

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
Office: Servants of India Society, Poona

Editorial Committee :

Prof. P. M. LIMAYE,
S. G. VAZE,

Member and
Secretary respectively of
the All-India Civil
Liberties Council

Annual

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

No. 94

July 1957

U. N. REPORT ON THE HUNGARIAN REVOLUTION WILL INDIA PUT HERSELF RIGHT AT LEAST NOW ?

Now the five-nation special committee of the United Nations composed of men of unimpeachable impartiality and competence has endorsed to the full the indictment brought against Soviet Russia in a General Assembly resolution condemning her brutal aggression against Hungary on the basis of evidence painstakingly collected and subjected to rigid tests of authenticity, will India do something to save herself from the disgrace which has fallen on her by her worse than equivocal attitude towards this grave international problem, or will she still continue to find apologia for the aggressor in the belief that her non-alignment policy requires her to identify herself to the utmost extent possible with the country which suppressed Hungarians' revolt for independence, democracy and civil rights with massed force and a treachery almost unknown in recent history? We hope, for her own good name as the youngest but largest democratic country in the world, that India will put all diplomatic considerations to one side and boldly range herself on the side of justice and humanity, thus putting herself right in the eyes of the free world. But we must confess to an apprehension that she will still boggle at condemnation that has, after the damning indictment, become more imperative than ever before and continue to put forward pleas, seemingly plausible, that will not help Russia in the least but will only inflict moral injury on herself by an indelible stigma being attached to her as a defender of the cruellest form of oppression.

Unfortunately there are reasons for such an apprehension. At Stockholm Mr. Nehru expressed the opinion soon after the publication of the committee's report, that though the Hungarian rising was nationalist, it received incitement from abroad too, thus partially supporting Russia's contention that her action in Hungary was dictated by a desire to save Hungary from Western powers' imperialist designs. If as Mr. Nehru said he had not yet read the report, he might have done well to hold his peace till he had time to study its contents. But he was seized with an irrepressible urge to air some view favouring Russia. However, if there is any clear finding of the committee, it is that the Hungarian revolution was

a spontaneous demonstration on the part of the local Communists and non-Communists, and the committee rejects completely the Soviet allegation that it was fomented or assisted from outside. It says:

The thesis that the uprising was fomented by reactionary circles in Hungary and that it drew its strength from such circles and from Western "imperialists" failed to survive the committee's examination. From start to finish, the uprising was led by students, workers, soldiers and intellectuals, many of whom were Communists or former Communists.

Mr. Nehru said later, at a time when he must have seen the report, that the Russians felt that the Hungarian revolt, unlike the Polish one, was hostile to the Soviet Government and a threat to their own security; and "when you touch a country on that soft spot, its own security, then self-interest is the highest motive." The Anglo-French action in Egypt at the same time perhaps precipitated matters. At that period a situation was "developing which seemed to be heading for a war — and a big war — not a local affair; and we were rather alarmed at the prospect of a big war." He thus put in a sort of defence as well for India's obstructive attitude at the U. N. as for Soviet's savage repression in Hungary. But there is no evidence to prove any of these allegations. There was no hostility on the part of the Hungarian people to Russians as such. In fact the Hungarian revolution was inspired by the Polish revolution and would have been equally peaceful if the Russian tanks in massive strength had not appeared on the scene. The news of Poland's achievement of greater independence from Soviet control on 19th October "was largely instrumental in bringing the Hungarian students together in the meetings of 22nd October," at which they demanded "withdrawal of all Soviet troops, the reconstitution of the Government under Imre Nagy, free elections, freedom of expression, the re-establishment of political parties, and sweeping changes in the conditions both of workers and peasants." The demonstration on the following day would have been entirely peaceful if the A. V. H., the hated political police,

had not without any provocation opened fire, "The police emerged, wearing doctors' white coats from white ambulances with Red Cross licence plates, and attacked defenceless people." This marked the turning point which "changed a peaceable demonstration into a violent uprising," and in the five-day battle that followed "the people of Budapest found themselves in combat with Soviet armour and with the A. V. H." "Hungarians felt no personal animosity towards the individual Soviet soldiers on Hungarian soil, but these armed forces were symbols of something which annoyed a proud people and fed the desire to be free." On the other hand, "there were many cases of fraternization between the people and the Soviet soldiers," who sympathised with the people's unanimous demand for freedom from foreign intervention, and indeed "some Russian officers and soldiers appear to have fought and died on the Hungarian side."

If Mr. Nehru has evidence to support his pro-Russian allegations (the Indian ambassador in China and the local charge-d'affaires made a pretty long stay in Hungary, a privilege which was denied to the U. N. committee and to the Secretary-General and any of U. N. observers, and gathered, it is said, a considerable information on the revolt), why did he not arrange to have this valuable material placed before the committee? Why did India follow a policy of non-co-operation with the committee? The committee was compelled, because of non-co-operation of the Soviet-installed Hungarian regime, to collect data from refugees who had fled from Hungary, though it sifted all these data with the utmost care and based its findings only on such of them as were amply corroborated by eye-witness' stories. India did not suffer from this disability and yet she did not let the committee benefit by her advantageous position in this respect. Other Governments like the United States, the United Kingdom and the Netherlands freely placed all the material they had at the disposal of the committee, but not so India. The Ceylonese member of the committee, Mr. Gunewardene, told press representatives in Bombay on 7th June that he was not aware of any similar reports from the Government of India, and added: "Personally I would have been most interested and most anxious to read what India had to say about the disturbances." Other members also would doubtless have been equally interested to see India's dossiers, if she had opened them to the committee as other countries did, particularly because at the General Assembly India always had something favourable to say about Russia unlike any other non-Communist country, and for this reason India would have been a valuable defence witness. Why did not she come on the stand?

India could well have been a member of the committee as a representative of the Asian-African countries in the place of Ceylon though none could pretend that Mr. Krishna Menon's substitution for Mr. Gunewardene would have added either to the prestige or the impartiality of the committee); India would certainly have been

preferred if she were willing to serve on the committee. But apparently she refused to participate. When appointments were to be made, the Indian delegation at the U. N. was reported to have asked the Government of India whether membership of the committee could be accepted, if offered. The Government presumably said no, because India did not want any committee to be appointed at all. She opposed the resolution establishing such a committee, as she had previously opposed a resolution condemning Russian intervention in Hungary, though Burma and Ceylon who were till then acting as a team with India voted for both the resolutions, as in their opinion real neutrality to which they were wedded like India herself left then no alternative on the record before the U. N. but to vote against Russia. India thus could not be one of the investigators and judges. But she also elected to keep away from the witness box. This does not prevent Mr. Nehru, however, from giving vent to views which would be somewhat to the liking of the Soviet Government.

When the committee was not allowed to go to Hungary on a fact-finding mission, it was compelled to collect evidence from refugees who had fled to other countries because of the Russian reign of terror. India then said that it would be improper to collect evidence in other countries, which meant in effect that the Soviet's desire to baulk investigation into her black deeds should be fulfilled and that the U. N. should do nothing at all in face of the terrific aggression that had taken place. India in fact did not want any kind of investigation. Her representative frankly told the General Assembly on 12th December, when speaking on the resolution censuring Russia for her aggression that the question was no longer one "of eliciting a large number of facts and passing judgments on them." She did not want the United Nations to pass any judgment, which she could not have failed to anticipate would be against the Soviet. She would have the U. N. erase all its earlier resolutions and carry on negotiations directly with Russia for the withdrawal of her forces from the Hungarian soil. India felt that such negotiations would succeed, but if they failed—well, then nothing else should be done but to wait on Russia's pleasure. India's is a shameful record altogether on this question. From the very start she did not like Russia's action in Hungary to be talked about too much, but when, owing to the initiative of the U. S. A. and other democratic countries, some ten resolutions proposing remedial action were brought up in the Assembly, she either abstained from voting or cast her vote against them. On one occasion she distinguished herself by being the sole dissenter amongst countries not directly in the Communist orbit. This was on the occasion when the Hungarian demand for free elections under U. N. auspices came up. India's representative opposed the demand as inconsistent with the sovereign status of Hungary. He insisted that even the Soviet-imposed Kadar regime must

be recognized as a legal Hungarian Government entitled to claim sovereign rights. This claim the U. N. committee has emphatically repudiated and cited the commander of the Russian army in Hungary himself in support. When around 17th November the Workers' Council of Budapest was pressing Mr. Kadar for the withdrawal of the troops as a condition for the resumption of work, General Grebennik "enlightened them on the situation as follows":

You have to understand that it is not the Kadar Government which is in control here, but the Soviet Military Command, and it has the power to force the Hungarian workers to return to work.

