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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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The Fourth Session

The fourth session of the All-India Civil Liberties Conference, held in Bombay on 20th and 21st December, was a great success. From the view-point of organization it left nothing to be desired, and the credit of this goes mainly to the dynamic leadership of Mr. N. M. Joshi, a veteran in the cause of civil liberty, who did not spare himself and would not let any of his co-workers spare themselves in making proper arrangements for the conference. The number of delegates was not large, but it was as large as one could reasonably expect for a gathering of this nature. However, the 125 delegates who assembled were all keen men, with a full understanding of the problems that were dealt with. And it was a thoroughly representative gathering, all non-Congress parties taking active part in it. Unfortunately, we have now come to a pass when no Congressman of any standing, after the ban put by Dr. Pattabhi Sitaramaya as Congress President, can be depended upon to attend a gathering called upon to protest against the coercive policies of the Congress Governments without forfeiting his position in the Congress organization. But all other parties were fully represented at the conference, and represented by leading men. For instance, the Socialist Party, which now goes by the name of the Praja Socialist Party, was represented by Messrs. Ashok Mehta and M. Harris; the Communist Party by Messrs. A. S. R. Chari and D. Latifi; the Radical Rationalists, at whose head is Mr. M. N. Roy, by Miss Maniben Kara and Mr. V. B. Karnik; the Hindu Mahasabha by Mr. Jamnadas Mehta; and the Liberal Party by Mr. D. G. Dalvi, Principal J. R. Gharpure, Mr. M. D. Altekar and Mr. Naushir Bharucha, Leader of the Opposition in the Bombay Assembly.

These groups differ widely in the political policies espoused by them, and indeed some of them are poles asunder from one another in their political views. But the need for defending civil liberties against the onslaughts made by a Government gripped by hysterical fear for the safety of the new-born Republic brought them on one platform, and there they acted in perfect harmony. This harmonious working together of disparate groups is a new experience in the civil liberties movement. For only as late as last year, instead of striking a blow for their common objective against their common

enemy, they were found occasionally to strike a blow at one another, thus making it easy for the Government to lay its hands upon each of them in turn. But now they know better; they have come to realise that unless they make a concerted effort to save civil liberties from a wholesale encroachment on the part of a Government seen to be always apt to act in panic India's democratic structure would be but a mockery, and that in spite of the attainment of independence real freedom would be as far as ever. Mr. Ashok Mehta, in moving the resolution relating to preventive detention, avowed this faith in the coming together of all political parties for the preservation of the common heritage of civil liberties and adjured all others to share that faith and steadfastly adhere to it, whatever be the differences that might divide them on other matters. And Messrs. Jamnadas Mehta and Chari, who followed, heartily supported this plea. They pledged themselves not to bring in their politics at all where civil liberty was the question at issue but to stand together when the high principles of freedom and individual rights were in danger of being subverted by a fear-ridden Government. That has always been an article of faith of the movement represented by the conference; it is set out in its creed — that it is free from all political affiliations; that it is above all politics. But its smooth working has not always been possible in the past, on account of the narrowness of vision of some of those who took part in the movement. And if any single achievement of the fourth session of the conference has to be mentioned, which surpasses all other achievements, we for our part would proudly mention this solidarity, which hereafter will be wholly unbreakable, of all diverse civil liberty forces. They can no longer be defeated in detail by a panicky and oppressive Government, which in a one-party system appears all-powerful at the present time.

The speech of the Chairman of the Reception Committee, Mr. N. M. Joshi, was, as it should be, a simple welcome speech, but it throws a withering light on the attitude which Congress leaders have come to assume towards civil liberties since their party came into power. Congressmen were the worst sufferers under the repressive policy which was adopted under British rule; then they were the most ardent supporters of the civil liberties movement. Mr. Nehru established a Civil Liberties Union

for the purpose of repelling the attacks on civil liberties which were current at the time. The Union in fact came to nothing ; it ceased to function after it came into being. Actual work was then done only by the Bombay branch of the Union, of which Mr. Joshi was Secretary. But when fortune favoured the Congress and it took the reins of office, its attitude to civil liberties underwent a complete transformation. Protests against invasions of civil liberties became protests against the Congress itself, and even Mrs. Sarojini Naidu, who herself had large vision and was not a hide-bound Congress partisan by any means, was constrained to give up her Presidentship of the Bombay Union, for no other reason than that the Union continued to be as loyal to civil liberties when the Congress was in control as under the British regime. To the Congress leaders civil liberty is worth preserving when the attack on it comes from other quarters, but not when the attack is made by Congress rulers themselves. It came home to Mr. Joshi and all those who worked with him more than ten years ago, that even when the Congress was only provisionally installed in the seats of power, it would pay no heed to the civil liberty of others. This is a lesson which is now being daily burnt on the minds of all political non-conformists.

We have furnished copies of the address of the President of the conference, Dr. N. C. Sen Gupta, to all our readers, and it is unnecessary for us to speak of its contents. It contains of course a scathing condemnation of the Nehru Government, but the most notable feature of the address is the philosophical flavour about it, hardly to be found in the speeches of the presidents of political conferences. The address is that of an eminent jurist and it may well be delivered from the forum of a political science conference, so thoroughly detached and analytical it is. Freedom of Person and Freedom of Expression,

the only two subjects dealt with at length by Dr. Sen Gupta, because they are the freedoms most violently attacked by the Government at present, have been given exhaustive treatment in the address. Such treatment is something to study and ponder deeply at leisure ; the more cogently reasoned it is, the more trying it is likely to be in listening to. And it speaks volumes for the keenness of intellect of the audience gathered at the conference that they not only listened to it patiently but could appreciate all the fine points it contained ; and at the end they all felt that they could have had more of it. The fact was that the audience, though small, consisted of persons profoundly interested in the subject. The speeches made in support of the resolutions were of a very high order too. We can honestly say that seldom at any gathering are speeches of such calibre made. There was very little of fireworks in them, which was all to the good ; it was the cold logic of facts that created the deep impression they did. It is in respect of the quality of the speeches made and the earnestness and the knowledgeable-ness of those who listened that we feel entitled to say that the conference was a great success.

The conference represents a movement in which the active participants at present are but a handful. And if the Government has regard only to numbers, it has very little to fear from it. But if the opinions of thoughtful persons, not unconcerned with the claims which the State can legitimately make upon its citizens and always willing to make all reasonable allowance in the matter, are to be given any weight as to how best to maintain a balance between the sacred rights of individuals and the security of the nation, a problem which often faces an administration in dealing with what is suspected to be internal subversion, this is a movement which the Government can hardly afford to ignore.

CONSTITUTIONALITY OF RACIAL SEGREGATION IN PUBLIC SCHOOLS

WILL THE "SEPARATE BUT EQUAL" DOCTRINE BE OVERTHROWN ?

In five cases coming from four states—South Carolina, Virginia, Delaware and Kansas—and the District of Columbia (which is under the Federal Government)—the question has been squarely raised before the Supreme Court of the United States, whether the segregation between the Negroes and the whites that is practised in public schools there is valid. The Supreme Court decided towards the close of the last century that such segregation could be legally established provided equal facilities were provided in the separate schools maintained for the children of different racial strains. But now the Court is invited to overthrow that doctrine and rule that segregation on the basis of race and colour, even in spite of equality of opportunities for each race, is *per se* unconstitutional, and the decision that will be rendered in these cases will affect thirteen other states which impose racial segregation in

their public schools. It will thus be seen that the decision (which, however, will take several months in being announced) will have a far-reaching effect, covering an area in which nearly 2,400,000 Negro children are at school.

