without any sinister motive such as Mr. Nehru ascribes to them. Similarly, the feeling that, in co-sponsoring the resolution, Britain was merely taking vengeance on India for her opposition to British intervention in Egypt also seems to be groundless, for all the opposition papers in Britain which condemned the British Government's action no less strongly than India are also of the view that demilitarization followed by a plebiscite would be the best solution of the Kashmir dispute. Again, the U. S. A. too was one of the sponsoring nations and on Middle East its attitude was the same as India's. It is possible to believe that both Britain and America were only seeking an agreed solution in bringing forward the resolution they did.

However, the resolution now adopted by the Security Council omits the feature that was so obnoxious to India. And it is a matter of satisfaction that she has promised to co-operate with the Jarring mission, which can work on a flexible programme, and this flexibility itself may help in reaching a solution. One can only hope that the mission will go a long way in bringing about a satisfactory settlement, so that India and Pakistan which are almost at war with each other will live happily together after this problem is eventually got out of the way.

Police Firings

"A Heavy Toll of Life and Limb"

The Socialist Party, which has taken a strong stand on firings by the police on crowds, has compiled statistics of such firings in the past ten years, which go to show that of the 1020 occasions on which the police is believed to have opened fire, nearly 840 firings were on public and political demonstrators. There were thirty incidents in which students were involved; of the 409 casualties among them, 36 were fatal. Altogether 840 persons were reported to have been killed and 3,136 injured.

Commenting on this, the "Times of India" says:

> Nobody dare deny that this is a heavy toll of life and limb.... What the public would like to be assured about is that the extreme step of opening fire has been taken only under extreme circumstances. This, unfortunately, is not always so. This is shown by the findings of the judicial inquiry at the many places where it has been ordered—for instance in Gwalior,

Indore, Patna and Kalka. In the past five years many police officers have been sent abroad to familiarise themselves with modern methods of police work. But none of them seems to have paid—or been asked to pay—much attention to the tactful and non-violent methods employed in foreign countries to deal with demonstrators. It ought to be remembered that many of them, including factory labour on strike in foreign lands, carry arms. On the other hand, our people are known for the silence and submissiveness with which they suffer indignities and provocations; few who know them would call them bloodthirsty or by nature violent. They deserve to be treated with all the greater humaness and respect for life.

When the new Governments assume office, they will go a long way in winning public confidence if they can declare as a matter of policy that there will be proper inquiries whenever police firing leads to a loss of life.

Press Council Bill

CONDEMNATION BY MADRAS JOURNALISTS

The Madras Union of Journalists at its third annual conference in Madras adopted on 3rd March a resolution, which stated that the conference "views with grave concern the obnoxious provisions of the Press Council Bill as it has emerged from the Rajya Sabha" and demanded that "the Bill requires radical changes before it can be enacted." The resolution said:

> If the Council is to be financed by Government grants and not by the industry itself through a cess on news-print as suggested by the Press Commission, the objective of an independent Press Council to safeguard the liberty of the press will be completely defeated. Some of the powers proposed to be given to the Council in the matter of disclosure of information are highly objectionable and repugnant to accepted canons of journalistic conduct. There is no need to clothe the Council with any more powers than are necessary for free decision of the subject by the Council without attracting the penal provisions of the law.
>
> This conference, therefore, urges the members of Parliament to see that the press of India is given a Press Council worthy of its high tradition.

THE "TIMES" SUGGESTS THREE YEARS' DURATION

Supporting a Press Council if it be based on the principle of "self-regulation," the "Times of India" oppose the clause in the Press Council Bill which provides for six laymen, including three M. P.'s, in the composition of the Council as a provision "repugnant to the very principle of self-regulation." As regards the Chairman of the Council, the paper says that the journalists had proposed to the Press Commission that the incumbent should be a person with a judicial background "solely with a view to investing that body's pronouncements with judicial authority and prestige," but, it adds, "if he is not going to be a person of judicial experience, then surely that post should be occupied by a member of the profession," in order that the Council should be, in the words of Mr. C. P. Ramaswami Aiyar, a "domestic tribunal that would enable the profession to order its own affairs." "Equally out of tune," says the paper, "with the principle of self-regulation, which should be treated as the very coping-stone of the legislation, are the clauses relating to compulsory extraction of information, the summoning and enforcing of attendance of persons and examining them on oath."

Generally favouring the policy of leaving the press alone as the best way of preserving freedom of the press, the "Times" says that in any case the greatest caution needs to be exercised in tinkering with press freedom and therefore makes the suggestion that "the Press Council should be treated as an experiment for an initial period of three years." It says: "A clause may be introduced in the Bill for providing for a review, at the end of three years, of the working of the body with a view to determining whether the experiment had proved successful and deserved to be put on a permanent basis."

DRAMATIC PERFORMANCES ACT

Procedural Part Offends Against the Constitution

Ruling by the Allahabad High Court

Mr. Baboo Lal Varma and some others, who are organizers of the Lucknow branch of the Indian People's Theatres Association, decided to stage an adapted version of Munshi Prem Chand's short story "Idgah" at Lucknow on 16th June 1953, for which the City Magistrate had given permission. But while the play was proceeding the permission previously given by the City Magistrate was cancelled. In the meanwhile the Additional District Magistrate served a notice on the organizers prohibiting them from staging the play as they had not obtained the licence from him required by sec. 10 of the Dramatic Performances Act, 1876. The City Magistrate's cancellation order was served in the middle of the performance, but the organizers disobeyed the order and continued the performance.