India's is indeed a black record on the Hungarian problem; and it will be hard for Mr. Nehru to live it down. Will he now turn over a new leaf and play a part in the United Nations which can be acclaimed as a worthy part befitting the Indian people's love of democracy?

The Civil Rights Bill

Freedom of the Ballot for Negroes

The Civil Rights Bill incorporating President Eisenhower's civil rights programme passed the House of Representatives on 18th June without any crippling amendments of the Southern Democrats, though a much sterner fight awaits it in the Senate. This programme, as our readers are aware, is a very modest one: creation of a non-partisan commission to study civil rights; establishment of a civil rights division in the Justice Department; authority for the Attorney General as representative of the Federal Government to initiate injunction suits to prevent local officials from depriving citizens of their guaranteed civil rights; and special local protection to permit free voting in national elections.

Denial of the right to vote to minority groups, specially Negroes, by one device or another is rampant in Southern states. Thousands of Negroes are effectively barred from voting in many Southern states by rules that keep Negroes from the voting register, leaving the white citizens the run of the election machine. Thus in Alabama only 10.3 per cent. of Negroes over 21 years old were registered as voters in the 1950 elections; in Arkansas 16.5 per cent.; in Virginia 20 per cent.; in Georgia 20 per cent. Protection of the voting rights of Negroes in the South is thus a very urgent problem, and the only way to give such protection, the one embodied in the civil rights bill, is to empower federal courts to grant injunctions against any person suspected of trying to prevent any qualified citizen from voting and to authorize Federal judges to enforce any court order against any person who defies the court's injunction, subjecting him to punishment for contempt of court. Under present law, the Federal Government has to wait until after the right of a citizen to vote has already been violated and then proceed against him with a criminal prosecution. This does not afford

any worthwhile protection and the Government is therefore seeking new legislation strengthening the authority of the Federal courts to prevent infringement of the right to vote by means of injunctions in civil proceedings.

The Southerners do not make a frontal attack on this provision of the bill, but their aim is to undermine its effectiveness by moving amendments which have a specious appeal to those who have not thought deeply about the problem to be tackled. One of these amendments provides jury trial for persons cited for contempt for violating injunctions issued by Federal courts to prevent local officials from denying voting rights to anyone. Since trial by jury is regarded in the United States as a great guarantee of the individual against the power of the State, it may seem at first glance that this is only a reasonable effort to ensure that justice is done. But in effect one may be sure that the certain effect of the amendment, if passed, would be to defeat justice. For it is clear that the all-white juries in Southern states would be disinclined to convict persons charged with denying voting rights to Negroes. As the American Civil Liberties Union has pointed out, "to grant jury trials in the civil rights legislation would protect officials who are failing to do their duty in protecting the constitutional rights of citizens," and as the "New York Times" has put it, "the result (of requiring jury trials in such cases) would be that the violator of the law would be the person protected, not the victim." Fortunately the House has rejected the proposed amendment, but there is great danger of the Senate introducing it.

It is not as if the absence of jury trial in contempt proceedings is a departure from the normal procedure in any way. In fact that is the normal procedure, since the law provides that where the United States is a party there shall be no trial by jury in a contempt proceedings. As Mr. Celler, Chairman of the House Judicial Committee, has said, "while it is true that Congress, in 1914, provided for a jury trial in criminal contempt proceedings, the Act carefully excepted contempt arising from any suit brought or prosecuted in the name of or on behalf of the United States." The injunctive relief for which the bill provides is not in the nature of a criminal remedy, where jury trials are proper. The relief envisaged in the bill is designed not to punish a state official for committing a crime but to prevent him from committing a crime. And in such matters the judge cannot be deprived of his traditional power to punish for contempt without a jury. "The provision for jury trial in the Federal Bill of Rights," says a competent lawyer, "did not uproot the historical power of courts of equity whereby injunctions and contempt orders for their violation are issued in proceedings heard by the judge alone without a jury." President Eisenhower, opposing the amendment sought to be made in the bill, said: "One thing that I have been struck by is late Chief Justice Taft's comments on a similar effort (when) he stated that if we tried to put a jury trial between a court order and the enforcement of that order,

we would be really welcoming anarchy." In a brief Senator Douglas of Illinois pointed out in April that the jury-trial amendment is not only meant to hamstring enforcement of the law but may well be unconstitutional itself. He said :

(The amendment) would deny to the Government of the United States its duty and its power to give the citizen effective protection in his right to vote and in his fundamental rights to equal protection and liberty and security under law.

LEGISLATIVE INQUIRIES AND INDIVIDUAL LIBERTY

LIMITS SET ON CONGRESS' INVESTIGATIVE POWER

Mr. John T. Watkins, a labour leader, was called as a witness in April 1954 before the Un-American Activities Committee of the House and questioned about the subversive activities of Communists. He freely answered questions about himself. He said that he had never been a "card-carrying member of the Communist Party," but had co-operated with the party, contributed to Communist causes and participated in some Communist activities. He said he would answer questions about persons he knew who in his belief were still Communists but would not name "persons who may in the past have been Communist party members . . . but who to the best of my knowledge and belief have long since removed themselves from the Communist movement." He gave this explanation of his stand :

I do not believe that such questions are relevant to the work of the committee, not do I believe that this committee has the right to undertake the public exposure of persons because of their past activities.

The committee and the House cited Mr. Watkins for contempt of Congress. The Justice Department obtained an indictment against him for violating a law (sec. 192 of Title 2 of the United States Code) which requires anyone called before a Congressional Committee to answer questions put to him and declares guilty of a misdemeanour anyone who "refuses to answer any question pertinent to the question under inquiry." Mr. Watkins was convicted of the charge in May 1955 and sentenced to a fine of \$100 and a year in jail. He thereafter appealed to the Supreme Court.

Similarly, Professor Paul M. Sweezy, lecturer at the University of New Hampshire, appealed from a decision by the supreme court of New Hampshire holding Mr. Sweezy in contempt and ordering him to jail for refusing to answer questions asked by the state's Attorney General during an inquiry into alleged subversive activities.

The Supreme Court on 17th June reversed the convictions of both Mr. Watkins and Mr. Sweezy in a majority judgment, Justice Clark dissenting in the Watkins and he and Justice Burton dissenting in the Sweezy case. Chief Justice Warren wrote the majority opinion in both cases. In giving judgment, he noted first that Mr. Watkins was not a "truculent or contumacious witness." Indeed, the

Government itself had admitted that Mr. Watkins had given the committee a "complete and candid statement of his past political associations and activities. The Chief Justice observed that the Court, after hearing arguments and studying the record, was still "unenlightened" as to the pertinency of the questions asked to the purpose of the inquiry. Certainly, he said, the purpose had not been adequately revealed to Mr. Watkins "when he had to decide at his peril whether or not to answer." The statement as to the purposes of the investigation read by the chairman of the committee at the outset of the hearing was "woefully inadequate" to inform Mr. Watkins on the pertinency of the questions to the subject under inquiry.

(Mr. Watkins) was thus not accorded a fair opportunity for determining whether he was within his rights in refusing to answer and his conviction is necessarily invalid under the due process clause of the Fifth Amendment.

Criticizing the broad range of inquiry followed by the House Un-American Activities Committee in the case, the Chief Justice referred to the resolution of Congress directing the committee to inquire into "un-American propaganda activities," "the diffusion of subversive and un-American propaganda instigated from foreign countries and all other questions in relation thereto that would aid Congress in any necessary remedial legislation," and said :

It would be difficult to imagine a less explicit authorizing resolution [than the one creating the committee] . . . The committee is allowed in essence to determine its own authority and to choose the direction and focus of its activities. In directing what to do with the power that has been conferred upon them, members of the committee may act pursuant to motives that seem to them of the highest. Their decisions, nevertheless, can lead to exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it.

We cannot simply assume that every Congressional investigation is justified by a public need that overbalances any private rights affected.

The charter given by the House to the committee, Chief Justice Warren said, was "excessively broad" and suffered from the "vice of vagueness." Under it the

committee "conceived of its task in the grand view of its name."

The Court conceded that the power to investigate was inherent in the legislative process and was a broad power, but the power was "not unlimited." It "cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." The Chief Justice said:

There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. Investigations conducted solely for the personal aggrandizement of investigators or to "punish" those investigated are indefensible. . . . The First Amendment freedoms of speech, press, religion, or political belief and association cannot be abridged in legislative inquiries.