Of these cases that from South Carolina has peculiar characteristics in that segregation is mandatory in that state under its constitution, which says :

Separate schools shall be provided for children of the white and coloured races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.

The original suit in this case was filed on behalf of 67 Negro children and their parents. They asked an injunction enjoining school officials in Clarendon County from "making a distinction on account of race and colour

in maintaining public schools for Negro children which are inferior to those maintained for white children." The suit was filed in May 1950. In June 1951, a three-judge federal court handed down a two-to-one decision upholding segregation but ordering the school board, on the lines of the U. S. Supreme Court's decision of more than fifty years ago, to furnish Negroes with "educational facilities, equipment, curricula and opportunities equal to those furnished white pupils." In accordance with this ruling, South Carolina has, by levying a sales tax and floating a 75 million dollar loan for the purpose, framed a programme designed to end admitted inequality in facilities. The Negroes, defeated in the lower court, have brought the case to the supreme tribunal as appellants.

And now the attack is not on inequality of educational opportunities, but on the principle of segregation itself. Mr. Thurgood Marshall, Negro counsel for the National Association for the Advancement of Coloured People, a militant body fighting for Negroes, took his stand on the Fourteenth Amendment to the Constitution adopted in 1868 after the Civil War for the express purpose of preventing the southern states from abridging the rights of their newly liberated Negro citizens and enacting legislation that would all but nullify the Emancipation Proclamation. The Amendment forbids the states to pass or preserve any statutes that abridge "the rights or immunities" of any citizen. It also provides:

No state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Any statute, Mr. Marshall said, which imposes segregation by race in the public schools breaches the Constitution and must be pronounced invalid, however well equipped the Negro schools might be. He asserted that the impact of segregation on the minds of Negro children, making them feel that they were of an inferior race, was far more serious than physical facilities, teaching standards or curricula of the schools. "The humiliation the children go through will affect their minds as long as they live," he said. The challenge to segregation he made before the Supreme Court is the broadest yet made.

Equally broad is the challenge which is made in the other cases, though in the states where the cases have arisen segregation is not ordained by their respective constitutions as in South Carolina. In Topeka in the state of Kansas, where segregation prevails in the grade schools, Negro pupils joined in a suit asking invalidation of the segregation statute. Here, too, a federal district court upheld the legality of segregation, though it acknowledged in its opinion that "segregation of white and coloured children in the public schools has a detrimental effect upon coloured children." This ruling about the validity of the principle of segregation is now being challenged in the nation's Supreme Court, in which Mr. Robert Carter, a Negro lawyer, who agreed with the Assistant Advocate

General of Kansas that educational facilities in that state were equal for each race, maintained that segregation as such "denies Negro children equal protection of the law" and must on that ground be prohibited.

Thus it will be seen that the nation's high court is being called upon by the anti-segregation forces to overturn its past and to rule, contrary to its former decisions, that segregated schools, however excellent, put a stamp of inferiority on Negro children, denying the mandate of the Fourteenth Amendment. It is being asked to abandon the "separate but equal" doctrine first laid down in *Plessy v. Ferguson* (1896) in the matter of public transportation and extended in *Cumming v. County Board of Education* (1899) to public education. The *Cumming* case established the principle that segregation in the schools did not violate the Constitution so long as equal facilities were set up for pupils of each race. Latterly, the Supreme Court has been giving such an exacting and rigid interpretation to "equal" as virtually to force abandonment of segregation upon the states at the graduate and professional level. But such abandonment, if and when it comes, will be by an indirect process. Now the demand is being made that the states be compelled by judicial fiat to give up segregation altogether at all levels. A ruling is invoked to the effect that segregation in itself involves inequality and discrimination between citizens within the meaning of the Fourteenth Amendment, and that therefore "separate but equal" cannot stand. In the *United States v. Cruikshank* (1876) Chief Justice Waite wrote for the Court, the Fourteenth Amendment "adds nothing to the rights of any one citizen against another. It simply furnishes a federal guarantee against encroachments by the states upon any fundamental rights which belong to every citizen as a member of society." To-day the Court is being asked to say that it is a Negro citizen's "fundamental right" to enrol his child in any public school he likes, which no state can take away.

The case of the District of Columbia complicates the argument of the appellants in the cases now before the Supreme Court, for this District is not a state; it is federal territory. And the Fourteenth Amendment's prohibition of discrimination does not extend to it. Congress is the law-making body for the District, and the Fourteenth Amendment applies only to the state legislatures. Thus, segregation or non-segregation is a mere matter of legislative policy in so far as this area is concerned and not a matter of constitutional rights. Moreover, segregation was established in the District of Columbia in 1866 and it was this very Congress which drafted the Fourteenth Amendment and submitted it to the states. From this the conclusion may be drawn, as is drawn by pro-segregationists, that Congress did not intend that the Amendment should restrict the right of the states to enforce public school segregation if they wanted to. The President-elect's announced determination to abolish all segregation in the capital leads many to believe that the District of Columbia

will soon be free from it, but if the Constitution is to forbid it, obviously a constitutional amendment will be required.

From the queries the Justices made in course of the arguments it would appear that the Court will be divided on the question. There are also practical reasons why the Court may avoid taking a forthright position on the issue of principle. It is well known that the southern states are already considering ways in which an anti-segregation decision of the Supreme Court could best be circumvented. In Georgia, for instance, a law has been passed under which funds could be cut off to any publicly supported institution of whites that would admit Negroes. South Carolina adopted in November an amendment to its constitution deleting the requirement that the legislature provide free public schools for all children. The amendment will not take effect until approved by the legislature, and the leaders are holding out the threat that the

legislature will be asked to approve it if the Supreme Court rules against segregation. In fact the Governor of the state has announced that he would rather abolish the system of public education than submit to segregation. In case segregation is invalidated, he would like schools to be turned over to private institutions for operation. The Supreme Court, even if it were unanimous for mixed schools, would be faced with a situation similar to that when President Jackson warned Chief Justice Marshall, saying, "Mr. Marshall has made his decision; now let him enforce it." In passing it may be said that education has progressed considerably during the last fifty years in the deep South, where Negroes constitute 29 per cent. of the population. In 1900 just half the children went to school; to-day 90 per cent. attend. Half a century ago, a little more than half the Negro population was literate; to-day, nearly 95 per cent. are literate.

LOYALTY OATH ACT INVALIDATED AS VIOLATIVE OF DUE PROCESS OF LAW

BALANCING NATIONAL SECURITY WITH THE INDIVIDUAL'S CONSTITUTIONAL RIGHTS

On 15th December the United States Supreme Court held unconstitutional the Loyalty Oath Law of the state of Oklahoma requiring state employees to take a loyalty oath within fifteen days after the statute became operative on 9th April 1951. The law requires each state employee to swear that, among other things, he had not been, within the previous five years, a member of any "group whatever which has been officially determined by the United States Attorney General or other authorized public agency . . . to be a Communist front or subversive organization."

Seven teachers (Robert M. Wieman and others) in the Oklahoma Agricultural and Mechanical College at Stillwater refused to take the oath, and one Paul W. Updegraff, as a taxpayer, brought suit to enjoin payment of their salaries by the college's Board of Regents. An injunction was granted and sustained in the state courts, the supreme court of the state ruling that the teachers who were discharged had no constitutional right to state employment except on terms prescribed by the state. The teachers thereupon brought the case to the Supreme Court of the nation, and this Court set aside the ruling of the state's supreme court.

The principal arguments of the teachers were that the injunction impaired their contracts, which contained no oath requirement; took their property, meaning their jobs, without due process of law; and constituted a bill of attainder, which is a legislative act inflicting punishment without a judicial trial.