On account of this disobedience they were prosecuted and the Additional City Magistrate, who heard the case, made a reference to the Allahabad High Court on the point of the validity of the Dramatic Performances Act, he himself being of the opinion that the Act was void as inconsistent with the fundamental rights regarding freedom of speech and expression guaranteed under Art. 19

(1) (a) of the Constitution. A division bench of the Allahabad High Court consisting of Chaturvedi and Mulla JJ. came to the conclusion (10th May 1956) that the prosecution was "entirely misconceived" as the impugned Act was ultra vires of the Constitution and, exercising their inherent powers, quashed the proceedings. (The case, State *v.* Baboo Lal, is reported in A. I. R. 1956 All. 571.)

SEC. 3 OF THE ACT

One of the charges against the accused was that they committed an offence under sec. 4 of the Act inasmuch as they had violated the order under sec. 3 prohibiting the performance of "Idgah." Sec. 3 authorizes the issue of such a prohibitory order when, in the opinion of the provincial Government, a play about to be performed is—

(a) Of a scandalous or defamatory nature, or

(b) Likely to excite feelings of disaffection to the Government established by law in British India, or

(c) Likely to deprave and corrupt persons present at the performance.

In the complaint filed by the District Magistrate all that was said about the nature of the play to be staged was that the accused had distorted, in the adapted version, the original story of "Idgah" "to suit their political ideology." As there was not even a suggestion in the complaint that the version of "Idgah" which was staged was either scandalous or defamatory as in (a) or was likely to deprave and corrupt the audience as in (c), it appeared, said Mr. Justice Mulla who delivered the opinion of the Court, that in the District Magistrate's opinion "it is not open to a person to preach or advocate a political ideology different from the political ideology of the party in power" and that if he did so he would be exciting feelings of disaffection as in (b). But the counsel for the State had to concede the position that (b) had become a nullity on the coming into force of the Constitution of India. The counsel therefore contended that the changes made in the original story by the accused so as "to suit their political ideology" could be proved to have made the play scandalous and obscene within the meaning of (a) and (c). On this point His Lordship said:

> We are surprised at this argument. It only shows to us the alarming tendancy of the executive authorities to stifle all political opposition and characterize it as an advocacy of ideas which are likely to deprave and corrupt the people. It takes our minds back to the days when those who did not share the religion of the ruling classes were branded as heretics and disturbers of peace.
>
> The District Magistrate either thought that as the present Government had stepped into the shoes of the British Government, therefore cl. (b) is still in force, or he grossly distorted the meaning of cls. (a) and (c) of sec. 3 in order to justify the complaint which he filed. Incidentally, this prosecution demonstrates that there are no adequate and reasonable safeguards against an abuse of power by the executive authority in the Dramatic Performances Act.

The prosecution of the accused under sec. 4 was thus, in the opinion of the Court, "wholly misconceived."

SEC. 10 OF THE ACT

The Court also held that prosecution of the accused under sec. 10 for omitting to obtain a licence, etc., was equally unmaintainable. It was argued on behalf of the accused that the Dramatic Performances Act was ultra vires and further that the prosecution was not a bona fide one but intended only to victimise persons holding a different political ideology from the ideology of the party in power. The Court said: "We have our doubts about the bona fides of the prosecution but it would not be necessary for us to decide this point as we have come to the conclusion that the Dramatic Performances Act ... is ultra vires of the Constitution." The Court rejected the contention put forward on behalf of the accused that the substantive provisions of the Act amounted to an "unreasonable restriction" and therefore void: it held that "to prohibit the performance of plays which are scandalous or defamatory or which are likely to deprave or corrupt the audience is a reasonable restriction" within the meaning of Art. 19 (2) of the Constitution.

Having held that the prohibition of plays falling within sec. 3 is reasonable in itself and thus that the substantive provisions of the Act are valid, the Court proceeded to consider the procedure laid down in sec. 10 for enforcing the prohibition. This section provides that "the provincial Government may order that no dramatic performance shall take place ... except under a licence to be granted by such provincial Government or such officer as it may specially empower in this behalf." And this procedure, the Court held, "imposes such restrictions on the right of freedom of speech and expression which cannot be covered by the saving clause in Art. 19 (2)." Mr. Justice Mulla said:

> An officer specially empowered, who in this case was the Additional District Magistrate, is made [under the section] the final authority to determine the question whether a particular play offends against any of the clauses of sec. 3 or not. The Act has made no provision for appointing any higher authority, judicial or otherwise, who can review or reconsider the order passed by the District Magistrate or the Additional District Magistrate.
>
> The order of such an officer may be absolutely arbitrary and unreasonable, but the aggrieved party cannot question it. It is left entirely to the sweet will and understanding of this executive officer whether he imposes such a restriction or not. The way District Magistrates are likely to impose these restrictions is fully illustrated by the manner in which the prohibitory order was issued in this case.

It may be that abuse of power by the executive authority is irrelevant for the true interpretation of the law, but it cannot be completely ignored in considering the reasonableness of the procedural part of the law.

Even an opportunity to make a representation against the prohibitory order passed by the executive authority under sec. 3 is not provided under the Act. One can accept that a prohibitory order may be passed as an emergent measure, but there is no reasonable justification for making this order final. [If the law does not make the prohibitory order amenable to objective determination by a court of law or some other body] it cannot be held to be a reasonable restriction. The final order cannot be left to the mere subjective determination of an executive officer whose decision is not open to review or reconsideration.

By leaving the matter entirely to the subjective determination of the District Magistrate, it (the Act) has denied the essential minimum requirements of natural justice, namely, the right to be heard before final condemnation and the right to have the order reviewed and objectively determined by a higher tribunal, judicial or otherwise.

(See the leading article in this issue.)