Chief Justice Warren said that it was the responsibility of Congress to "spell out" the jurisdiction of a committee and the purpose of its inquiry. In the absence of a clear determination that "a particular inquiry is justified by a specific legislative need, protected freedoms should not be placed in danger." He said:

The conclusions we have reached in this case will not prevent the Congress, through its committees, from obtaining any information it needs for the proper fulfilment of its role in our scheme of government.

The legislature would not be deprived of its freedom to "determine the kinds of data that should be collected," but "there was need to protect the rights of individuals against illegal encroachment." The Chief Justice declared:

A measure of added care on the part of the House and Senate in authorizing use of the compulsory process and by their committees in exercising that power would suffice. That is a small price to pay if it serves to uphold the principles of limited, constitutional government without constricting the power of the Congress to inform itself.

Justice Frankfurter in his separate concurrence asserted that "prosecution for contempt of Congress presupposes an adequate opportunity for the defendant to have awareness of the pertinency of the information he has denied to Congress." This essential, he said, was wanting in the Watkins case. Justice Clark declared in dissent that the majority decision was a "mischievous curbing of the informing function of the Congress." The majority, he said, "has substituted the judiciary as the Grand Inquisitor and supervisor of Congressional investigations."

The Court in this case laid down the principle that Congressional committees must be guided by a clearly defined legislative purpose in their investigations, and that they may not force witnesses to testify against their will on subjects which do not conform to that purpose, and that they must respect the right of individual citizens to enjoy the liberties embodied in the Constitution's Bill of Rights. The American Civil Liberties Union hailed the decision as "a vigorous affirmation of freedom of speech and association. It said:

The country should be grateful that the Court has pointed the way toward a further restoring of the citizen's right of belief and association and the maintenance of a proper balance between individual freedom and national security.

TIGHTENING CONDITIONS FOR SMITH ACT CONVICTIONS

HEIGHTENED EMPHASIS ON BILL OF RIGHTS

The Supreme Court on 17th June ordered the acquittal of five Californian Communist leaders and a new trial for nine others. All the fourteen had been convicted on 5th August 1952 in a Federal district court of violating the Alien Registration (or the Smith) Act of 1940, which is the Government's chief weapon to put down subversive acts of the Communist Party. The Smith Act has three main provisions. It makes it a crime: (1) to teach or advocate the overthrow of any government in the United States by force or violence; (2) to organize, or help to organize, any group advocating such violent overthrow; or (3) to become a member of such a group "knowing the purposes thereof." The act declares that it is equally unlawful to conspire to do any of these prohibited acts. The penalty on conviction is a fine of not more than \$10,000, five years in jail, or both.

The Supreme Court decision in these cases involved the first two of the three prohibited acts, since the fourteen West Coast Communists had been charged with conspiracy "to advocate" the violent overthrow of the Government and conspiracy "to organize" a group advocating the violent overthrow of the Government, in this case the Communist Party. They were not charged with being members of the Communist Party knowingly.

The Charge of "Organizing"

On the "organizing" count the Court construed the verb "organize" in its narrow sense, that is, bringing a group into being, and ruled that since the Communist Party was organized in its present form in 1945, but the indictment was not brought until 1951, this meant that

the statute of limitations had run out. Justice Harlan, who wrote the Court's opinion, said :

We should follow the familiar rule that criminal statutes are to be strictly construed and give to "organize" its narrow meaning, that is, that the word refers only to acts entering into the creation of a new organization, and not to acts thereafter performed in carrying on its activities, even though such acts may loosely be termed "organizational." . . . Since the Communist Party came into being in 1945 and the indictment was not returned until 1951, the three-year statute of limitations had run on the "organizing" charge.

The ruling bars forever any future Smith Act indictments on the "organize" count, unless Congress broadens this clause to cover present Communist activities. This count figures in seven of the nine cases in which convictions have been affirmed by the Circuit Court and in which appeals are now pending. The Government must now be feeling that the Communists concerned will win their appeals.

The Charge of "Advocacy"

The Court held that advocacy of overthrow of the Government must be such as to incite to violent action and it found the trial judge's charge to the jury defective because the Judge made no distinction between advocating the violent overthrow of the Government as an abstract doctrine, which is not a crime, and advocating it in a way calculated to incite unlawful action, which is a crime. The Court said :

The essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something. . . . The Smith Act does not denounce advocacy in the sense of preaching abstractly the forcible overthrow of the Government. . . . [In the original Smith Act case of the eleven Communist leaders] the jury was properly instructed that there could be no conviction for "advocacy in the realm of ideas." [But in the West Coast case] the trial court [insisted] that all advocacy was punishable "whether in language of incitement or not."

The Smith Act, the Court said, does not prohibit mere "teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end." In drawing the fundamental distinction between "advocacy of abstract doctrine" and "advocacy directed at promoting unlawful action," the Court in fact applied the protection of the First Amendment to those who advocate as an abstraction the forcible overthrow of the Government, as contrasted with those who conspire to incite the attempt.

The effect of this part of the ruling, which draws a constitutional distinction between freedom of thought and

limitations on action, will be, as the "New York Times" puts it :

The Government will no longer be able to convict and punish members of the Communist Party for expressing a mere belief in the violent overthrow of government. It will have to prove that the prisoners at the bar actually intended to overthrow the Government by violence or to persuade others to attempt to do so. The danger will have to be very clear and present indeed.

The "Membership" Charge

Once the Court had ruled out the "organize" charge and narrowed the "advocacy" charge, it examined the evidence remaining against each of the fourteen Communists. The majority found there was no evidence left to justify a retrial for five of them and it therefore directed their acquittal. Two of these five are editors of the Communist Party's organ on the West Coast, the "Daily People's World." As for the remaining nine, the Court said that if the jury were to give the evidence "its utmost sweep" and resolve "all conflicts in favour of the Government," the Government might win a valid conviction. Accordingly, it ordered a new trial for the nine.

Chief Justice Warren, Justice Frankfurter and Justice Burton joined Justice Harlan (Justice Burton opposing the narrow construction of "to organize"). Justices Black and Douglas also concurred, but they went further to say that all fourteen should have been freed, on the ground that the Smith Act itself was unconstitutional (as they had said in the original Dennis case). Justice Clark dissented.

It is unsafe to predict what the Supreme Court's decision will be under the "membership" charge alone. Two convictions were obtained in Federal district courts in 1955 on the count of joining the Communist Party with the knowledge that it advocated forcible overthrow and appeals in these cases will come up before the Supreme Court in the next term. But it may be noted that the Court said, when dealing with the "advocacy" charge in the instant case that "it is difficult to perceive how the intent to overthrow [the Government by force] could be deemed proved by a showing of mere membership or the holding of office in the Communist Party."

What is this new look at the Smith Act due to? A competent observer offers the following explanation :

The decision reflects the great changes in the political climate, at home and abroad, since Chief Justice Vinson wrote the Dennis opinion. The country then was in great agitation over the dangers of Communist penetration and subversion, which had been stirred by the Hiss and the Gouzenko revelations of atomic espionage.

The doctrine of "clear and present danger" was the basis for the Vinson decision in the Dennis case. Now, however, the fears of 1951 have been largely

dissipated to be succeeded by a reasonable estimate of the domestic Communist danger—an estimate that certainly bears some relation to the low estate of the Communist Party here and the strength of the free world defences.

Defending the Supreme Court's decision against the criticism by Mr. Wyman, Attorney General of New Hampshire, that the decision has "set the United States

back twenty-five years in its attempt to make certain that those loyal to a foreign power cannot create another Trojan horse here," the "New York Times" wrote:

The Supreme Court's scrupulous affirmation and reaffirmation of the Bill of Rights is one of our country's greatest safeguards against Communism, as well as one of the most striking points of difference between ours and a Communist society.

DISCLOSURE OF SECRET INTELLIGENCE ACCUSED TO HAVE FULL OPPORTUNITY TO CONFRONT ACCUSER

The Supreme Court struck a heavy blow on 3rd June at the tradition of the Federal Bureau of Investigation, the secret intelligence service of the United States, to keep its files confidential unless it elects to disclose their contents. The files consist of all kinds of material culled from every imaginable source. They contain reports from paid and volunteer informers, even rumour and hearsay, as well as hard material painstakingly assembled by its own investigators. The Government has claimed that such material must be inviolate. For instance, the director of the F. B. I., testifying before a Senate sub-committee, said: "I have always maintained that the confidential character of our files must be inviolate. The public interest would not be served by the disclosure of their contents." He remarked that the information thus obtained could be used by criminals to defeat justice. And this claim the courts and Congress have in general admitted. They have recognized the importance of guarding the F. B. I. files against unauthorized scrutiny, as much for the protection of innocent people mentioned in the files as for reasons of security. But the Supreme Court has now ruled that when the Government puts F. B. I. informants on the stand in criminal cases it must give the defence attorneys records of reports made by such informants to the F. B. I.