The U. S. Supreme Court's verdict was unanimous; only Justice Jackson who did not hear the arguments in the case did not participate in the decision. Justice Clark who wrote the opinion of the Court held that the

statute violated the provision of the Fourteenth Amendment which says that no person shall be "deprived of life, liberty or property without due process of law," and that the teachers who were discharged for a refusal to take the oath were deprived of "property"—that is, of the salaries guaranteed to them under previously signed contracts. It was emphasized in the decision that the state supreme court had not taken into consideration whether membership in a subversive organization had been undertaken knowingly or innocently. Membership "may be innocent," Justice Clark said, adding: "A state servant may have joined a proscribed organization unaware of its activities and purpose. In recent years, many completely loyal persons have severed organizational ties after learning for the first time of the character of groups to which they had belonged."

He cited the case of *Garner v. the Board of Public Works of Los Angeles* in which the issue was an ordinance requiring all city employees to swear that they did not advocate overthrow of the Government by unlawful means or belong to organizations that so advocated, and said that the Supreme Court upheld this ordinance because "we felt justified in assuming that scienter [knowledge of the nature of the organization] was implicit in each clause of the oath." The Court said:

We hold that the distinction observed between the case at bar and (previous cases) is decisive. Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The (Oklahoma) oath offends due process.

The major difference between this law and the New

York State's Feinberg law, for instance, which the Supreme Court has upheld, is that the Oklahoma law makes membership in a subversive organization automatic ground for dismissal from state employment. Thus it does not allow for the possibility that an individual might have joined an organization without being aware that it was a Communist front, or that the organization itself might have changed before or after he joined it.

But to require of an employee an oath as a condition of employment, as the statute in the instant case did, that he did not belong to what was regarded as a subversive organization, was to penalise persons, who might innocently have joined subversive organizations, and the statute did not provide adequate safeguards for such innocent persons. "Democratic government is not powerless," Justice Clark asserted, "to meet the threat of ideological disloyalty, but must do so without infringing the freedoms that are the ultimate value of all democratic living." Legislatures, he said, are confronted with the problem of balancing "national security with the often conflicting constitutional rights of the individual."

The "New York Times" has well brought out in its editorial the import of the tribunal's decision. It said:

The oath, in turn, was unfair because it set up a capricious standard—the opinion of a federal Attorney General "or other authorized public agency of the United States" as to what constitutes a "Communist front or subversive organization"—and because it assumed that all such organizations remained such constantly and that all members knew exactly what the organizations stood for.

These assumptions could not possibly stand. Attorneys General are not infallible. Organizations once legitimate may become tainted. Those once tainted may become legitimate. And the state of Oklahoma had no right, so the decision seems to say, to require a public employee to take an oath as to something he could not certainly know.

The paper bids us remember what the Supreme Court was not saying in its decision. "It was not maintaining that states had no right to demand that teachers or other civil servants be law-abiding, which they could not be if they knowingly belonged to organizations advocating or planning the forcible overthrow of our Government." "No one under this decision gains the right to conspire against the Government." But a democratic Government must meet the threat of subversive organizations without infringing fundamental freedoms.

ALL-INDIA CIVIL LIBERTIES CONFERENCE

RESOLUTIONS PASSED AT THE FOURTH SESSION

The following resolutions were passed at the fourth session of the All-India Civil Liberties Conference on 21st December.

1.—Preventive Detention

A (1) This Conference reaffirms its firm conviction that preventive detention of persons for no offence or without trial under any circumstances except in an emergency of the nature referred to in Article 352 of the Constitution is destructive of the fundamental right of Freedom of Person in any real sense, and calls upon the people to take proper steps to amend Article 22 of the Constitution by deleting clauses (3) to (7) of the Article and Article 21 by substituting "due process of law" for "procedure established by law."

(2) In the opinion of this Conference every legitimate purpose sought to be achieved by the laws of preventive detention except in times of emergency can be achieved by proper use of ordinary laws, with full opportunity to the person proceeded against to defend himself in ordinary courts.

(3) In particular, the power given by the Constitution to the legislatures to pass laws for preventive detention, as interpreted by the Supreme Court, without any limitation of the circumstances in which and effective safeguards under which they can be passed, leaves the liberty of persons entirely at the mercy of the legislatures and is wholly obnoxious to a free constitution.

B (1) Without in any manner admitting the propriety or justification of the power of any legislature to pass a law for preventive detention in normal times, this Conference is firmly of opinion that, while the amendments made in 1952 in the Preventive Detention Act are

in the right direction so far as they go, they do not go far enough and this Conference strongly protests against the following features of the Act as it now stands:

(a) the vagueness and undefined orbit of the definition in section 3 of the purposes for which detention may be made, inasmuch as it says that such detention may be made to prevent persons from "acting in any manner prejudicial to" the matters specified without any indication of the nature and magnitude of prejudice required;

(b) the authorisation of detention for prejudice to "public order" or to "relations of India with foreign powers" or to "supplies or services essential to the community, purposes which can be adequately dealt with under ordinary laws and which, in any case, are too trivial for such drastic remedies except in a great emergency;

(c) absence of any power in the Central Government to declare and limit the areas where the law could be applied, as suggested in an amendment proposed in Parliament (This Conference wholly repudiates the suggestion by Dr. Katju that the Constitution gives no power effectively to control the State legislatures and that such limitation may be unconstitutional);

(d) provisions limiting the powers of review of cases by the Advisory Board by permitting the withholding of information from the Board and the detenu and prohibiting a hearing of a detenu by a legal representative, contrary to the provisions of Regulation 18B in war time in England.

(2) The Conference in particular views with alarm the reference by Dr. Kailas Nath Katju to possible disturbances in the wake of abolition of landlordism or movement for forming linguistic States as justifying the law of detention and his suggestion about "nipping such move-

ments in the bud," which suggests dangerous possibilities of abuse of this power for suppression of relatively slight disturbances for which ordinary laws are quite adequate and possibly also for suppression of legitimate agitations which the Government disapproves. And the Conference is also of opinion that, in view of the decision of the majority of the Supreme Court that the subjective satisfaction of the detaining authority is sufficient and that the Court has no authority to judge about the reasonableness or sufficiency of the grounds, it becomes imperative that the law should be so amended as to make the reasonableness of the detention and the questions of fact relied upon justiciable.

C. Without prejudice to its demand for deletion of clauses (3) to (7) of Article 21 of the Constitution, the Conference demands the repeal of the Preventive Detention Act and, as a measure of immediate relief, the release of all those who are held in detention.

2.—Freedom of Expression

AMENDMENT OF ARTICLE 19(2)

(1) While re-affirming the resolution passed by the third session of the Conference concerning the amendment made by the Constitution (First Amendment) Act in Article 19(2), which in the words of the resolution "was as uncalled for as it is destructive of the freedom of speech and of the press," the present session of the Conference emphasizes the fact that subsequent events have conclusively proved that the amendment was in fact wholly uncalled for.

(2) The resolution referred to above said:

"Taking advantage of certain stray decisions of High Courts to the effect that incitement to violent crime was protected by Article 19(2) as it then stood, the Government of India proposed, and secured the assent of a one-party Parliament for changes which in effect reduce the right to freedom of expression to a nullity.

"The Government should have first caused an appeal to be made to the Supreme Court for an authoritative interpretation of Article 19(2), and if as a result of this the Supreme Court had upheld the interpretation of the High Courts, the Government might have limited the amendment of the Article to making it clear that incitement to violence did not fall within lawful speech."