HABEAS CORPUS PETITION

Bihar Detenu Released

A Constitution Bench or the Supreme Court on 18th February directed the immediate release of Mr. Ganesh Chandra Das who had filed a petition for a writ of habeas corpus against detention by the Government of Bihar under the Preventive Detention Act.

The petitioner was arrested in March 1956 under the orders of the Governor of Bihar for the reason that it was necessary to detain him with a view to preventing him from acting in a manner prejudicial to the security of India. He was also supplied the grounds for his detention wherein it was stated that he was acting in a manner prejudicial to the security of India and that if he was allowed to remain at large he would indulge in activities prejudicial to the security of India.

The question for the consideration of the Supreme Court was whether mere recital of the reasons for detention in the grounds which were furnished to the petitioner was sufficient compliance with the provisions of the Preventive Detention Act. The court inquired, in view of the fact that the object of the law in making it obligatory to furnish the grounds of detention was to enable a detenu to make a representation against his arrest, whether such object could be fulfilled by merely repeating the clause of the Act under which he was being detained.

The petitioner's claim that the grounds supplied to him did not comply with the provisions of law was not seriously contested by the State of Bihar and the Supreme Court, therefore, directed his release from custody.

The petition was heard by the Chief Justice, Mr. Justice Aiyar, Mr. Justice Sinha, Mr. Justice S. K. Das and Mr. Justice Gajendragadkar.

INDIAN MARRIAGE ACT

Registration of Non-Marital Relationship

A MADRAS JUDGE SUGGESTS AMENDMENT OF LAW

The need for early amendment of the Indian Registration Act by the authorities concerned in order to prevent the exploitation of that measure by parties entering into relations, not of marriage but of concubinage, was voiced on 20th February by Justice P. N. Ramaswamy in the Madras High Court, where he took up this question suo motu for determination in connection with the disposal of a civil appeal arising out of a petition for divorce.

The wife of Mr. Meghanath Nayagar, Sushila Ammal, preferred an application before the Principal Judge, City Civil Court, under sec. 14 of the Hindu Marriage Act of 1955 for leave to file a petition for the grant of divorce from her husband. She sought the dissolution of the marriage on the ground, among other things, that her husband had taken a Harijan girl, by name Chandramathi, as his wife by going through a certain form of marriage, and that she had borne him a son also.

The case of the husband was that the affair between him and Chandramathi was not a regular marriage, and even this liaison, sanctified by a registered agreement, got subsequently dissolved by another registered agreement. The Principal Judge allowed the petition of Sushila Ammal upholding her plea. Against that the husband filed an appeal in the High Court.

Justice Ramaswami dismissed the appeal, but before doing so took up suo motu, in the exercise of the High Court's inherent revisional powers and supervisory jurisdiction, the determination of the legal question " whether prima facie the agreement for permanent and exclusive concubinage and the other agreement for divorce by mutual consent not statutorily or customarily permissible, should have been registered at all under the Indian Registration Act." For this purpose he gave notice to the counsel on both sides and the Government Pleader and heard arguments.

In his judgment His Lordship observed that the point involved might legitimately be described as a public scandal of considerable magnitude arising from the mischievous exploitation of the Indian Registration Act and it required the " early attention of the Executive and the Legislature."

After setting out the scheme of the Indian Registration Act and the case law relating to this subject, the Judge said that the Republic of India had placed on a comprehensive footing the laws of marriage and divorce, both sacramental and non-sacramental, by the recently enacted Hindu Marriage Act of 1955 and the Special Marriage Act of 1954. That being so, there was no scope for the registration of the agreements (invoked by Meghanatha Nayagar) under sec. 35 of the Indian Registration Act. Those agreements constituted only "agreements for concubinage and the dissolution of the concubinage" by mutual agreement and thus made the fruits of those alliances only bastards. The parties to that type of "marriage" as well as the issues therefrom were not even protected by the civil and criminal laws of the country. For instance, the parties to such an agreement could not invoke the benefits of the provisions of the Indian Penal Code in regard to kidnapping, enticement, adultery, etc. Nor could they invoke the provisions for maintenance under the general Hindu law or even the provisions of the Hindu Marriage Act and the Special Marriage Act. His Lordship said :

> Now that this grave public mischief has been brought to light in Court and the urgency of averting future repetitions has been fully made evident, I am sure that our progressive, responsive and high-minded State Government will move in the matter, as soon as the exigencies permit legislature work, and amend sec. 35 of the Indian Registration Act on the lines of the Bombay legislation ; because marriage is the very foundation of the civil society, and no part of the laws and institutions of a country can be of more vital importance to the subjects than those which regulate the manner and conditions of forming, and if necessary of dissolving, a marriage contract.

The Bombay legislation referred to by the Judge empowers the State Government to declare by notification in the official Gazette that the registration of any document or class of documents was opposed to public policy and notwithstanding anything contained in the Registration Act, the Registering Officer shall refuse to register any document to which the notification thus issued was applicable.

CRIMINAL LAW AMENDMENT ACT

Supreme Court Upholds Act of 1952

PROVISION ABOUT SPECIAL JUDGES

The validity of the Criminal Law Amendment Act, 1952, providing for speedier trial of cases of certain offences of bribery and corruption was upheld by the Supreme Court by a judgment delivered on 19th February on an appeal.

The appellant, Mr. A. N. Singaporwalla of Bombay, was charged with offering illegal gratification to a sub-inspector of the C. I. D. The trial began in July, 1951, and judgment was delivered by the Presidency Magistrate on 29th September 1952, convicting two of the accused and acquitting the appellant. The State of Bombay, instituted an appeal in the Bombay High Court against this acquittal.