The ruling came in the case of Mr. Clinton E. Jencks, a New Mexico labour leader. He was accused of lying when he filed a non-Communist affidavit (an affidavit stating that he is a non-Communist) as required by the Taft-Hartley Act. The Government's chief witnesses were the notorious Hervey Matusow and John Ford, both former under-cover informers on Communist activities. They testified that they had known Mr. Jencks as a Communist and recounted official positions they said he had held and Communist activities which he had participated in. But under cross-examination they said they could not remember exactly what they had told the F. B. I. in reporting on Mr. Jencks' activities. Thereupon the defence attorney asked the court to direct the Government to produce the reports of Matusow and Ford to the F. B. I. for inspection and cross-examination, so as to check whether the informants' verbal testimony in court was consistent with what they originally had told the F. B. I.

The trial judge refused to grant the request and on the basis of the informants' testimony convicted Mr. Jencks. The latter then appealed to the Supreme Court.

The Court ruled that Mr. Jencks' attorneys were entitled to inspect F. B. I. reports "to decide whether to use them in his defence" and because of this error in the trial reversed the conviction of Mr. Jencks and ordered a new trial for him. The judgment was delivered by Justice Brennan, one the newest appointees on the high court bench, and was concurred in by Chief Justice Warren and Justices Frankfurter, Black, Douglas, Burton and Harlan. Justice Brennan said that the "crucial nature" of the testimony of Matusow and Ford was "conspicuously apparent." The admission of both witnesses that they could not remember which reports to the F. B. I. were oral and which were written high-lighted the value of the reports for the purpose of showing a conflict between the witnesses' testimony in court and the reports that they had made to the F. B. I. It was "singularly important" for the defence to impeach the informants' testimony if possible. Justice Brennan quoted a Court of Appeals opinion in another case. This opinion said:

Since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecutions and then invoke its Government privilege to deprive the accused of anything which might be material to his defence.

The Court in the instant case says in effect: Once the Government calls its informers as prosecution witnesses in criminal cases, it must make the pertinent files available to the defence or else dismiss the charges; an accused person must be given full opportunity to "confront his accuser."

While agreeing with the majority opinion Justices Burton and Harlan expressed the view that a trial judge should pass on the question of relevancy of secret reports. Justice Clark, the lone dissenter, was of the opinion that the ruling would open up a veritable Pandora's box of troubles. He said:

Those intelligence agencies of our Government engaged in law enforcement may as well close up shop,

for the Court has opened their files to the criminal and thus afforded him a Roman holiday for rummaging through confidential information as well as vital national secrets.

The alarm expressed in the dissent appears to the "New York Times" "quite exaggerated," for the Court's decision applies only to cases in which the Government possesses statements or reports by witnesses "touching the subject-matter of their testimony at the trial." The Court, referring to a previous decision, points out that "the demand was for the production of specific documents and did not propose any broad or blind fishing expedition, nor was this a demand for statements taken from persons or informants not offered as witnesses." The task of the law-enforcement agencies, says the "Times," may indeed have been made more exacting; but the Court reminds all of us that "the interest of the United States in a criminal prosecution is not that it shall win a case but that justice shall be done."

Within a fortnight of the Supreme Court's ruling opening F. B. I. reports to defence attorneys came a decision of a Federal district court which in a case before it interpreted the ruling more literally than the Government could appreciate. The case concerned Mr. James R. Hoffa, vice-president of the Teamster Union, who was charged with having offered "a large sum of money" to Mr. Cheasty, an employee of the Senate committee investigating labour racketeering, in order to induce him to give the accused access to confidential committee documents. The prosecution case was that Mr. Cheasty, the F. B. I. informant, "played along," doing what Mr. Hoffa instructed, but later reported on Mr. Hoffa's activities to the Government.

The Attorney General had in this case, in accordance with the Supreme Court's judgment in the Jencks case, ordered United States attorneys and the F. B. I. to release only the signed reports of informants after they had testified in court as witnesses for the Government. But he was opposed to releasing "raw" reports by F. B. I. agents, files that contained hearsay evidence and statements incriminating persons other than the defendant. While turning over some confidential reports to the defence, he refused to give up secret reports of F. B. I. agents who had worked on the Hoffa case. He thought that the Supreme Court's ruling did not require the Government to let the defence attorneys see these secret reports.

But district judge Burnita Mathews on 15th June held that this was to put too narrow an interpretation on the Supreme Court's decision. She ruled that attorneys for Mr. Hoffa had a right to see all notes prepared by an F. B. I. informant as well as reports by F. B. I. agents.

This ruling, it is believed, has prompted the Attorney General to think of introducing a law to preserve the traditional sanctity of F. B. I. files. The director of the

F. B. I. argues that opening of his files will violate the pledge of confidence given to the bureau's informers and dry up its sources of confidential information.

S. Africa's Apartheid Legislation

Separate Universities Bill

The Separate Universities Bill of the South African Government, setting up separate university colleges for separate ethnic groups—one for Africans, one for Coloureds of mixed descent and one for Indians—and barring all non-white students from white universities, passed its second reading in the House of Assembly on 29th May. The bill will now be referred to a Parliamentary committee to hear evidence during the next seven months on "purely administrative aspects," the principle of university apartheid being supposed to have been already approved.

The measure is being widely condemned not merely because it compels whites and different non-white groups to receive education separately and because in the non-white universities the education offered will be vastly inferior to that in white universities, but also because it places the affairs of the former bodies under absolute control of the Government. As the "Times of India" says: "The Minister (of Native Affairs) has been empowered to nominate not only the University College Council, but even the University Senate, and indeed the Principal. It will be impossible for any non-white students to get admission into any one of the new universities without the personal approval of the Minister, who is also empowered to direct students to specific colleges. By no means the least drastic power vested in the Minister is the one enabling him to dismiss professors and lecturers found offending against any of a comprehensive list of rules, one of which forbids any criticism of any Government department." Perhaps the worst feature of the bill is, as the two open universities of Capetown and Witwatersrand have declared in their protest, that the non-white colleges are intended "to indoctrinate non-whites with the idea that they are permanently inferior to the whites," which it is easy to believe, since in speaking on another bill he stated explicitly that the relation between the whites and the Africans must ever be that between guardian and ward.

When the bill was being discussed, university students wearing black suits arrived at the gates of the Parliamentary buildings, carrying "the torch of academic freedom." About 100 students carrying placards reading "Open minds in open universities" and "Segregation means indoctrination" bowed their heads in silence for one minute. After the second reading vote, a petition signed by 200 prominent citizens of Capetown was presented to the Minister of Education, strongly condemning the bill. This was followed on 7th June by a solemn protest by gowned professors and lecturers of the Capetown Univer-

sity and students from the universities of Witwatersand, Natal and Rhodes, who paraded through Capetown to make a demonstration of their utter condemnation of the measure. The procession was led by the Chancellor of the Capetown University and former Chief Justice, Mr. Centliviers.

Native Laws Amendment Bill

This omnibus segregation bill has passed the House of Assembly and it now goes to the Senate. It empowers the Minister of Native Affairs to bar African Natives from churches, clubs, hospitals, schools, places of public entertainment or public meetings of any kind outside their own residential areas if he thinks their presence is undesirable. The most contentious clause in the bill is what is known as the "church clause" which authorizes the Minister to direct that no Native may attend a church or religious service on premises situated in a white area if he considers it will cause local residents any nuisance. The only concession made to the Opposition was that the bill stipulates that the Minister of Native Affairs may not issue a prohibitory order without the consent of the urban authority concerned. But the concession has no practical value since these urban authorities, being the nominees of the Nationalist Government, may be expected to be as thoroughly imbued with racial prejudice as the authors of the measure.