(3) The High Court decision on which the Government mainly relied for establishing the need for making the above amendment was the Patna High Court's majority decision in the Bharati Press case, in which it was decided that Art. 19(2) gave immunity to incitements to violence. But the Court itself urged the State Government to appeal against this interpretation of the Article to the Supreme Court, and the State Government did file an appeal too. The Government of India, however, without waiting for the Supreme Court's judgment, proceeded to amend the Article as if the High Court's decision was final. And, as it turned out, the Supreme Court reversed the High Court's ruling on the constitutional issue and declared that incitement to violent crime was *not* protected by Article 19(2) even as it stood before it was amended, thus clearly proving that there was no reason whatever for introducing in the Article "public order" and "incitement to an offence" as additional grounds for limiting freedom of expression.

(4) These grounds and also the third ground, "friendly relations with foreign States," inserted in Article

19(2), were proposed in one form or other as grounds for restricting free speech and press in the Human Rights Commission and other United Nations bodies, and they were stoutly opposed by representatives of leading democratic countries as too broad and vague to afford any constitutional protection to the right of free expression.

(5) Our Government also has frankly admitted that the restrictions couched in this form are too broad and vague for insertion in legislative measures and has promised that their scope would be restricted when legislation might be proposed. "Even if this hope were to be realised," as the resolution of last year says, "the fact would still remain that the right to freedom of expression would lose all constitutional protection and would be placed at the mercy of Parliament and the State legislatures."

(6) Because the amendment has introduced additional restrictions which are proved to be unnecessary and because it practically frees legislative power from all constitutional limitations, it is in the highest degree necessary to restore Article 19(2) to its old form, so that any possible inroads by legislative bodies on the right of free expression will become impossible.

3.—The New Press Act

(1) This Conference reaffirms the protest entered by the All-India Civil Liberties Council on 21st October, 1951, against the Press (Objectionable Matter) Act on grounds, among others,

(i) that the press should be governed by the ordinary law of the country and should not be subjected to any special law creating special press offences and awarding special penalties for these offences;

(ii) that the exaction of securities from the offending section of the press and the forfeiture of these securities and of the press itself which the Act provides for are penalties which are unknown in any civilized country;

(iii) that all persons involved in the composite process of publication—author, printer and publisher—being made responsible at the same time for the same offence, which the Act permits, is a proceeding unjust in itself and contrary to the practice followed in democratic countries.

(2) This measure which severely curbs the freedom of the press was unanimously opposed by the press of India when the Act was passed, and the opposition was again voiced this year by the All-India Newspaper Editors Conference, which represents the whole of the Indian press. In view of this fact alone it behoves the Government to repeal the Act in its entirety and leave the ordinary criminal law to deal with any offending publications.

4.—The Press Commission

Having itself imposed drastic restrictions on the freedom of the press by its Press Act, the Government has since appointed a Press Commission to inquire into the existing state of the press with the object, *inter alia*, it would appear, of freeing journalists of small means from the domination which journalists possessed of much larger resources are able to exercise. The suppression of independent opinion which results from the uncontrolled use of its vast power by "big business" in the profession of journalism must also be remedied if the freedom of the press is to become a reality. And to the extent that the Press Commission's recommendations lead to action which leaves sufficient elbow-room for small independent journals, which come into the field at all not from a commercial

motive but because they feel they have a message to convey, to that extent the Conference will welcome the setting up of the Commission. But it cannot lose sight of the fact that the entire press, small and big, and whether carried on on a profit basis or on a non-profit basis, has already been subjected to tight governmental controls, which reduce freedom of the press to a mockery.

5.—Public Safety Acts

(1) The whole country has been subjected ever since 1947, and continues to be subjected, except in a province or two, to a regime of Public Safety Acts giving to executive officers extremely wide powers of control over the activities of citizens. These powers include, e. g., power:

- (i) to prohibit the holding of processions or meetings;
- (ii) to impose collective fines;
- (iii) to search premises and seize articles without judicial sanction;
- (iv) to impose censorship;
- (v) to prohibit drilling;
- (vi) to prohibit wearing of uniforms and display of flags.

Some of these powers were found necessary in England during World War II but were abandoned as soon as the war came to a close. In India, however, the powers are being exercised in peace time.

(2) In addition to the powers mentioned above, the Acts confer on district magistrates power to regulate the movements and actions of the people, which power, according to the ruling of a High Court, is "as wide as conceivable," permitting "an interference by the Government with practically every sphere of activity of the citizens." The section relating to this power was declared unconstitutional by this High Court, on the ground among others that it gives no right of representation to the aggrieved person. Some provinces have since provided an investigating body with advisory functions and some have provided a body which has the power of deciding whether necessity exists for making restrictive orders. But still there are certain provinces like Bombay in which persons against whom such orders are made enjoy no right of representation at all.

(3) It is, in the opinion of this Conference, urgently necessary to repeal these Acts, which have no justification in the conditions now existing.

6.—International Covenant on Human Rights

This Conference records its opinion that the provisions of the draft Covenant on Civil and Political Rights, as adopted at the eighth session of the Human Rights Commission of the U. N., is in regard to some of the most fundamental human rights extremely unsatisfactory.

(2) The Article in the Covenant on freedom of person places this basic individual liberty at the mercy of the national legislatures just as Art. 21 in our own Constitution leaves it at the mercy of our Parliament, thus making the legislature sovereign in this respect, free from all constitutional limitations.

(3) If the present draft of the Article is not eventually improved in the United Nations in a suitable manner, it will mean that no international covenant will give India a guarantee of security of person as her own national Constitution has already denied it to her.

[The first paragraph in the draft International Covenant relating

to this Article (Art. 8) reads as follows: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Art. 21 in the Indian Constitution is: "No person shall be deprived of his life or personal liberty except according to procedure established by law."]

(4) Similarly, the Article in the Covenant relating to Freedom of Expression gives to the national legislatures full discretion to restrict this freedom "for the protection of public order" as for the protection of national security. The insertion of the words "public order" in the Article was opposed by representatives of democratic countries on the ground that the term was too broad and flexible, rendering the right sought to be guaranteed almost wholly ineffective for all practical purposes.

(5) The Article thus suffers from the same vice as that to which Art. 19(2) of the Constitution of India has become liable since its scope was extended by the Constitution (First Amendment) Act, though the Article in the Covenant is better in one respect, viz., that the Egyptian amendment for the insertion of a clause permitting restriction of freedom of expression "for the maintenance of peace and good relations between States" (corresponding to the restriction in our Constitution arising from the addition of words "in the interests of friendly relations with foreign States"), was rejected.

(6) On the whole, therefore, the Conference regrets to note that the International Covenant, as it stands at present, is not calculated, even by the pressure of world opinion as represented by the United Nations, to lift India's standard of constitutional law to the standard that is requisite for due preservation of man's internal dignity and a standard that has in large measure already been achieved in genuinely democratic countries.

7.—Examination of Constitutionality of Existing Laws

This Conference urges upon the Government of India the appointment of a Committee, consisting preferably of lawyers and members of legislatures, for the purpose of examining Central and State legislation, and reporting which parts of the legislation, if any, contravene any provisions in Part III of the Constitution relating to fundamental rights and what changes are required to bring them into conformity with those provisions.

All-India Civil Liberties Council

RESOLUTIONS PASSED

The newly elected All-India Civil Liberties Council, which is the executive of the Conference, adopted the following resolutions at its meeting held on 22nd December.

Time Limit for Making Applications

UNDER ART. 226

This Council views with great concern the observations in the judgment of the Nagpur High Court in the case of Rajnandgaon Bus Service (Misc. Petn. No. 110 of 1952) laying down, as an ordinary rule, a time limit of 45 days from the date of the act complained of under Art. 226, beyond which the application would be liable to be dismissed for want of due diligence, unless the delay was satisfactorily explained.