A preliminary objection was urged before the High Court by the State of Bombay to the effect that after the passing of the Criminal Law Amendment Act on 28th July 1952, the trial magistrate had no jurisdiction to proceed with the case, and that a Special Judge appointed by the Government on 23rd September 1952 alone had jurisdiction to try the accused and consquently the Presidency Magistrate's judgment was void. This contention was upheld by the High Court, which directed that the case be remanded for retrial in accordance with the provisions of the new Act. This judgment of the High Court was the subject of appeal before the Supreme Court by the appellant.

The appellant urged before the Supreme Court that the Act was discriminatory as the mode of trial of persons charged with the offences specified under the Act was not similar to trials for offences under the Indian Penal Code. Consequently the Act violated the principle of equal protection under the laws contained in Art. 14, and hence was ultra vires.

The Supreme Court, referring to the principles set out in the case of Budhan Choudhry *v.* the State of Bihar, stated that the main question for consideration was whether the selection of the particular offences had a reasonable relation to the object sought to be achieved by the impugned Act. The Court held that as all offenders of the same class were treated uniformly under the Act there was no question of any discrimination, and further the classification was not unrelated to the object of obtaining a more speedy trial of offences relating to bribery and corruption.

On these findings the Supreme Court came to the conclusion that the Act was intra vires and that the judgment of the High Court was correct Accordingly the appeal was dismissed and the case remanded for retrial to the court of the Special Judge for disposal according to law.

The appeal was heard by Mr. Justice Bhagwati, Mr. Justice Jagannadhadas, Mr. Justice Menon and Mr. Justice Kapur. The judgment was delivered by Mr. Justice Bhagwati.

BOMBAY TENANCY ACT

Upheld by the High Court

EXCEPT FOR SEC. 88 D

Mr. P. D. Vaidya, a landlord owning extensive lands in Kolaba district, filed a petition in the Bombay High Court challenging the validity of the Bombay Tenancy and Agricultural Lands Act, 1948, as amended by Act No. 13 of 1956, on the grounds among others that the majority of the provisions of the Act were inconsistent with the guarantee of the fundamental right to property conferred by the Constitution and that certain provisions were void as amounting to delegation of legislative authority by the State Legislature to the State Government.

On 22nd February Mr. Justice Shah and Mr. Justice Gokhale, in disposing of the petition, held sec. 88 D of the Act to be invalid and upheld the validity of all the other provisions of the Act. The amending Act confers on tenants the right to purchase the lands held by them for cultivation from their landlords and makes them the owners of these lands on the so-called "Tillers' Day," 1st April 1957.

Their Lordships held that the provisions of the Act did not infringe the right to property as guaranteed under the Constitution. Referring in this connection to Art. 31 of the Constitution, Their Lordships remarked that the provisions of Art. 31 (2-A) stated that even if a citizen was deprived of his property, it was not to be deemed to be compulsory acquisition or requisitioning of property unless the right of the citizen to ownership or possession was transferred to the State or to a corporation owned or controlled by the State. It had been contended on behalf of the petitioner that provisions in secs. 32 to 32 R of the Act contemplated suspension of the title of the landlord and that this was not covered by Art. 31. Rejecting this contention, Their Lordships said :

> We are unable to hold that the scheme of Part II of Chapter III of the Act as amended is suspension of the title of the landlord without transferring it to the tenant. The words of the section [sec. 32B] make it abundantly clear that on the Tiller's Day or such other subsequent day as referred to in the section the tenant shall be deemed to have purchased the land from the landlord. That provision appears to have the effect of statutory conveyance of the land to the tenant.

Referring to sec. 63A, which provides for "reasonable price of land for the purpose of its sale and purchase," Their Lordships said, it was true, that the reasonable price was not the real market value, but that it was an artificial price fixed by the Legislature for sale of the land to the tenant.

In Their Lordships' opinion, as the Legislature had authority to enact legislation for the extinguishment or modification of any right in an estate, the provision which artificially reduced the value of the land for the purpose of sale and purchase could not be regarded as invalid.

Their Lordships said that the State Legislature for the last 20 years had been enacting from time to time legislation with the object of improving the economic and social conditions of the peasants and for ensuring efficient use of land for agriculture and for doing away with absentee landlordism.

The amending Act marked the culmination of the pattern of this social reform.

Their Lordships rejected the contentions of the petitioner questioning the validity of various sections on the ground of delegation of legislative authority to the executive, except sec. 88D. Secs. 88 to 88C gave exemptions to various lands like Government lands from the applicability of different provisions of the Act. Exemptions made by these sections might be regarded as founded on a rational basis, but by sec. 88D, which gives power to the State Government to withdraw these exemptions, the Legislature appeared to have given the Government the power to direct by a notification that any land referred to in secs. 88 to 88C "shall not be exempt" from the provisions referred to in those sections. Their Lordships said :

> The Legislature has not indicated either expressly or by implication any principle which should govern the Government in issuing the notification. It may be open to the State Government, even for purposes other than securing the object of the Legislature in enacting the Act, to exclude any land from the exemptions provided under those sections.

In Their Lordships' view sec. 88D amounted to delegation of legislative authority and was, therefore, invalid.

SALES TAX ACTS

Exemption from Sales Tax

UNDER ART. 286 (1) (b) OF THE CONSTITUTION

Messrs. Daulatram Rameshwarlal, who were registered dealers under the Bombay Sales Tax Act 1953, filed a petition in the Bombay High Court under Art. 226 of the Constitution for quashing the assessment order passed by the sales tax officer in respect of sales and purchases of cotton and castor oil made by the firm. They claimed exemption from sales tax and purchase tax under sec. 8 of the Act. On 25th February Mr. Justice K. T. Desai dismissed the petition with costs.