The most serious defect of the bill is that the determination of what is "undesirable" or (in the case of the churches) "a nuisance" is left to the judgment or whim of a single individual without any question of judicial review. The Minister of Native Affairs was brutally frank in explaining the provisions of the bill. He said it was of the greatest importance that different racial groups did not become socially integrated. He rejected any idea of a multi-racial community in South Africa and was convinced that if different races were allowed to intermingle, it would lead to the downfall of white civilization. He repeatedly stated that the contact between the white and the African should be in the capacity only of a guardian and a ward and said, he strongly disapproved of the present inter-racial welfare bodies. These bodies, he said, mentioning the Red Cross by name, must function strictly according to apartheid.

Apartheid in Nursing Profession

But as if all this is not enough, more restrictive measures are coming on with full speed. On 29th May the Minister of Native Affairs introduced a bill in the House of Assembly still further tightening the control over the Natives. It empowers the Minister to declare undesirable, and then deport, any African not born in South Africa, whose presence in the Union is by reason of his activities or any other ground deemed by the Minister not to be in the general public interest. This provision is in addition to an existing provision in law for the deporta-

tion of Africans outside South Africa, who are convicted of certain offences. In this bill also one man is given the power to make a decision concerning the rights of individuals, a decision which, not being capable of being carried to the courts, is final. That is, this man can deport persons settled in the country.

A colour bar is now being introduced in the nursing profession. A bill introduced on 11th June lays down that the Nursing Council, a statutory body controlling the profession, shall be an all-white body. Even at present the Council is in fact an all-white body, but it can have African, Coloured or Indian nurses on its roll. Now the membership of the Council is proposed to be restricted by law to white nurses only of the Nursing Association, to which all nurses must belong. The Council will be supported by advisory bodies to be formed of non-white nurses, but they will have no power. The advisory bodies will hold separate meetings and communicate their opinion on any question to the Council, but this opinion will be treated only as a recommendation, the final decision being left to the white nurses. The Nursing Council is empowered by the bill to prescribe different uniforms and badges and also different qualifications for different classes. The bill says that anyone who lets a white nurse work under a non-white person in any hospital or similar institution or in any training school will be liable to a fine of £200.

Demonstrations are being held on a large scale in protest against the Government's apartheid legislation. Torchlight processions are being taken in Johannesburg, Port Elizabeth, Bloemfontein and other centres, followed by baton charges and arrests.

The South African Institute of Race Relations in a statement points out the danger of following a racist policy. It says:

These bills aim at undermining all voluntary European association with Africans and canalizing all contact through public servants alone. Should this happen and should the tide of resentment now running continue, then we believe most sincerely that the outcome will be tragic for all in our country. With the means of voluntary communication increasingly restricted, the racial groups may become sealed off into entirely separate and hostile camps.

We call on our fellow-South Africans, particularly on the Europeans who exercise sole political power, to take heed before it is too late.

COMMENTS

Reform of Criminal Procedure SATARA JALMANDIR CASE

The action that the All-India Civil Liberties Council took in the Satara Jalmandir case, in which there was reason to believe that the accused were subjected to police torture, was thus described in the *Servants of India*

Society's current report while giving an account of the work of one of its members, Mr. S. G. Vaze, who is also Secretary of the A.-I. C. L. C. :

The effort made on behalf of the Council to obtain redress in the Satara Jalmandir case (in which it was shown by means of a 60-page Note that the police had used third degree methods against the accused with the co-operation of the magistracy) and to ensure that such cases would not recur in future, has borne some fruit. After the Bombay Government's refusal to institute an inquiry with a view to finding out whether the accused in this case were subjected to various forms of ill-treatment, as the Council's Note made out, the Council approached the Bombay High Court in the matter. The Court, after scrutinizing the records in the case, made representations to the Government suggesting to them that they might introduce some improvements in the existing practice and procedure followed by the police in the course of their investigational work, and the Government has adopted most of the suggestions made by the High Court. The High Court itself, it is understood, will issue certain instructions to the magistrates in this behalf, and when these are known it will be possible to judge the effectiveness of the new reforms in preventing abuse of authority on the part of the police and the magistrates. Thus, though no disciplinary action against the erring police and judicial officers in this particular case was taken, the Council has succeeded in securing reforms in the administration of criminal justice which, it is hoped, will go a long way in preventing a repetition of such cases of police torture in future.

India has "Mortgaged" herself in World Affairs MR. JOSEF KORBEL'S CRITICISM

Commenting on the stand India took in the U. N. Security Council on the question of Kashmir on the last occasion, that her commitment to hold a plebiscite as a means of finally determining the political status of Kashmir State was no longer binding or had been sufficiently fulfilled by the Constituent Assembly of Kashmir, Mr. Josef Korbel, former Chairman of the U. N. Commission on India and Pakistan, opines that no country in the non-Communist world would identify itself with this stand, and goes on to say :

Only the Soviet Union and Communist China seem eager to support it. Nikita S. Khrushchev declared in Srinagar, the capital of Kashmir, on December 9, 1955 : " The question of Kashmir as one of the States of the Republic of India has already been decided by the people of Kashmir. " Last month, while visiting Ceylon, Chou En-lai took a similar stand. By supporting India on Kashmir, Russia and China have in effect mortgaged Nehru's independent position in world affairs. India's ambiguous stand during the

U. N. debates on Hungary may well represent the fruits of this Moscow-Peking policy.

HABEAS CORPUS PETITIONS

Disaffection against the Government

Preventive Detention Order Quashed

Mr. Muhammad Ishaq Ilmi started from 23rd August 1956 criticising in his daily Urdu paper "Siyasat" certain passages relating to the Prophet Mahomed in a book entitled "Religious Leaders." The book, which was written by two American authors and had been in circulation in a number of countries since 1941, was republished by the Bharatiya Vidya Bhawan of Bombay in May or June 1956. The passages therein reflecting on the founder of the Muslim religion created much discontent among the Muslims of this country and early in September Mr. K. M. Munshi, the general editor of the Bhawan, publicly expressed regret for the publication and withdrew the publication from circulation, assuring everybody concerned that he himself had the highest regard for the Prophet of Islam. In spite of this the editor of the "Siyasat" continued to write about it, quoting objectionable passages from the book and making comments of his own. Mr. Ishaq Ilmi called in his articles for the proscription of the book and the resignation of Mr. Munshi, who was then Governor of the Uttar Pradesh.

This "Siyasat" propaganda was allowed to be continued for some ten days after Mr. Munshi's expression of regret, i. e., till 16th September, when Mr. Ishaq Ilmi was arrested by the police for a breach of an order under sec. 144, Cr. P. C., and remanded to jail custody. His application for bail was dismissed first by the magistrate and then by the sessions judge of Kanpur. He then moved the Allahabad High Court for bail, but while his co-accused were granted bail, the application of Mr. Ishaq Ilmi was said to have been withdrawn as he had already been detained on 5th October on an order by the district Magistrate under sec. 3 (1) (a) (ii) of the Preventive Detention Act on the ground that his activities were prejudicial to the maintenance of public order. Subsequent to this, proceedings were taken against him both under ordinary law and under the Preventive Detention Act. On 9th November the police submitted a charge-sheet against him under secs. 147, 353, 332, 356 and 188, I. P. C., but his trial was held up for one reason or another. In the meantime, i. e. on 8th October, he was served with a statutory notice under sec. 7 of the Preventive Detention Act and was placed before the advisory board which on 1st December confirmed the detention order. On 21st December the Governor, who happened to be Mr. Munshi, sanctioned his detention for a period of twelve months. Mr. Ishaq Ilmi then filed a petition for a writ of habeas corpus.

The petition was heard by Mr. Justice Bishambhar Dayal and Mr. Justice Takru at the Allahabad High Court. The Government Advocate took a preliminary

objection, viz. that the petition was belated, inasmuch as the petition was made not earlier than 23rd April 1957. The petitioner had sat tight over the matter, it was said, even after the advisory board had confirmed the detention order on 1st December 1956. It was argued that it was incumbent on the petitioner in a case of this kind to go at once to the High Court for a writ and that delay would disentitle him for a writ. Their Lordships, who delivered the judgment on 21st June, rejected this contention. They said the provisions of the Preventive Detention Act were serious inroads upon the fundamental rights of the citizen and they were not therefore prepared to refuse the relief asked for merely because, according to the Government Advocate, the petitioner should have first secured his release on bail if possible and then should have approached the High Court for his release from detention under the Preventive Detention Act. Their Lordships added that, having regard to all the circumstances of the case, the delay in filing the habeas corpus petition had been satisfactorily accounted for.