This Council feels that such an artificial time limit is wholly unsuited to applications under Art. 226 where the merits of the application ought always to be the overriding

consideration. In particular, it would be wholly out of place in applications in the nature of writs of habeas corpus and prohibition, which are not discretionary reliefs. Even in other cases where due diligence is a proper consideration, any rule of the thumb to fetter the discretion of the judge is undesirable, particularly one which fixes such an unduly short limit as 45 days when even criminal appeals may be filed within 60 days.

This Council hopes that the Nagpur High Court will reconsider the ruling which unduly limits the exercise of a constitutional right of the citizen.

Cinematograph Act

This Council is of opinion that the existing provisions of the Cinematograph Act unduly curtail the liberty of people to have cinematograph shows for purposes other than public exhibition for commercial purposes and in this respect the Council fully endorses the observations of the Film Enquiry Committee in paras. 56 and 57 of their Report of 1951 that the Act requires amendment with reference to present-day conditions. The Council accordingly recommends that the Act be amended in the following manner, namely,

(i) Section 3 should be amended to read as follows :

"Save as otherwise provided in this Act no person shall give a public exhibition by means of a cinematograph using inflammable films elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence. Provided that nothing in this Act shall require the certification of any film used :

- (a) for an exhibition given in a private dwelling house to which the public are not admitted, whether on payment or otherwise ;
- (b) for an exhibition given by a registered trade union to its members ;
- (c) for an exhibition given by permission of the administration of a recognised school or college to the students thereof on the premises thereof."

(ii) Section 6 (4) should be amended to read as follows :

"The Central or State Government or any person aggrieved by the decision of the authority under clauses (2) or (3) above may move the local High Court to call for the records of the case and examine the legality, propriety or sufficiency thereof. The High Court may thereupon, if necessary after seeing an exhibition of the film concerned, hear and determine the matter as if it were an appeal from the decision of the authority.

No application to the High Court under this clause shall be entertained after a period of one year from the decision of the authority complained against. Provided that the High Court may for sufficient cause extend this period. The fact that a film has not been publicly exhibited after certification for a given period may be deemed sufficient cause for the foregoing purpose."

(iii) Section 6, sub-sections (5), (6) and (7) should be deleted.

(iv) A new sub-section should be inserted in section 7 as follows :

"Any order suspending the exhibition of a film under this section shall be subject to revision by the High Court in the same manner as if it had been an order under section 144 of the Criminal Procedure Code."

C. L. U. NEWS

M. P. Civil Liberties Union

At a meeting of the Madhya Pradesh Civil Liberties Union held on 30th December, an executive committee consisting of twelve members, besides office-bearers, was elected. Mr. R. V. S. Mani, advocate, has been elected General Secretary and Messrs. G. D. Karkare, journalist, and Mr. G. B. Barai, advocate, Joint Secretaries.

The Union is following up the resolution passed by the All-India Civil Liberties Council (given above) on the subject of the time limit for making applications under Art. 226. In a resolution passed at the meeting the Union has requested the Chief Justice of India to consult with the Chief Justices of States and leading advocates "with a view to establishing uniform procedure in regard to disposal of cases under Arts. 226, 227 and 228." In another resolution the Union has also suggested to the Chief Justice of the Nagpur High Court the appointment of a committee consisting of the members of the Bar to advise him on procedural matters arising under Art. 226 "in the interest of removing anomalies in the existing rules of procedure, including one requiring the deposit of security of costs of varying amounts from the applicants."

NOTES

U. S. Bill of Rights

On 15th December last, the 161st anniversary of the ratification of the Bill of Rights, which is composed of the first ten Amendments of the Constitution, this document along with the Constitution and Declaration of Independence was displayed in a glass case in a new shrine under the dome of the National Archives Building. On this occasion President Truman called the American people to a new dedication to the Bill of Rights which he described as the most important part of the Constitution because "it is the only document in the world that protects citizens against their Government," and warned them against hysteria in meeting the threat of communism, which he thought was grave. He said :

The idea of freedom is in danger from others as well as the Communists. There are some who hate communism but who, at the same time, are unwilling to acknowledge the ideals of the Constitution as the supreme law of the land.

They are people who believe it is too dangerous to proclaim liberty throughout all the land to all the inhabitants. What these people really believe is that the Preamble ought to be changed from "we the people"

to read "some of us—some of the people of the United States, but not including those we disapprove of or disagree with—do ordain and establish this Constitution."

Whether they know it or not, those people are enclosing the spirit as well as the letter of the original Constitution in a glass case, sealed off from the living nation. They are turning it into a mummy, as dead as some old Pharaoh of Egypt, and in so doing they are giving aid and comfort to the enemies of democracy.

Invasion and conquest by Communist armies would be a horror beyond our capacity to imagine. But invasion and conquest by Communist ideas of right and wrong would be just as bad.

For us to embrace the methods and morals of communism in order to defeat Communist aggression would be a moral disaster worse than any physical catastrophe. If that should come to pass, then the Constitution and the Declaration would be utterly dead and what we are doing to-day would be the gloomiest burial in the history of the world.

But I do not believe it is going to come to pass. On the contrary, I believe that this ceremony here today marks a new dedication to the ideals of liberty.

He said, Americans will "destroy the very thing they are struggling to preserve" if hysterical fear of Communism drives them into "suppression of liberty at home." (The new President, General Eisenhower, has also as President of Columbia University repeatedly spoken out against hysteria in Communist-hunting or in facing the Communist menace.)

Loyalty Test in U. S. A.

One James Kutcher, a veteran of World War II, was employed on a clerical job by the Veterans Administration. Being a federal employee, he was screened by the loyalty board for loyalty. During the board's proceedings, Mr. Kutcher admitted belonging to the Socialist Workers' Party, which is on the Attorney General's list of subversive organizations. Thereupon the Administrator of Veterans Affairs dismissed him. Mr. Kutcher carried his dismissal to the federal district court in Washington, but lost in that tribunal. He then went on appeal to the appellate bench, and the Federal Court of Appeals on 16th October upset the lower court and quashed the order of dismissal in a unanimous ruling.

The opinion, written by Judge Proctor, says:

Neither Congress nor the President has seen fit to make membership in any organization designated by the Attorney General to be subversive cause for removal from Government employment.

We do not mean to suggest that membership in activities connected with the designated organization may not, in the circumstances of a case, justify disbelief in the loyalty of an employee. Yet, in each instance, it rests with the head of the department or

agency to make the final and controlling determination.

In this case, involving Kutcher's loyalty, the vital decision still awaits the Administrator's decision . . . of the ultimate issue as to whether on all the evidence reasonable grounds exist for belief that Kutcher is disloyal.

The meaning of the decision is that only the fact of membership in an organization listed as subversive by the Attorney General is not sufficient ground for the discharge of a Government worker under loyalty regulations. Compare with this the Supreme Court's judgment in the Oklahoma case reported on an earlier page in this issue.

Freedom of Travel

PASSPORTS AND VISAS IN THE U. S.

The Bulletin of the International League for the Rights of Man writes:

The restrictions on travel both of Americans and foreigners adopted in recent legislation by Congress have been somewhat eased by the State Department, which for the first time in American history has established a system for reviewing denials of passports to American citizens. Up to now, the Passport Division has had absolute discretion to refuse passports and to give no reasons beyond a vague resort to "national security" or "the best interests of the U. S." The State Department's action was prompted by an Appeals Court decision which held that adequate reasons must be given for refusal in every case (vide p. ii:188 of this BULLETIN). The American Civil Liberties Union, a League affiliate, had long urged a review system on the Department.