His Lordship referred to the Supreme Court's construction of the words "export out of" and "import into" in Art. 286 (1) (b) of the Constitution and observed that the question in this case was whether the sales which had been effected by the petitioners were sales in the course of export, i. e., whether the sales had taken place whilst the goods had crossed the Customs barrier and were in the export stream.

The petitioners themselves were not exporters. They had merely sold the goods for export. The exporters of the goods were the purchasers from the petitioners.

His Lordship held that the transactions of purchase by the exporter for the purpose of export in the State was not within the exemption. Similarly the sale in the State to the exporter for enabling the exporter to export the goods would not be within the exemption.

It was clear to His Lordship that the goods were to be exported under the export licence of the buyers. Therefore, before any goods could be exported under any licence, they must be the property of the licencee before they crossed the Customs barrier.

In His Lordship's opinion the sales by the petitioners to the exporters took place within the State. Therefore, His Lordship held that the sales tax was leviable in respect thereof under the Bombay Sales Tax Act.

As regards purchases, it was contended by the petitioners that the purchases were effected by them in the course of export of the goods out of the territory of India. His Lordship said that even purchases in the State by the exporter himself for the purpose of export were not within the exemption.

His Lordship held that purchases made by the petitioners in order to enable them to sell the goods to exporters could in no sense be said to be purchases in the course of export. They were all purchases made within the State and were liable to payment of purchase tax.

Claim for Exemption Allowed

A notification under the U. P. Sales Tax Act whereby exemption from tax is granted on sales of cotton cloth and yarn manufactured for export, was construed by the Supreme Court on 22nd February to cover all sales of cloth and yarn for the purpose of export, irrespective of the fact whether they were manufactured specifically for export or not.

Cawnpore Textiles Limited were taxed on sales of cloth to indenters who held permits from the Government for getting their requirements manufactured from specified mills for export purposes. The company challenged this levy as violative of its fundamental right to carry on business on the grounds that the tax was being levied without legal authority as they were entitled to exemption on these sales.

The Supreme Court overruled the objection of the respondents that a tax levy could not be made the subject of a petition claiming fundamental rights and stated that "if a tax is levied without due legal authority on any trade or business, then it is open to the citizen aggrieved to approach this court for a writ under Art. 32, since his right to carry on a trade is violated and Art. 19 (1) (g) comes into play." Constructing the notification, the Court held that its essential prerequisite was that the sale must be for export and whether the cloth was manufactured with a view to exporting or otherwise did not conclude the matter. The objection by the State that the taxed goods had not been manufactured for export was therefore without force.

Counsel for the State had further submitted that the cotton cloth which was ultimately exported was not the same as that sold because after sale it was dyed and processed by the purchaser and this made it into a different commodity. Consequently the cloth that was sold by the petitioner and taxed, not having been exported, was taxed rightly.

The Court held that mere variation of the cloth by printing and processing did not alter its character of being the cloth which had been sold for exports. On this view the levy of sales tax on such cloth for the year 1953-54 was not according to law and the petition must be allowed to that extent.

The petition was heard by Mr. Justice Bhagwati, Mr. Justice Jagannadhadas, Justice Imam, Mr. Justice Menon and Mr. Justice Kapur.

INCOME-TAX ACT

No Exemption for Sectarian Charity

A question as to whether a sum of Rs. 12,889 credited by the Sarangpur Cotton Manufacturing Co. Ltd. to the charity account maintained in its books was exempt from payment of income-tax either under sec. 4 (3) (i) or sec. 15B of the Indian Income-Tax Act was decided by Their Lordships the Chief Justice and Mr. Justice Tendolkar on 21st February at the Bombay High Court in an income-tax reference.

The assessee company, Messrs. Sakarlal Balabhai & Co. Ltd., Ahmedabad, was the managing agent of the Sarangpur Cotton Manufacturing Co. Ltd.

Under the managing agency agreement it received a certain commission.

It was provided in this agreement between the assessee company as managing agents and the Sarangpur Cotton Manufacturing Co. Ltd. that out of the total amount of commission earned by the agency company a sum not exceeding 2½ per cent. as might be determined from time to time by the managing agents should first be credited to a charity account in the books of the Sarangpur Cotton Manufacturing Co. Ltd. This amount was to be spent at the sole discretion of the managing agents for purposes thought fit by them as charitable. Pursuant to this agreement, an account of charity was maintained in the books of accounts of the Sarangpur Cotton Manufacturing Co. Ltd. and on October 11, 1952 a sum of Rs. 87,130 was standing to the credit of the charity account.

On October 11, 1952 a trust was executed of this sum and also of future amounts to be received by the managing agents for charity.

In the year of account of the assessee company, i. e., the managing agency company (Sakarlal Balabhai & Co. Ltd.) a sum of Rs. 12,889 was credited by the Sarangpur Cotton Manufacturing Co. Ltd to the charity account.

The Income-Tax Department included this sum of Rs. 12,889 in the income of the assessee. The assessee company claimed that this sum was not a part of its income since it was set apart for charity and it claimed exemption from tax for the sum of Rs. 12,889 under sec. 4 (3) (i) or under sec. 15B.

In giving judgment, Their Lordships said that it was clear that the amount was spent for charity after it had accrued to the assessee company as income. Once income accrued to a person, it attracted tax and, therefore, this sum of Rs. 12,889 was liable to tax as being the income of the assessee company. After the accrual of the income the Taxing Department was not concerned with what that person did with his income.

As regards the exemption under sec. 15B, Their Lordships referred to the second condition laid down in that section which provided that the charitable purpose which would earn exemption should be a cosmopolitan or non-sectarian charity.