CREATING CLASS HATRED

Among the grounds for detention furnished to the detenu were two: (i) creating class hatred, and (2) fomenting disaffection of Muslims against the State. In regard to the first of these grounds, it was contended on behalf of the petitioner that the latter had merely exercised his fundamental right of free speech guaranteed by the Constitution, and that so long as he did not advocate the use of force or incite to violence no action could be taken against him under the Preventive Detention Act. The petitioner had in his articles advocated the maintenance of absolute peace and denounced the use of force in most emphatic language. It was no doubt alleged against him that, as a result of the writings in the "Siyasat," there were communal riots in several places in the State, but in these happenings outside Kanpur the petitioner was not involved; and the connection between the "Siyasat" articles and breaches of the order was not proximate as between cause and effect. The detention of the petitioner was thus mala fide and illegal.

Their Lordships rejected this contention. They said there was no gainsaying that the "Religious Leaders" contained some highly objectionable and provocative passages about the character and dignity of the Prophet Mahomed which were likely to injure and hurt—and in fact did injure and hurt—the feelings of the Muslims, including the petitioner. But they did not accept the limited construction on the restrictions which could be imposed on the right of freedom of speech which counsel for the petitioner had placed, viz. that unless a person advocated violence or other illegitimate courses he could not be placed under the Preventive Detention Act. In their opinion not only would advocacy of violence or incitement to use violence or resort to other illegitimate courses be considered good grounds for inferring that the

public order would not be maintained, but also expression of views which would normally tend to disturb public order, peace and tranquillity would be considered good grounds for that purpose. In other words, if the expression of views was tantamount to a veiled incitement to violence or was otherwise prejudicial to the maintenance of public order, then in their opinion it mattered little whether violence or incitement to use violence or resort to other illegitimate courses was openly advocated or not. What had to be seen in all such cases was the effect which the expression of such views, judged from ordinary standards, would have on the people for whose consumption those views were being expressed. If in the ordinary course of things such views would tend to disturb the public order, peace and tranquillity then no matter how guardedly they might be worded, the order of detention would be justified. A "rational" or "proximate" connection would then be established between the acts complained of and the apprehension of the breach of public order, peace and tranquillity resulting therefrom sufficient in their opinion to justify detention under the Preventive Detention Act. In such cases the freedom of speech and expression guaranteed by the Constitution was subject to the restrictions which had been validly placed upon it by the Preventive Detention Act in the interests of public order, peace and tranquillity.

In Their Lordships' opinion the passages published and the views expressed by the petitioner in his paper to which their attention had been drawn, would normally tend to excite the Muslims and to incite them into breaking the public peace, order and tranquillity even though in the same article they might have been advised not to lose their heads and not to do anything that would have the effect of jeopardising the cause for which the petitioner was making such strenuous efforts. It was a notorious fact of which they were justified in taking judicial notice that in cases in which communal feelings had been exploited and communal frenzy had been worked up, violence had invariably resulted sooner or later, whether such violence was advocated or not.

SPREADING OF DISAFFECTION AGAINST GOVERNMENT

In regard to the second ground, viz., that of creating disaffection against the Government, Their Lordships ruled that it was irrelevant and agreed with the contention of counsel for the petitioner, urged on the strength of Supreme Court decisions, that if some of the grounds mentioned in the notice under sec. 7 of the Preventive Detention Act were irrelevant or non-existent, the order of detention was bad, because the court could not judge how the mind of the detaining authority would have reacted to the remaining grounds. Their Lordships said that the petitioner in the case before them did no more than try to create disaffection amongst the Muslims against the Government. There was no allegation that in his efforts to create disaffection he either advocated vio-

lence or incited the Muslims to use violence or resort to other illegitimate courses or that violence took place as a result of the disaffection created amongst the Muslims against the Government. In paragraph 3 of the said notice (under sec. 7 which the court construed as a statement of facts and particulars on which the subjective satisfaction of the detaining authority was based) a number of violent incidents were stated to have taken place, but they were attributed to the communal feelings and passions roused by the petitioner by his writings and not to disaffection that the petitioner might have created against the Government. The spreading of disaffection against a party government had been repeatedly held to be the right of every citizen in a democratic government subject to the condition that there should be no advocacy of violence or incitement to use violence or to resort to other illegitimate means. The petitioner, in their opinion, could not be said to have done anything illegal and his detention, *inter alia*, on the ground of spreading disaffection against the Government, in the absence of anything to show that the said ground was of an "inconsequential nature," could not be upheld. They were, therefore, of the opinion that one of the grounds given in paragraph 1 of the notice (setting forth the grounds of detention) suffered from irrelevancy and for that reason the detention of the applicant under the Preventive Detention Act could not be upheld and the order in which it was passed must be quashed.

Their Lordships said that the petitioner was in detention under the ordinary law from 16th September 1956, and nothing had happened in the meantime to justify his further detention under the extraordinary provisions of the Preventive Detention Act. There would have been sufficient justification for the application of the said Act, if and when the petitioner was ordered to be released on bail for his alleged offences under the I. P. C. The detaining authorities would then have had ample justification for passing the detention order under the Preventive Detention Act and the said order would not necessarily have been a *mala fide* one, the reason for that being that the considerations which weighed with the courts when granting bail were different from the considerations which actuated the detaining authorities when they were called on to take preventive action in the interest of maintenance of public order, safety and communal harmony.

In the result the petition was allowed and the order of detention dated 5th October 1956 was quashed. The petitioner was directed to be set at liberty forthwith " unless he had to remain in custody under some other order of a competent court or authority. "

COMPANIES' CONTRIBUTIONS TO PARTY FUNDS

A Danger to Democracy

PREVIOUS SANCTION OF THE COURT SUGGESTED

The Bombay High Court had occasion recently, like the Calcutta High Court earlier (vide p. iv : 258 of the

BULLETIN), to caution Government against the danger inherent in permitting companies to make contributions to the funds of political parties. The Court was hearing an appeal filed by three shareholders of the Tata Iron and Steel Company against Mr. Justice Tendolkar's decision giving sanction to the company to alter its memorandum of association so as to enable it to make contributions to political parties.

In dismissing the appeal (21st June), Chief Justice Chagla and Justice Desai observed that the company felt that its safety, security, future expansion and profits were all linked up with the continuance of the Congress Government at the helm of affairs and that it should therefore see to it that that Government continued in power. There was nothing unlawful in the company making contributions to political funds just as individuals could, and Their Lordships could be guided only by legal principles and not by views as to politics and morality. They therefore agreed with the decision of the trial court.

But, Their Lordships remarked, it was with considerable uneasiness in mind and a sinking feeling in the heart that they approached the proposal of the company that it should be permitted to contribute to political parties. They said :

The democracy in this country, is a nascent democracy and it is necessary that this democracy should be looked after, tended and nurtured so that it should rise to its full and proper stature. Therefore, any proposal or suggestion, which is likely to strangle that democracy, must be looked at not only with considerable hesitation, but with a great deal of suspicion.

The company had already agreed that it would show all donations in the profit and loss account and the balance sheet. Their Lordships said it was essential that the electorate should know how a party was being financed and by whom and to what extent. Therefore, the company at the end of the financial year should publish in two leading newspapers a complete statement of the contributions made.

Wide powers had been conferred upon the companies to make contributions. Their Lordships wished to draw the attention of Parliament to the great danger inherent in permitting companies to make contributions to political parties. It was a danger which might grow apace and which might ultimately overwhelm and even throttle democracy in this country. From experience in a large number of cases, the contributions were made by the directors and the sanction of the company was merely a camouflage as either the directors controlled the company or some powerful person having a large number of shares did. Their Lordships therefore said that the least Parliament could do was to require these companies to get the sanction of the court before any large amount was paid to the funds of political parties. They therefore suggested that Parliament should pass remedial measures.

Their Lordships said that, on first impression, it would appear that any attempt on the part of anyone to finance

a political party was likely to contaminate the very springs of democracy. Democracy would be vitiated if results were to be arrived at not on merits, but because money played a part in the bringing about of the decision. The form and trappings of democracy might continue but the spirit underlying democratic institutions would disappear, they added. The history of democracy had proved that in other countries democracy had been smothered by big business and money bags playing an important role in the working, influencing and shaping of democratic institutions. It was, therefore, the duty not only of the politicians and citizens but also of the court of law, to the extent that they had power, to prevent any influence being exercised upon a voter which was improper or which might be looked at as corruptive influence. While the integrity of the voter and his representative should be safeguarded, they had also to consider the way the world had developed and democratic institutions had evolved. In the modern countries, they were dealing with millions of voters, and large organizations, political parties, and modern methods of carrying on propaganda required money, which normally was obtained by the parties from their supporters and sympathisers. But the danger of the corrupting influence of money should not be allowed to increase and must be strongly curbed.