No system of review of denials of visas to foreigners has been adopted, though pressure to do so has come from influential senators, who embodied the proposal in a bill on which Congress has not acted.

Evidence Obtained by Wire Tapping

DOES IT CONSTITUTE ILLEGAL SEARCH?

A pawnbroker of the name of Thomas Schwartz of Dallas in Texas was alleged to have conspired with two thieves to rob places designated by him, after which he would dispose of the loot and the three would divide the proceeds. The robbers entered the home of Dr. W. W. Shortal on 17th February 1950, bound the servants and forced Mrs. Shortal to give them her diamonds and jewelry. The thieves then fell out over the division of the loot and Schwartz was arrested, prosecuted, convicted and sentenced on the basis of telephonic conversation between him and one of the thieves which was intercepted from the sheriff's office. From the conviction which was affirmed by the supreme court of Texas Schwartz appealed to the Supreme Court of the United States on the ground that the Federal Communications Act prohibited evidence procured by wire tapping without the consent of the accused. Various courts have ruled that the records of

intercepted telephone conversations may not be admitted in federal court trials.

The Supreme Court on 15th December upheld the conviction in an 8 to 1 opinion on the ground that evidence obtained by state officers by wire-tapping was admissible in state courts. Mr. Justice Minton, delivering the Court's opinion, said :

Although the intercepted calls would be inadmissible in a Federal court, it does not follow that such evidence is inadmissible in a state court. Indeed, evidence obtained by a state officer by means which would constitute an unlawful search and seizure under the Fourth Amendment to the Federal Constitution is nonetheless admissible in a state court, while such evidence, if obtained by a Federal officer, would be clearly inadmissible in a Federal court.

We hold that [the provision of the Federal Communications Act] applies only to the exclusion in Federal court proceedings of evidence obtained and sought to be divulged in violation thereof ; it does not exclude such evidence in state court proceedings.

In a dissenting opinion Associate Justice William O. Douglas held that the wire tapping had constituted a "search" and hence was prohibited under the "search and seizure" restriction of the Fourth Amendment. He said that such methods infringed upon the rights of individuals and gave the police arbitrary powers. For those reasons he would have reversed the Texas supreme court, which had sustained the Schwartz conviction.

BOMBAY SALES TAX ACT

Beyond the Competence of the Provincial Legislature

A special bench of the Bombay High Court, consisting of Chagla C. J. and Dixit J., on 11th December declared that the Bombay Sales Tax Act, no. 24 of 1952, was ultra vires of the State legislature and ordered the State to forbear and desist from enforcing any of its provisions against the seven motor firms which had filed a petition challenging the validity of the Act.

Their Lordships observed that the power to levy sales tax was given to the States under entry 54 of the State List in the Seventh Schedule, and this power of the State legislatures was subject to the provisions of Art. 286 of the Constitution, which imposed restrictions of three kinds : prohibiting the State legislatures from levying a tax in respect of a sale or purchase (i) which took place outside the State or (ii) in the course of import or export, or (iii) in the course of inter-State trade or commerce.

When the Court looked into the Act's provisions, it found that the definition of " sale " as given in the Bombay Act was in the widest terms including any transfer of property in the goods for valuable consideration and would include sale in the course of export or import and sale or purchase in the course of inter-State trade or commerce. It was clear. Their Lordships said, that the definition of

" sale " included also sales which were exempted by the Constitution from State taxation. They then referred to the general tax and the special tax levied by the State and expressed the view that in enacting these provisions, the legislature had proceeded to pass this law on the clear assumption that it had the power to tax these sales which were excluded by Art. 286 of the Constitution. The scheme of the Act was bound up with the definition of the word " sale " in the Act ; the definition permeated the whole Act, and as it would be " impossible to sever any specific provisions to save the rest of the Act," Their Lordships held the whole Act ultra vires.

Their Lordships then turned to the argument of the Advocate-General that the rules framed by the Government under the Act did not envisage taxing of sales which were prohibited under the Constitution. Referring to Rule 5, which provided for deduction of certain sales in calculating the turnover of a dealer, Their Lordships stated that there was no obligation whatsoever upon the State Government to deduct sales by its rules. They further pointed out that the power conferred upon the State Government to deduct certain sales assumed the power not to deduct the sales too. In their opinion, this rule was based on the assumption that a State legislature had the power to tax sales, if they were not deducted by the Government under the rule.

Rule 5 enumerated eight different kinds of sales in which deduction could be given in calculating the taxable turnover. The rule, however, made no distinction between sales which were allowed and sales which were prohibited under the Constitution. It seemed to Their Lordships that there was a " complete lack of understanding " as to the true effect and meaning of the constitutional restrictions placed upon the legislature.

The rules had also gone to the extent of taxing a sale which was clearly outside the State, if the goods were not consigned or transported in a specified manner or if such goods were not exported within three months.

By the rules, the Government had attempted to convert a prohibited sale into a sale in respect of which it could levy a tax by laying down a condition which it was not competent for the Government or the State legislature to do.

The Act was challenged also on the ground that it contravened Art. 14 of the Constitution (equal treatment before the law) and that it contravened Art. 19 (1) (g) (the right to carry on trade). But the Court did not think it necessary to go into these grounds.

ABOLITION OF PROPRIETARY RIGHTS

Antecedent Rights can be Enforced

Ten business firms of Madhya Pradesh dealing in the manufacture of bidis, culturing of lac and trading in teak, timber, hardwood and bamboos filed petitions in the

Supreme Court under Art. 32 of the Constitution for the enforcement of their fundamental rights by writs of certiorari on the State of Madhya Pradesh. On 22nd December the Supreme Court allowed the petitions and directed the State Government to refrain from interfering with their rights acquired under contracts entered into by them with proprietors of land whose rights had been acquired by the State under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

The several petitioners entered into contracts and agreements with the previous proprietors of certain estates and mahals in the State under which it is said they acquired the right to pluck, collect and carry away tendu leaves, to cultivate, culture and acquire lac and to cut and carry away teak and timber and miscellaneous species of trees called hardwood and bamboos. The contracts and agreements are in writing; some of them are registered. There is no dispute about their genuineness, and it has not been alleged that they are collusive or fraudulent transactions. Their dates and the several sums of money paid as consideration were set out in the petitions. The petitioners alleged that they had spent large sums of money in the exercise of their rights, and this fact too was not controverted.

The contentions of the petitioners were that the rights acquired by them under the contracts and agreements referred to above were acquired before the passing of the Madhya Pradesh Act of 1950, which was subsequently declared to be good law by the Supreme Court. They contended that the legislation referred to above did not affect them and since they were not proprietors but merely lessees the Madhya Pradesh Act could not apply to them. The petitioners also contended that the Act was ultra vires, because certain of its provisions militated against the Fundamental Rights. Since the Act was declared to be good law in *Visheshwar Rao v. the State of Madhya Pradesh*, the contentions with regard to its validity failed. The other two contentions were upheld by the Court. The claim of the State Government was that after the Act came into force the rights under the contracts became vested in them.

The Madhya Pradesh Act came into force on January 26, 1951. On January 27, there was a notification under section 3 of the Act putting an end to all proprietary rights in estates and vesting the same in the State free of all encumbrances, with effect from March 31, 1951.

Mr. Justice Chandrasekhara Aiyar, who delivered the judgment of the Court, said that the scheme of the Act, as could be gathered from its provisions, made it reasonably clear that whatever was done before March 16, 1950 (the date of vesting), by the proprietors of land in Madhya Pradesh by way of transfer of rights was not to be disturbed or affected, and that what vested in the State was what the proprietors had on the vesting date.