If the charity was tainted with any communal or sectarian consideration, then it would not be considered for exemption under sec. 15B.

Here the charity was for establishment and maintenance of support of sanatoriums and dharmashalas for the Hindus. It was beyond dispute that if a sanatorium or dharmashala was maintained only for one community it constituted a charity but a sectarian charity contrary to the provisions of sec. 15B.

Here it was open to the trustees to apply the trust funds wholly to an object which was repugnant to the provisions of sec. 15B. Therefore, Their Lordships held that the whole of the charity failed to attract the exemption given under sec. 15B.

Their Lordships decided the reference against the assessee company.

ANTI-UNTOUCHABILITY ACT

Discrimination against Harijans

HOTEL PROPRIETOR ACQUITTED BY HIGH COURT

Mr. Bindeshwari Prasad, proprietor of a hotel—Rashtriya Swatantra Bhojnalaya—in Etawah, was convicted and sentenced by a magistrate under sec. 3 (i) (c) of the U. P. Removal of Social Disabilities Act 1947 for putting up a notice on the notice board of the hotel which seemed to bar admission to Harijans. The sentence was upheld by the assistant sessions judge of Etawah. The hotel proprietor filed a revision petition in the Allahabad High Court and on 6th February Mr. Justice Dayal and Mr. Justice Tandon, allowing the petition, set aside the sentence on appeal, and in doing so Their Lordships laid down an important proposition of law concerning the section as follows:

> Putting up a notice board intimating that the hotel will serve only Brahmins, Thakurs, Vaishyas, Kayasthas and Yaduvanshis does not lead to the commission of any offence by the applicant. The notice means only that these five communities among the Hindus will be served food at the hotel. Besides the Scheduled Castes, there are many other communities among Hindus, which the hotel was not serving according to the notice board. It cannot, therefore, be said that the hotel refused to serve some persons merely because they were Scheduled Castes.
>
> One would commit the offence under sec. 3, (i) (c) only when one prevents the members of the Scheduled Castes only from enjoying the advantages, facilities and privileges in the hotel, which were open to other Hindus as it is only then that it can properly be said that such prevention was merely on the ground that those persons belong to the Scheduled Castes. This hotel, according to the notice on the signboard refused to serve the people who were Hindus but did not belong to the Scheduled Castes and, therefore, its refusal to serve persons who belong to the Scheduled Castes would not be merely on the ground that they belong to the Scheduled Castes.

Another charge against the hotel proprietor was that on the night of 16th June 1952 he had refused to serve meals to Swami Chhama Nand, chamar by caste, in a brass utensil but had told him that he would be served his meal in the compound on patals. He was convicted of this charge too under sec. 3 (2) of the Act. Their Lordships said in regard to it that there was nothing on record to show that in the ordinary course of business the accused supplied brass utensils to customers and that it was essential for the prosecution to establish that the supply of brass utensils was a service rendered by the hotel to other Hindus. In the absence of such evidence Their Lordships were of the opinion that the applicant's conviction for contravening sec. 3 (2) was not correct.

BOMBAY LAND REGISTRATION ACT

Upheld by Supreme Court

NOT INCONSISTENT WITH ARTS. 19 AND 31

The Constitution Bench of the Supreme Court on 5th March held that the Bombay Land Requisition Act, 1948, was valid.

The constitutionality of the Act and enforceability of the Governor's order dated January 27, 1954, made under sec. 6 (4) (A) of the Act, were challenged by Mrs. Lilavati Bai, widow of Mr. Dharamdas Chellaram, whose premises were requisitioned by the order.

The ground on which the validity of the order and of the Act was challenged was that they offended against the provisions of Art. 31 (2) of the Constitution.

Mr. Justice Sinha, who delivered the judgment of the Court, in dismissing the petition, said that at the outset it was necessary to state that the main grounds of attack against the constitutionality of the Act, based on such fundamental rights as were recognised by Arts. 19 (1) (f) and 31 (2) of the Constitution, should be overruled in view of the decision of the Constitution Bench of the Supreme Court in Bhanji Munji's case. In that case, His Lordship said, this Court had upheld the validity of the Act with reference to the provisions of Arts. 19 (1) (f) and 31 (2) of the Constitution.

Dealing with the question whether the declaration of vacancy made under secs. 5 and 6 of the Act while making an order of requisition could be the subject matter of a judicial review, Mr. Justice Sinha said that the Act had made a specific provision to the effect that the determination on the questions referred to in secs. 5 and 6 of the Act by the State Government should be conclusive evidence of the declaration so made.

But that did not mean that the jurisdiction of the High Court under Art. 225 or of this Court under Art. 32 or on appeal had been impaired. In a proper case Mr. Justice Sinha said, the High Court or this Court in the exercise of its special jurisdiction under the Constitution had the power to determine how far the provisions of the statute had or had not been complied with But the special powers of this Court or of the High Court could not extend to reopening a finding by the State Government under sec. 5 of the Act that the tenant had not actually resided in the premises for a continuous period of six months immediately preceding the date of the order or under sec. 6 that the premises had become vacant at about the time indicated in the order.

Those were not, His Lordship said, collateral matters which could, on proper evidence, be reopened by the courts of law. The Legislature in its wisdom had made those declarations conclusive and it was not for this Court to question that wisdom.

INDIAN COMPANIES ACT

Contributions to Political Parties

JUDGE DEPLORES PRACTICE BY COMMERCIAL FIRMS

The Indian Iron and Steel Company Ltd., by a resolution, altered its Memorandum of Association to allow of contributions to the funds of political parties and thereafter applied to the Calcutta High Court for confirmation of the proposed alteration and sought the court's sanction for its contribution to political parties. Mr. Justice P. B. Mukharji on 28th Febuary, allowing the application, stated that in the absence of any contrary provisions in the Constitution and in the Indian Companies Act, a company could certainly be formed and registered, one of whose objects or purposes was to contribute to the funds of political parties.