INCOME-TAX ACT

"Agricultural Income"

EXEMPT FROM INCOME-TAX

Raja Benoy Kumar Sahas Roy, who owns about 6,000 acres of forest land grown with sal and piyasal trees, was assessed in 1944-45 to income-tax but he claimed that the gross receipt of Rs. 51,788 from the sale of trees on the land was not assessable as it was agricultural income within the meaning of sec. 2 (1) of the Income-Tax Act and as such exempt from income-tax under sec. 4 (3) (viii). The income-tax authorities were of the opinion that it was not agricultural income but was income derived from the sale of jungle produce of spontaneous growth. The Income-Tax Appellate Tribunal referred the question to the High Court, who held that as considerable amount of human labour and skill was applied year after year for keeping the forest alive and also for reviving the portions that were denuded as a result of destruction by cattle and other causes, the activity of the assesses fell within the term "agriculture" and the income derived from it was not liable to tax.

The Commissioner of Income-Tax, West Bengal, preferred an appeal to the Supreme Court, which dismissed the appeal on 24th May, the judgment being delivered by Mr. Justice Bhagwati. The main question for decision was whether the income derived from the sale of trees in a forest not grown by the aid of human skill and labour but on which forestry operations had been

carried out involving skill and labour was agricultural income and so entitled to exemption from tax under sec. 4 (3) (viii).

The Supreme Court made an exhaustive survey of the judgments dealing with the meaning of the term "agriculture" and found that there was a considerable difference of opinion as to whether "agriculture" included only operations connected with the cultivation of land or had a wider meaning so as to include all activities connected with land such as the breeding of sheep and cattle, poultry farming, the operation of mowing and reaping of crops and other processes subsequent to the sowing and tilling of the land.

The Court found that it was not able to accept the extended sense in which the term had been used in some cases. It stated :

We are of opinion that the mere performance of these subsequent operations on the products of the land where such products have not been raised on the land by the performance of the basic operations of cultivating a field would not be enough to characterize them as agricultural operations.

In order to invest them with the character of agricultural operations these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land.

The Court held that only this integrated activity could be termed "agriculture" and not the latter alone. In the present case, however, it appeared that the original forest was about 150 years old and much labour and skill had been spent in growing new trees. The whole of the income derived from the forest could not be treated as non-agricultural income, and in view of the respondent's figure of Rs. 17,000 as expenditure as against the income of over Rs. 51,000, a substantial part of the income must have been derived by the proprietors themselves. The income-tax authorities, however, had not examined what part of the income was from trees which were of spontaneous growth and what part of the income was from trees cultivated by the respondent.

In view of this there was not enough material before the Court to interfere with the judgment of the High Court and the appeal was accordingly dismissed.

ART. 14 AND ART. 16

Communal Considerations in Employment

KASHMIR GOVERNMENT'S ORDER QUASHED

On November 8, 1956, the Government of Kashmir State passed an order, with the object of securing "rationalization of work" and increasing the staff of the Audit and Accounts Department, making provision for direct recruitment of persons, including officials of the Audit Department, to posts of superintendents and senior

assistants so as to remove "communal disparity" in the Department. Subsequently 12 people were appointed to these posts by the Accountant-General. Later 12 other employees of the Department challenged the Government's order and the action of the Accountant-General on grounds that the 12 respondents did not possess the minimum qualifications and were junior to the petitioners whose claims had been "brushed aside on communal considerations."

Mr. Justice Jialal Kilam of the Kashmir High Court on 21st June allowed the writ petition of the 12 employees, holding that the Government's order and the subsequent order of the Accountant-General violated Art. 14 relating to equality before law and Art. 16 relating to equality of opportunity in public employment. He ordered that the 12 petitioners be appointed to posts to which 12 of the respondents had been appointed.

Delivering the judgment, Mr. Justice Kilam said :

Evolution of common citizenship is the sheet anchor of our Constitution. The Constituent Assembly of our State was fully alive to this constitutional requirement and has therefore incorporated various provisions in our Constitution for securing this purpose.

The State has been directed to take upon itself the removal of fissiparous tendencies among people and also to foster a spirit of brotherhood among people. In sec. 25 of the Jammu and Kashmir Constitution it has been laid down that the State shall combat ignorance, superstition, fanaticism, communalism, racialism, etc., and shall seek to foster brotherhood and equality amongst all communities under the aegis of the secular State. Needless to add that the spirit of brotherhood can be fostered by treating all citizens equally, not only before law but in all walks of life.

If the Cabinet order had expressed anxiety for the really backward classes and even made reservation for them in the matter of appointments, no fault could be found in it; on the contrary it says that it is meant to remove communal disparity—to give relief to members of a community irrespective of the fact whether they belong to the backward classes or not. This order and the subsequent action of the Accountant-General has therefore clearly violated Article 16, which lays down that "no citizen shall on the ground of his religion, caste or race, etc., be ineligible for or discriminated against in respect of any employment or office under the State." Really, a capable person belonging to the so-called over-represented community can stand ignored simply because he belongs to a particular community and his claims shall stand brushed aside in the face of this Cabinet order. This is discrimination pure and simple and goes clearly both against the letter and spirit of the Constitution.

NOTES

Lawyers and Communism

Past Membership no Bar to Admission to the Bar

Good moral character and loyalty to the states and Federal Governments are the tests which states in their jurisdictions apply in determining whether lawyers who apply for enrolment should or should not be admitted to the legal profession. State boards of bar examiners decide whether applications of lawyers for admission to the bar should be granted and the applicants should be given a licence to practise law. Two such applicants were denied a licence on the ground that they belonged in the past to the Communist Party, which in the states' opinion was evidence of lack of moral character and loyalty. The states' courts upheld the denials. But on certiorari the Federal Supreme Court on 6th May decided that no one could be refused a licence solely on the ground of past membership in the Communist Party, and reversing the judgments of the state courts, remanded the cases to state boards of bar examiners for proceedings in conformance with its opinion.

In the case of Mr. Rudolph Schware of New Mexico the record showed that he had been a Communist but had quit the Party in 1940. Mr. Justice Black, who wrote the opinion of the Court, upheld Mr. Schware's contention, with the concurrence of all other Justices, that the state's denial of a licence for the practice of law had deprived him of due process of law guaranteed by the Fourteenth Amendment and ruled that the fact of past membership alone was not evidence of lack of the "good moral character" that was a prerequisite to admission to the legal profession. He said :

We conclude that his past membership does not justify an inference that he presently has bad moral character. . . . There is nothing in the record that gives any indication that his association with the party was anything more than a political faith in a political party.

The other case was that of Mr. Raphael Konisberg of California, who, it appeared from the testimony of a former Communist at a California legislative investigating committee, had been attending in 1941 meetings of a Communist cell. At hearings before the state bar examiners, Mr. Konisberg had been asked many questions about his political affiliations and beliefs. But he declined to answer them on the ground that they were an intrusion into his rights of speech and belief protected by the Federal Constitution. His application for admission to the bar was rejected on the grounds that he had failed to demonstrate that he was a person of good moral character and that he had failed to show that he did not advocate overthrow of the Government by force and violence.

The Supreme Court's ruling in this case was the same as that in the Schware case, but this case involved a feature which was not present in the other one. This feature was that the state maintained that Mr. Konisberg's constitutional claims had not been presented in the manner described in the state supreme court's rules and hence there had been no rejection of his constitutional

claims, as Mr. Konigsberg had contended. Because of this feature there were dissents from three Justices who held that the matter had better be referred to the state supreme court. The majority, however, held that the "consequences for Mr. Konigsberg" took the case "out of the ordinary run of civil cases" to which the California court's rules would apply. Justice Black said: "The constitutional issues are before us and we must consider them." He referred to the fact that Mr. Konigsberg had served in the second World War to prove his loyalty and said that there was no evidence that he had ever been "convicted of any crime or has ever done anything base or depraved," and that even if Mr. Konigsberg had been a Communist in 1941, as alleged, "the mere fact of membership would not support an inference that he did not have good moral character." Referring to some of the editorials which Mr. Konigsberg had written, in one of which the Supreme Court's opinion in the Dennis case under the Smith Act was criticized, Justice Black said:

We do not believe that an inference of bad moral character can rationally be drawn from these editorials. Because of the very nature of our democracy, such expressions of political views must be permitted. Citizens have a right under our constitutional system to criticize Government officials and agencies. Courts are not and should not be immune to such criticism.