If the proprietor had any rights after the date of vesting, His Lordship said, which he could enforce against

the transferee such as lessee or licensee, those rights would no doubt vest in the State. In all these petitions, the several contracts and agreements were before the date of vesting and many of them were prior even to March 16, 1950. The petitioners had taken possession of the subject-matter of the contracts, namely tendu leaves, lac palsadies, teak, timber and hardwood, bamboo and miscellaneous forest produce. His Lordship said:

There is nothing in the Act to affect the validity of the several contracts and agreements. The petitioners are neither proprietors within the meaning of the Act nor persons having any interest in the proprietary right through the proprietors. There is no provision in the Act which extinguishes their rights in favour of the State.

He held that the contracts and agreements could not be said to be an encumbrance on the estate, free of which the vesting shall take place. He said:

The respondent-State cannot invoke in its aid section 3, sub-clause (1) of the Act which speaks of the vesting of proprietary rights free of all encumbrances, because the rights of the petitioners either as buyers or lessees or licensees are not encumbrances as ordinarily understood. The last part of clause (a) of section 4 (1) indicates that mortgage debts and charges on the proprietary right are meant by encumbrances.

In view of this conclusion His Lordship held that the State of Madhya Pradesh had no right to interfere with the rights of the several petitioners under the contracts and agreements in their favour and issued a writ prohibiting the State from interfering in any manner whatsoever with the enjoyment of these rights by the petitioners.

RESTRICTIONS ON SCHEDULED TRIBES

Nawanagar Act Declared Void

Mr. Sanghar Umar Ranmal and another person petitioned the High Court of Saurashtra for a declaration that the Pass Hajari Dhara of 1947, which has been made applicable to certain communities in certain villages, was void and inconsistent with the Constitution. Shah C. J. and Baxi J. considered the petitions and on 7th July 1952 held that the whole Act was void as being in contravention of the provisions of Art. 19 (1) (d) and (e) and Art. 15 of the Constitution. The nature of the restrictions which under the Act can be imposed will be apparent from the judgment which Mr. Justice Baxi delivered for the Court. His Lordship said:

The important restrictive provisions of the Act are secs. 4, 5, 6, 10, 11, 13 and 14. Under these sections persons to whom the Act applies have to attend the police office in the morning and evening. They are prohibited from leaving their village during the

night and if they have to visit another village, they are required to obtain a permit. The Police Commissioner has been empowered to direct any one of them to sleep at night at the police station. If any one of them goes out of the village and settles elsewhere the restrictions contained in the Act continue to dog his steps. Persons who are originally not subject to the Act become automatically subject to it on their coming down to reside and settle in any of the villages specified in the Schedule if they happen to belong to one of the castes mentioned therein. The imposition of these restrictions does not depend upon the individual propensity of the persons to whom the Act has been applied. A person may not have committed a single offence and may have been living a pure life and yet legally he must subject himself to the restrictions contained in the Act.

No public interest can be served by subjecting persons to severe restrictions for life, whether they are in fact proved to be deserving of them or not. We, therefore, hold that these sections are void and of no effect, being in contravention of the provisions of Article 19 (1) (d) and (e) of the Constitution. The rest of the sections are ancillary to the main section and cannot stand independently of them. Consequently no provisions of the Act can be sustained and the whole Act must be declared as void.

His Lordship also ruled that the Act violated Art. 15 (1) of the Constitution which forbids discrimination against any citizen "on grounds only of religion, race, caste," etc., because all male members of over 16 of the communities to which the Act was made applicable were subjected to restrictions and thus they were discriminated against "on the ground of their caste or community only."

LAND REQUISITION ACT

Bombay Government's Order Quashed

Certain premises belonging to Mr. Ali Gulshan Haji Siddick were requisitioned by the Bombay Government under sec. 6 (4) (a) of the Bombay Land Requisition Act. It was stated in the Government's order that the requisition was for a public purpose, viz., housing a member of the staff of a foreign consulate. The order was challenged in the High Court on the ground that it was not for a public purpose. Mr. Justice Tendolkar who heard the petition of Mr. Ali Gulshan dismissed it, holding that the requisition order was for a public purpose. The petitioner appealed against this decision, contending that although the order might be for a public purpose, it was not a purpose of the State but of the Union, and that the State Government had no power to requisition the premises for a public purpose, which was a purpose of the Union and not of the State.

Chief Justice Mr. Chagla and Mr. Justice Dixit on 17th December allowed the petition, upholding the

contention of the petitioner. The Advocate-General had drawn attention to secs. 5 and 6 of the Act giving power to the State to requisition property "for a purpose of the State or any other public purpose" and had argued that if the purpose for which the premises had been requisitioned was a public purpose, it was unnecessary to consider whether the purpose for which the requisition had been made was a purpose of the State or of the Union. This contention Their Lordships rejected. They observed that it was clear from the Union List in the Seventh Schedule that "diplomatic, consular and trade representation" (entry 11) was a Union subject and that legislation with regard to that subject could only be undertaken by the Union. Furthermore, Art. 162 of the Constitution which defined the executive power of States said: "The executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws." The States' executive power being thus restricted, executive functions relating to "diplomatic, consular and trade representation" could, under Art. 73, only be undertaken by the Union Government. Their Lordships said:

If the legislative competence of the (State) legislature is restricted to pass a requisition Act only for the purpose of the State, then we must read "any other public purpose" as *esjudem generis* with the purpose of the State, and the expression used by the legislature can only mean that the power of the State to requisition is restricted to a public purpose which is also the purpose of the State. In other words, the State Government cannot requisition property for a public purpose which is a purpose of the Union.

THE EVACUEES ACT

Cancellation of Allotment of Land

A division bench of the Punjab High Court consisting of Harnam Singh and Kapur JJ. on 18th December allowed a petition under Art. 226 of the Constitution questioning the order of the Financial Commissioner, Relief and Rehabilitation, which reviewed an allotment of land previously made.

The petitioner, Channan Singh, an allottee in village Dhesian Kana, Jullundur district, alleged that he was allotted A grade land in Nathewal village after the allotment of Avtar Kaur and Kartar Kaur, who were entitled to B grade land only, was cancelled. Petitions by the latter against this order were rejected by the Deputy Commissioner and later by the Director, Relief and Rehabilitation, and the Financial Commissioner, Relief and Rehabilitation. The order in favour of the petitioner was then made final. Four months later, however, the Financial Commissioner, Relief and Rehabilitation, acting on another application passed an order giving the land to the original allottees and the petitioner was dispossessed of the land.

Counsel for the petitioner, argued that the Financial Commissioner, Relief and Rehabilitation, had contravened the mandatory provisions of section 26 of the Evacuees Act in setting aside an order which the petitioner had obtained in his favour in a regular proceeding, without giving him notice or an opportunity of being heard. He contended that the order was illegal.

Mr. Justice Harnam Singh said the Financial Commissioner had no jurisdiction to pass an order against the interests of a party without hearing him on the point.

Their Lordships accepted the writ petition and quashed the later order of the Financial Commissioner, and directed that if a review petition was still pressed by the respondents, the Commissioner may proceed after hearing the petitioner's objections.

One would like to remark on this case that it would appear that the petitioner here obtained relief only because the statute concerned provides for an opportunity of being heard being given to an aggrieved person, and the Court's finding merely was that the Financial Commissioner's order was not in accord with the provision. But one wonders whether it would have been competent to the Court to set aside the order if the statute had not contained such a mandatory provision on the ground that the statute would be unconstitutional without it. In the United States, however, the Courts would invalidate a statute which did not give an opportunity of being heard as offending due process. In our country the Constitution contains no such limitation on legislative power.