In His Lordship's opinion it was the duty of the court to call attention to the dangers of this situation of so recent origin, on the eve of the General Elections in the country.

His Lordship said the dangers of the situation were manifold. *Joint stock companies were not intended to be* adjuncts to political parties and possible sources of revenue for these parties.

Secondly, it would induce the most unwholesome comeptition between business companies by introducing the race, who could pay more to the political funds of political parties. In the bid for political favouritism, by the bait of money, the company which would be the highest bidder might secure most unfair advantages over its rivals.

Thirdly, it would mark the advent and entry of the voice of big business in politics and in the political life of the country.

The object of the company, said His Lordship, was stated to be "to contribute to the funds of political parties which will advance policies conducive to the interests of the company." He added :

> Persuasion by contribution of money lowered the standard of administration even in the welfare State of democracy. To convert conviction and conscience by money was to pervert both democracy and administration.

His Lordship observed that as the number of applications was becoming more and more numerous, by which companies were trying to divert commercial funds to political purposes, it was essential in the interest of both commercial and public standards to have legislation on the subject to "keep the springs of democracy and administration reasonably pure and unsullied and before it was too late to control the dangers and mischief inherent in the situation." His Lordship said :

> To induce the Government of the day by contributing money to the political funds of political parties was to adopt the most sinister principle fraught with grave dangers to commercial as well as public standards of administration.

Sanctioning the alteration in the company's Memorandum of Association, His Lordship laid down certain conditions by which the company was to show every year in its balance-sheet the amount of contributions made to the political parties by name.

The sanction, moreover, would remain effective and operative for six years and it would lapse on the expiry of that period unless extended.

NOTES

Native Workers' Bus Boycott

Viewed as New Danger to the Whites

On 7th January several thousand Natives of South Africa living in segregated compounds outside Johannesburg and Pretoria started a bus boycott movement, walking eight to ten miles to their places of work and back home rather than pay a penny increase in bus fares. The increase in the fare from 4 to 5 pence for every ride to and fro comes to 4 shillings a month and cuts significantly into the Africans' low wages But though the movement was originally purely economic in character, it has now assumed a political character and has almost become a trial of strength between the whites and coloured peoples.

Sixty thousand people are now involved in the boycott, which is 100 per cent. successful, and the bus company is losing £15,000 a week. Businessmen too are alarmed. They complain that the workers arrive on the job late, tired and hungry, and a kind of slowdown strike has resulted. Many employers have indicated willingness to meet the increased fare with higher cost of living allowances, and some are quietly evading the public transport law by providing rides for their own workers. But the Government which is determined to smash the boycott will have none of this. The Transport Minister has called on the employers to make no concessions. They have been asked to pay no wages for time not worked, even if it should mean wholesale dismissals of the tired and tardy.

In order to prevent the labourers from using the railway, the Minister of Transport has ordered a cut in train services and stationed police on railway platforms to turn away bus boycotters. Some kind-hearted Europeans give the workers a lift in their cars, often making half a dozen trips. The Minister of Justice, however, has ordered a "police blitz" on such whites. Hundreds are stopped and their names and addresses taken. Their African passengers are told to produce their passes and those who are unable to do so are forcibly removed from the cars. The Natives riding bicycles are stopped and the tyres are let down. Those who, in order to avoid trudging back to their segregated outlying townships, stop in a hotel are arrested for illegally sleeping in the town. On 15th February alone 2,000 such Negroes were arrested on a charge of trespass and violation of the pass laws, which require express authorization for a Negro to remain in the city overnight. Most of the errested persons pleaded guilty and paid fines of £2 each.

The Johannesburg Chamber of Commers offered to pay the penny increase in the bus fare that precipitated the boycott. But Native leaders rejected this rebate offer. Thereupon the Nationalist Government withdrew the bus services altogether. and the raids on Native townships are continuing. On 2nd March the police arrested more than 160 Negroes on charges of not having the identification permits required by law.

Now there is talk of extending the boycott to products produced in "nationalist-controlled" factories and to "nationalist-controlled" finance houses. A campaign is being conducted to persuade the Africans to keep their money in commercial banks and building societies free from nationalist control. All business concerns having stocks of goods produced in "nationalist-controlled" factories were warned to dispose of their stocks before 3rd March in order to avoid undue hardship. It is clear that the Africans are going to test the efficiency of a new political weapon in their struggle with the whites.

Summary Trials in Hungary

Opinion of International Commission of Jurists

Presiding over a conference of the International Commission of Jurists on the administration of justice in Hungary on 1st March, which was attended by lawyers from twelves countries including India, Sir Hartley Shawcross said:

> We have no doubt on the admitted facts that there have been and still are grave breaches of the treaty of peace obliging Hungary to observe human rights, and we feel there have been clear breaches of the Geneva conventions of 1949 for the protection of civilians.
>
> We are going to examine the possibility of maintaining an official record of the cases, with the names of those concerned and we shall try to focus world attention from time to time on the illegality of what is being done.
>
> When the administration of justice is weakened in one country, its influence is diminished elsewhere. These matters are not matters of purely domestic concern for Hungary alone.

He declared the lawyers were agreed that the Soviet Union's intervention in Hungary was "flagrant violation of international law" and added that it was "tragically true that little action could be taken at this time."