Justice Black concluded:

A bar composed of lawyers of good moral character is a worthy objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important to society and the bar itself that lawyers be unintimidated — free to think, speak and act as members of an independent bar.

Anti-Obscenity Laws Upheld

Decisions Provoke Many Dissents

The U. S. Supreme Court considered three obscenity laws, one of them Federal and two state statutes, on 24th June. The Court sustained the constitutionality of all of them, though far from unanimously. One of the state laws it passed on was that of New York state, which prohibits the sale and distribution of obscene matter and sanctions seizure and destruction of such material. Justice Frankfurter, who wrote the Court's opinion, held that the state law did not violate the due process clause of the Federal Constitution. Chief Justice Warren and Justice Brennan pointed out that the New York statute suffered from a "fatal defect" in that it failed to provide for a jury trial. The other dissenters took a wider ground. Chief Justice Warren said that the impugned statute authorized the police to seize books summarily which, in their opinion, were unfit for public use because of obscenity and then obtain a court order for their condemnation and destruction. In the absence of a prior judicial determination of illegal use of books, the Chief Justice said, their destruction should not be permitted. He declared: "It savours too much of book-burning." Justices Black and Douglas held that the provision of the New York law for an injunction against sale or distribution of books held to be obscene prior to a hearing was "prior restraint and censorship at its worst."

The other statutes, the validity of which was upheld by the Court, were: (1) a statute of California forbidding the keeping for sale or advertising obscene and indecent books, and (2) a Federal statute that prohibits the mailing of indecent literature. The writer of the Court's opinion

in these cases was Justice Brennan who dissented from the majority opinion in the New York case. Referring to a large number of books being published that deal with the sex problem, he remarked that "sex and obscenity are not synonymous." Material dealing with sex becomes obscene, he said, only when it appeals to "prurient interest," and added that literature that incites to "impure sexual thoughts" or is related to "overt anti-social conduct" cannot be accorded the protection of the First Amendment. The Chief Justice concurred in the result, but felt that the language used by Justice Brennan was so broad that it "may eventually be applied to the arts and sciences and freedom of communication generally." He based his concurrence on the conclusion that it was constitutional to punish defendants who "were plainly engaged in the commercial exploitation of the morbid and shameful (public) craving for materials with prurient effect." Justice Harlan concurred in the decision relating to California's penal code because the case involved human conduct that he said was left by the Constitution to state regulation, but he dissented from the decision relating to the Federal statute. Justices Black and Douglas dissented in both cases. Justice Douglas made the following comments for himself and Justice Black:

By these standards punishment is inflicted for thoughts provoked, not for overt acts or anti-social conduct. . . . This issue cannot be avoided by saying that obscenity is not protected by the First Amendment. The question remains, what is the constitutional test of obscenity?

The standard of what offends "the common conscience of the community" conflicts, in my opinion, with the command of the First Amendment that "Congress shall make no law abridging the freedom of speech or of the press." Certainly that standard would not be an acceptable one if religion, economics, politics or philosophy were involved. How does it become a constitutional standard when literature treating with sex is concerned?

Government should be concerned with anti-social conduct, not with utterances. Thus if the First Amendment is to mean anything in this field, it must allow protests even against the moral code that the standard of the day sets for the community.

Security Probe in U. S. A.

The Commission appointed by Congress in 1955 to study violations of civil liberties and individuals rights in the Federal Government's internal security system has produced a report which, though claiming to provide more adequate safeguards for individual rights than at present, tends in effect to tighten and extend existing procedures and thus is out of tune with the greater concern for civil liberties now felt and expressed in a succession of decisions by the Supreme Court. A commission of the Association of the Bar of the City of New York recommended last year the curtailment of the security system, confining it to sensitive jobs, and the recommendation was hailed by the public; this commission on the other hand widens the scope of the system to a large degree, which leads the "New York Times" to say that the commission's recommendations "tend to revert to the old stress on ultra-security" that one had hoped would be given up for good. One of the recommendations that will cause great alarm is in regard to the admission of evidence obtained by wire-tapping in cases of subversion. The commission notes that a great deal of vital

information on the subversive operations of both individuals and groups has been uncovered to the wire-tapping technique, but because under present law it cannot be used in federal prosecutions for violations of the security statutes, the commission proposes that legislation be passed legalizing such evidence.

The step in the direction of offering increased safeguards for the rights of individuals that the commission recommends consists in its proposal that all persons subjected to loyalty investigations would be permitted to confront their accusers and cross-examine them "whenever it can be done without endangering the national security." It appears that the agency holding the derogatory information will have the authority to decide on bringing forward those who supplied it. The commission also recommends a certain measure of "de-classification" of official information, i. e., removal of restrictions on the disclosure of certain classes of information, because the commission believes that these restrictions retard scientific and technological progress. It therefore proposes to abolish the "confidential" category now in use, retaining the higher "secret" and "top secret" categories. But on the whole the commission's recommendations reflect the security mania which all well-wishers of the U. S. A. deplore.

Intensified Terror Campaign in Hungary

An order was issued by the puppet Government of Hungary on 15th June for the creation of "people's courts" throughout the country to fight "counter-revolution." One such was organized in the Supreme Court recently. Its chief function seems to be to stiffen sentences handed down by lower courts for offences committed during the revolt. In more than one case, prison terms have been transformed into death sentences. It should be noted that some judges have already resigned in protest against the travesty of justice that courts are under compulsion to dispense in treason trials. Some others have been dismissed for displaying leniency. At Miskolc, a centre of fierce activity last autumn, out of 21 defendants 14 were recently sentenced to death and executed, it is believed, the same day. Several other places have the same story to tell, for instance, Magyarovar which became notorious during the rebellion because of the terrible massacre which the A. V. H., the hated secret police, inflicted on a crowd of peaceful demonstrators, of whom 80 were killed and about 150 wounded, many of them women and children. Although only a handful of executions have been announced (the Government's figure is 76), cautious estimates of the regime's victims range from 3,000 to 5,000. And this in spite of the fact that Kadar had promised an amnesty last November.

The treason trials are only a part of the story of current oppression. There is evidence that prisons and internment camps are once more filled to overflowing. A new wave of arrests started after the brief session of Parliament last month. It is officially admitted that the 12,700 prisoners released earlier have been re-arrested, but many more are being thrown into forced labour camps and internment camps, and to accommodate them, new camps are being established besides re-opening those that had been closed down during the brief period of political amnesty. Careful estimates indicated a minimum figure

of 40,000 and a maximum of 60,000 persons who are being subjected to forcible detention for alleged political crimes. A terror campaign said to be worse even than the repressions of the Rakosi era (Matyos Rakosi was the Stalinist leader of the Hungarian Communist Party until the summer of 1956) is being pursued to keep an embittered population down. The increased repression of recent months is accepted as confirming the Communist conviction that only terror can keep Communism in power.

It is remarkable that even the Polish Writers Union on 7th June adopted a resolution condemning a purge of Hungarian writers (like Istvan Eorsi, a poet, who was sentenced to five years in prison) as action "against the essential rights of man."

Non-Disclosure of an Informant's Identity

WHERE DISCLOSURE IS HELPFUL TO THE DEFENCE

Albert Roviario was indicted on a charge of having violated the Narcotic Drugs Act by selling heroin in glassine containers to one who was described merely as "John Doe" and transporting it, knowing it to be unlawfully imported, and during the trial he sought to learn John Doe's identity, which the Government refused to disclose on the ground that John Doe was an informer. The district court, sustaining the privilege claimed by the Government, convicted him on both counts.

On certiorari the Supreme Court on 25th March reversed the judgment, pointing out that, as to the count of sale of heroin, the informer was a participant in and a material witness to the sale, and, as to the count of transporting, the informer had taken a material part in bringing about the possession of the heroin by Roviario, was the sole participant (together with Roviario himself) in the transaction charged and was the only witness in a position to amplify or contradict the testimony of the Government witness on which the conviction was based. The Court held that the district court committed error in allowing the Government to refuse to disclose the informer's identity. It said:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The scope of the privilege is limited by its underlying purpose. ... Where the disclosure of an informant's identity, or of the contents of his communication, is relevant and helpful to the defence of an accused, or is essential to a fair determination of a cause, the privilege must give way. In these circumstances the trial court may require disclosure and, if the Government withholds the information, dismiss the action.