PRE-EMPTION ACTS

Sec. 23 of the Pepsu Act

In *Rulia Ram v. Sudh Ram* the question of the constitutionality of the Patiala Alienation of Land Act arose for decision, and a full bench of the Pepsu High Court consisting of Teja Singh C. J. and Passey and Chopra JJ. held on 1st October 1951 that sec. 3 of the Act was unconstitutional. This section restricts the power of members of notified agricultural tribes to alienate agricultural land, and it was contended by the plaintiff in this case that the section, being inconsistent with Art. 19 (1) (f) of the Constitution, which confers the right to acquire, hold and dispose of property, had become void. Art. 19 (1) (g) only saves laws which impose "reasonable" restrictions in the interests of the general public. In this case the counsel for the appellant "frankly admitted that, the restriction was not reasonable and whether or not it was in the interests of the tribes notified to be agriculturists it was certainly not in the interests of the general public." In the face of this admission, the Court said, "We have no other alternative but to hold that sec. 3 of the Alienation or Land Act... is inconsistent with Art. 19 of the Constitution and accordingly it is void."

Then arose the question of the applicability of sec. 23

of the Pepsu Pre-emption Act, which was enacted with the object of preventing non-agriculturists from purchasing land from members of agricultural tribes, directly or indirectly, in contravention of the provisions of the Alienation of Land Act. If however land which was sold in this way was taken hold of by a pre-emptor, who happened to be a non-agriculturist, in execution of a decree in a pre-emption suit, the consequences laid down in the Act of a direct sale to a non-agriculturist were not entailed, and it was with the intention of meeting cases of this kind that sec. 23 of the Pre-emption Act was enacted. "But," the Court ruled,

"when sec. 3 itself (of the Land Alienation Act) has become void, and the sale by a member of a statutory agricultural tribe to a non-agriculturist is as good and effective as any other sale, that part of sec. 23 of the Pre-emption Act which makes it obligatory on the part of a plaintiff in a pre-emption suit to satisfy the Court that the sale pre-empted by him is not in contravention of the Alienation of Land Act becomes meaningless and superfluous."

ABDUCTED PERSONS ACT

Supreme Court Holds It Valid

The Constitution Bench of the Supreme Court held on 16th October that the Abducted Persons (Recovery and Restoration) Act, 1949, was valid and *intra vires* of the Constitution and gave reasons for this ruling on 10th November. This decision reverses the unanimous judgment of the full bench of the Punjab High Court (vide p. ii: 140 of the BULLETIN), holding that the Act violated Art. 22 of the Constitution, which provides for production before a magistrate of a person arrested and detained within 24 hours of the arrest. The Punjab State had come to the Supreme Court in appeal against this judgment.

The main point of the case was whether the word "arrest" used in Art. 22 included within its purview the kind of custody envisaged by the Abducted Persons Act. It was the contention of the Solicitor-General that the kind of "protective custody" contemplated by the Act could not fall within the scope of the word "arrest," while counsel for Ajaib Singh, who had filed a habeas corpus petition seeking an order for the release of Mukhtiar Kaur alias Musammam Sardaran, maintained that Art. 22 was only concerned with the physical restraint of a person and not with the reasons for which he was arrested. Counsel submitted that the concept of "protective custody" was a dangerous one and that under its cover Government could keep any one in custody without ever having to fulfil the requirements of Art. 22.

Mr. Justice S. R. Das, who delivered the judgment of the Supreme Court, observed as follows:

The language of Article 22 (1) and (2) indicated that the fundamental right conferred by it gave protection against such arrests as were effected otherwise than under a warrant issued by a court on the

allegation or accusation that the arrested person had or was suspected to have committed, or was about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. In other words, there was indication in the language of the Article that it was designed to give protection against the act of the executive or other non-judicial authority. It was not, however, their purpose, nor did they consider it desirable, to attempt a precise and meticulous enunciation of the scope and ambit of this fundamental right or to enumerate exhaustively the cases that came within its protection. Whatever else might come within the purview of Article 22 (1) and (2) of the Constitution, it sufficed to say for the purposes of this case, they were satisfied that the physical restraint put upon an abducted person in the process of recovering and taking that person into custody and delivery of that person to the custody of the officer in charge of the nearest camp under section 4 of the impugned Act could not be regarded as arrest and detention within the meaning of the Article in question.

The appeal was nevertheless dismissed on the ground that the tribunal was not properly constituted and its order was without jurisdiction, as conceded by the Solicitor-General.

COMMENTS

Detention Law in India

The International League for the Rights of Man in its Bulletin for October 1952 says :

The hotly-debated issue of preventive detention without trial of persons held to be dangerous to the national security came to a close for the moment with a vote in the Indian Parliament in August to extend the authority until 1954. The bill was opposed by the All-India Civil Liberties Council, a League affiliate, and most of the Opposition parties in Parliament. It was passed by large majorities after searching criticisms which modified some of the most extreme provisions. Maximum detention without trial is now limited to a year, and some protections have been given persons detained in getting their cases before the Advisory Boards which pass on detentions.

Although the All-India Civil Liberties Council is wholly opposed to the Communists, who furnish most of the "detenus," it supported the principle that imprisonment of Communists without trial in peace-time is indefensible on the theory of preventing unlawful acts.

Assam's Public Safety Act

We have now been able to find out what the position of a person is who is subjected to an order restricting his "movements or actions" under the Assam Maintenance of Public Order Act, 1947. On 1st October 1951 a Third Amendment Act was passed, which corresponds very closely with the Madhya Pradesh and the Punjab Acts in this respect (see p. ii:184 of the BULLETIN). That is to say, the amending Act gives to such a person an opportunity to make a representation against the restriction order and provides that such representation and the material which the Government has in its possession shall be placed before an Advisory Council "consisting of not less than three members, one of whom shall be a person qualified to be a Judge of a High Court." The Advisory Council is to submit its report to the State Government within four months from the date of the order. "After considering the report of the Advisory Council, the State Government may confirm, modify or cancel the order." Which means that the Advisory Council has only advisory powers as in Madhya Pradesh and the Punjab, in contradistinction to the Advisory Board of Bihar and West Bengal, whose report is mandatory in the sense that if the Board reports that there is no sufficient cause for making a restriction order, the State Government will have to revoke the order it has made. In regard to the duration of restriction orders, the Assam Act provides that such an order can remain in force for a year "from the date on which it is confirmed or modified" by the State Government after considering the Advisory Council's report.

Freedom of Information Convention

The All-India Civil Liberties Conference pointed out in a resolution, the text of which will be found elsewhere in this issue, how unsatisfactory the article in the draft International Covenant on Human Rights relating to freedom of expression was. The same remark could be made about the Freedom of Information convention which is being debated ever since 1946. The U. N. General Assembly's Social, Humanitarian and Cultural Committee by a tie vote agreed weeks ago not to redraft the text of the convention at the present session of the Assembly but has decided to raise the matter this year. This is so much to the good, for the convention, purporting to protect the right of "all persons everywhere to seek and receive information," includes provisions that would curb, not promote, the liberty of the press. On this ground the United States, Britain, the Scandinavian States and others, have opposed the convention.

On 16th December the Assembly decided by a vote of 25 to 22 to ask Governments to sign the convention on the International Right of Correction obliging the signatory nations to correct "false or distorted" news. The convention provides machinery whereby complaining Governments can ask signatory states to circulate to their news agencies "corrections" for any reports felt to be erroneous or distorted. This pact, like the article in the Covenant on freedom of information, is being opposed by Britain, the United States and several other countries on account of the feeling that it could be misused as an outlet for foreign propaganda. The convention will be open for signature at the end of the current seventh session of the Assembly, but it is hardly to be expected that the nations which are critical of it will be willing to sign it.