Rigged Trials

While Hungarian rebels are mostly tried in secrecy, some are tried in the open, probably because they are thought to have propaganda value. Among those who were publicly tried was Miss Toth, a medical student of 25, who testified that on 4th November, the day of the big Soviet attack, she disabled a Soviet tank with a hand grenade and on 18th November killed a security policeman. Of such trials a Hungarian journalist, Mr. George Poloczi Norvath, writes in the "Tribune" of London:

> The Kremlin dictators and their Hungarian stooges are now preparing a series of confession trials against the leaders and fighters of the Hungarian revolution. According to their latest declaration, Imre Nagy will be tried for treason. He is probably being tortured right now in the hope that long weeks of sleeplessness, next to no food, and an ocean of pain will make him a tool for the falsification of history.
>
> Laszlo Rajk and some thousands of others were murdered in 1949 by Janos Kadar, then Minister of the Interior, to prove the existence of an alleged imperialist-Titoist plot. False evidence was duly given then. It is now admitted that it was false evidence.

Nevertheless, Janos Kadar and his Kremlin masters are now intent on repeating the experiment to convince the world that the Hungarian revolution was the outcome of an imperialist-fascist conspiracy.

Every large-scale rigged trial is always preceded, in Stalinist history, by smaller ones. Janos Kadar has already staged them. Twenty-year-old girls and boys have been hanged as "fascist monsters."

A New Rising Feared

The fear is widely entertained in official circles in Hungary that on 15th March, the anniversary of the Hungarian revolt against the Hapsburg Empire, another revolution would burst out. MUK is said to be the slogan of the anti-Communists, which means: "In March we start again." This revolution was expected to be preceded by youths' country-wide demonstrations at which the following demands would be made:

1. Reinstatement of Imre Nagy as Prime Minister;
2. Hungary must become a neutral State;
3. Freedom to function for all political parties;

and 4. Freedom of the Press.

Naturally, arrests are widespread. Hundreds of people are stopped for questioning and in most cases loaded into waiting trucks. Soviet troops are moving into Budapest "in strength" to crush the new rising, and the Hungarian militia has been ordered to "open fire immediately if groups collecting in the streets fail to disperse after warning."

Interim Report of the U. N. Committee

REVOLT NOT "FOREIGN-INSTIGATED"

The five-nation committee appointed by the U. N. to collect data on Hungary submitted an interim report on 21st February which consists mainly of a chronological account of the rising, the use of Soviet troops and tanks to suppress the rebellion and the arrest of the rebel leaders when they were trying to persuade the Soviet troops to leave Hungary. The report says witnesses testified unanimously that the revolt was not foreign-instigated or organized, as Moscow had charged. It also observes at one point that Premier Kadar on two occasions in the last two months had recognized that his regime "could not at this stage claim the support of the majority of the Hungarian people." The committee has announced that it would leave this month for Geneva to collect additional data and take testimony from Hungarian refugees abroad. It says that it intended to "persevere" in its effort to make an on-the-spot inquiry in Hungary. It also intends to try to talk with former Premier Nagy who is said to have been removed to Rumania.

Freedom of the Press

— IN NORTH VIET-NAM

Following the trend of "liberalization" in Communist countries after de-Stalization in the Soviet, the Government of North Viet-Nam promised the intellectuals that they should again have the right to criticize and even agreed to tolerate two magazines not under the control of the Communist Party. The magazines exercised the right too for a brief period of time, freely criticizing the regime for cliquism, corruption and the cult of personality. The crushing of Hungary was, however, the signal for a reversal of the policy. The "free" magazines were suppressed early in December and a few days later a decree was issued, according to one article of which the main duty of the press was to "serve the interests of the State and support the Government of the People's Democratic Republic," and according to another the duty of the press was "to mobilize the people in order to carry out the Government's policy. The press was forbidden to publish articles which oppose "popular authority." Mr. Guy Wint, well-known in India, says about the suppression of press freedom in Viet-Minh after an extensive tour in that country.

> The North Viet-Nam Government facea the same problem as Communist governments elsewhere. They cannot do without intellectuals. The very intricate technical civilization of today depends on them. But if intellectuals are allowed freedom, they turn upon the Communist government and denounce it. On the other hand, if they are suppressed, they become sullen and withhold their co-operation.
>
> What is the solution for the Communists? Probably there is no solution. The Communists are up against one of the contradictions in society—which they delight in detecting in a capitalist society but which they now find in their own.

— IN JAPAN

In Japan, on the other hand, the Newspaper Law and the Publications Law which restricted the freedom of the press have been abolished, and as a further means of safeguarding the individual's civil and political rights the State Indemnity Law enables Japanese citizens to seek adequate compensation for any infringement of their rights by the authorities.

We have adverted before to the establishment in Japan of a Civil Liberties Bureau within the Justice Ministry. The Bureau was constituted in February 1948 and it has regional branches at eight places and sectional branches in 41 places. The object of these Bureaus is to spread the concept of respect for human rights among the people at large. In cases of apparent violation of these rights, they send the victim to the procurator's office, where he is given legal advice and aid in bringing up a law-suit. In addition to these government organs, non-official Civil Liberties Commissions have been organized, whose work is similar to that of the Civil Liberties Bureau. At present there are 5,509 Civil Liberties Commissioners appointed by the Justice Minister on the recommendation of the heads of local administrative agencies, who make their choice from among civilian leaders of bearing and high character. They also try to promote an understanding of civil liberties among the public and help in bringing violators of civil rights to book in courts of law.

Printed by Mr. K. G. Sharangpani at the Aryabhushan Press, 915/1 Shivajinagar, Poona 4, and published by Mr. R. G. Kakade, M. A., LL. B., Ph. D., at the Servants of India Society, Poona