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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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"Preferred Position" of Free Speech

As the question of Freedom of the Press is very much in the minds of the people on account of the appointment of the Press Commission, we think it would be useful to bring to the notice of our readers the latest judicial pronouncement that free speech occupies a preferred position in the constitutional law of the United States. Previous statements to this effect were given by us in the last but one issue on p. ii:222. In addition to the cases there mentioned the principle that speech is in a preferred position was reiterated by the Supreme Court in *Saia v. New York*, 334 U. S. 558 (1948), and here it was reiterated as being applicable to all First Amendment freedoms. In this case in which a municipal ordinance was struck down as placing "the right to be heard" in the uncontrolled discretion of the Chief of Police, the Court said :

Unless we are to retreat from the firm positions we have taken in the past, we must give freedom of speech in this case the same preferred treatment that we gave freedom of religion in the *Cantwell* case (*Cantwell v. Connecticut*, 310 U. S. 296 [1940]), freedom of the press in the *Griffin* case (*Lovell v. Griffin*, 303 U. S. 444 [1938]), and freedom of speech and assembly in the *Hague* case (*Hague v. C. I. O.*, 307 U. S. 496 [1939]).

In the *Cantwell* case, our readers will remember, an ordinance requiring a license to be obtained in order to distribute religious pamphlets was declared void; in the *Griffin* case requiring a license for the distribution of literature was held unconstitutional; and in the *Hague* case an ordinance requiring a license from a local official for a public assembly on the streets was invalidated. Recently, in *Bourharnais v. Illinois* 343 U. S. 250 (1952), Justice Douglas said :

The First Amendment is couched in absolute terms : freedom of speech shall not be abridged. Speech has therefore a preferred position as contrasted to some other civil rights. For example, privacy, equally sacred to some, is protected by the Fourth Amendment only against unreasonable searches and seizures. There is room for regulation of the ways and means of invading privacy. No such leeway is

granted the invasion of the right of speech guaranteed by the First Amendment.

An historic aspect of the issue of judicial supremacy was the extent to which legislative judgment would be supreme in the field of social legislation. The vague contours of the Due Process Clause were used to strike down laws deemed by the Court to be unwise and improvident [as in *Lochner v. New York*, 198 U. S. 45 (1905)]. That trend has been reversed. In matters relating to business, finance, industrial and labour conditions, health and the public welfare, great leeway is now granted the legislature [cf. *Nebbia v. New York* 291 U. S. 502 (1934) etc.], for there is no guarantee in the Constitution that the status quo will be preserved against regulation by government. Freedom of speech, however, rests on a different constitutional basis. The First Amendment says that freedom of speech, freedom of press, and the free exercise of religion shall not be abridged. That is a negation of power on the part of each and every department of government. Free speech, free press, free exercise of religion are placed separate and apart; they are above and beyond the police

SECURITY AND FREEDOM

Mr. Robert M. Hutchins, Chancellor of the University of Chicago and Chairman of the Commission on Freedom of the Press, in the statement he issued on occasion of the 161st anniversary of the Bill of Rights, said :

We know there are spies and traitors. We know that international communism is a danger to us. But we also know that if we suppress the basic rights of Americans because we are scared, we are throwing away without a struggle the things we should be fighting for.

The dangers to our security are not greater and they are not more fundamental than the dangers to our freedom.

(True Americanism) is the conviction that the rights of the minority, even a minority of one, are the most precious possessions of a progressive society, and that there must be freedom of discussion and criticism of tyranny.

power; they are not subject to regulation in the manner of factories, slums, apartment houses, production of oil, and the like.

Intemperate speech is a distinctive characteristic of man. Hot heads blow off and release destructive energy in the process. They shout and rave, exaggerating weakness, magnifying error, viewing with alarm. So it has been from the beginning; and so it will be throughout time. The Framers of the Constitution knew human nature as well as we do. They too had lived in dangerous days; they too knew the suffocating influence of orthodoxy and standardized thought. They weighed the compulsions for restrained speech and thought against the abuses of liberty. They chose liberty. That should be our choice to-day.

Police Rule in India

INDEPENDENCE NO GUARANTEE OF CIVIL LIBERTIES

by Acharya J. B. KRIPALANI

Writing in the Praja Socialist Party's organ, the "Janata", of 22nd March, Acharya J. B. Kripalani, a leader of the Party, describes how the country is under police rule and emphasizes the need of an organization for the protection of civil liberties, for he says, "National independence alone or even democracy by itself gives no guarantee of liberty to the ordinary citizen."

He first quotes Dicey's observations:

"A Secretary of State is governed by the ordinary law of the realm both in his official conduct and in his private life. If, in an access of anger, the Secretary of State for Home Affairs assaulted the Leader of the Opposition or had him arrested because he considered the liberty of his political opponent dangerous for the State, this minister would in either case expose himself to proceedings and to all the other penalties laid down by the law for the case of violence. Although the arrest of an influential politician whose speeches might excite disorder is a strictly administrative act, that would not excuse either the minister or the policeman who had obeyed his order."

And then Mr. Kripalani proceeds:

This about the Secretary of the Home Affairs in England. In India any constable can attack and injure a citizen on the least provocation. The police here arrest, assault and lathi-charge citizens on the least provocation. Brick-bats, whether real or imaginary, are answered by bullets. In this, as in everything else, old bad traditions established by foreign tyranny are kept up. Nay, they are improved upon. Prisoners, for whose safety government is even more responsible than of free citizens, are shot dead in numbers that would have shocked the people in pre-Swaraj days. Peaceful and non-violent demonstrators, instead of being arrested for breaking the law, are

dispersed by the use of police violence even though they do not resist arrest. Yet nobody questions these acts in a court of law. What happened recently in Saurashtra and in Durg (M.P.) and, if reports are to be credited, is happening in Jammu, seems to shock nobody. What shocks the authorities is that there should be resistance to their will, for they hold that all resistance to a democratic government is treason. They do not even hesitate to say so. The rulers alone have to decide what constitutes patriotism. Before industries are nationalised, patriotism has been nationalised!

What happened in Delhi, the centre of the government, the other day, proves my point completely. Important Members of Parliament, among them a leader of the Opposition and an ex-High Court judge, were arrested and detained in jail for alleged breach of law. The action of the authorities was challenged in the Supreme Court. The Chief Justice, releasing them, remarked: "This Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty, in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of law. That has not been done in this case." An executive that can set at naught "forms and rules of law" in the case of important public leaders and Members of Parliament can do anything in the case of common citizens. How many in India can approach the Supreme Court, for the vindication of their liberty? This liberty is being violated every day throughout India without any effective protest or remedy.

What happens to the members of the Executive who thus break the law? In this country they go scot-free. In England they would be hauled up before a court of law and if proved guilty would be made to suffer the penalties of the law as any common offender. If a few of them are dragged to courts of law and punished, the rest will be careful about interfering with the liberty of the individual.

Under such circumstances, is it not the duty of the legal profession, whose members, whether paid or unpaid, are officers of law and justice, to come to the rescue of the citizen, where he is too poor or is afraid or is ignorant of his rights, and render him all assistance to vindicate his civil rights and liberties? But this can only be done if the legal profession is organized for the purpose. If in India under foreign rule there was need for a Civil Liberties organization, the need is the greater to-day when the state power has increased manifold. A democratic form of government is no guarantee against the wayward, whimsical and arbitrary conduct of the executive. It is time that our legal luminaries and retired judges gave thought to this supreme question of the liberty of the individual and organized themselves in its defence. This is the only way to protect the freedom we have achieved. National independence alone or even democracy by itself gives no guarantee of liberty to the ordinary citizen.

DETENTION OF DR. S. P. MOOKERJEE

Under the caption of "Law and Order" the "Times of India" wrote as follows on the circumstances in which the Supreme Court's decision (infra) revealed that Dr. Syama Prasad Mookerjee and two other members of Parliament were detained in custody.

The Prime Minister shook with emotion, so it was reported, when last Monday he described the satyagraha launched by some parties in support of the Jammu Praja Parishad as a challenge to law and order. Pandit Nehru was "amazed at some of" the things happening in "the country." It would be interesting to know what he thinks of the feckless manner in which Delhi's custodians of law and order defied both the spirit and letter of the Constitution by apprehending Dr. Mookerjee and two other M. P.s and holding them in illegal custody. The Supreme Court has now set them free, but the disclosures made during the proceedings will disquiet responsible citizens, whatever their political affiliations. The Constitution has now been in force for over three years. Yet the New Delhi authorities could calmly contemplate and perpetrate a gross breach of constitutional law which safeguards a basic individual right. The law as designed by the Constitution requires that a citizen should be produced before a magistrate within 24 hours of his arrest except when this is effected under the Detention Act. Moreover he cannot be held in custody without proper authority from a magistrate. The story of the slip on which the alleged remand order was made—its absence from the Court records and its production before the Supreme Court at a later stage—carries its own moral. If so scant is the respect shown to law in relation to such eminent persons, how much worse must it be when those arrested are of no political significance or consequence? It would appear that the executive's conception of law and order is unilateral. While the citizen must obey the law, Authority arrogates to itself the prerogative to violate it. This strange and sorry business emphasizes the need for separating the judiciary from the executive. Even so, the custodians of law and order might prove intractable and the common citizen might have to be given additional protection against the illegal deprivation of his personal liberty.

Instead of attempting to defend this studied flouting of "the forms and rules of law" the Government would have emerged with more grace had it admitted its officials' mistakes and tendered apologies to the Court and the arrested persons. But this would ill become the Moghuls of New Delhi. Nothing, they say, changes under the sun. That may well be, for the same notions of prestige and the same conception of law and order guide the Congress Governments as did our former alien rulers. Political considerations apart, the capital was surely not going to be set on fire by the satyagrahis. Instead of reimposing a ban on processions the authorities could have watched developments while taking precautions to meet possible violence and disorder. The police do not

emerge with any credit from the Home Minister's own narration of events at the meeting on March 8. Lathi charges interspersed with charging bulls make a confusing picture, but a little patience and that by the authorities might well have ensured both peace and order. To the authorities, however, every Opposition procession, crowd and meeting is composed of murderous hooligans who constitute a "challenge to the Government." Only those who adulate Authority are on the side of the angels. The others constitute the people whom Authority instinctively suspects. No responsible person suggests that the Government should not meet squarely any threats of violence and disorder when these break out. Indeed the charge is that the police often fail to give the people protection against dacoits and desperadoes. What the Government should not do is to smell violence in every popular movement, particularly those directed at ventilating grievances against the authorities. The tendency to meet every popular movement as a problem of law and order is endemic in the bureaucrat and survives in aggressive glory in the Ministers. Our Congress rulers should realise that the symbol of democracy is not the police baton, as they seem to imagine, but Parliament where controversial issues are settled by democratic debate and not by dictatorial dictats.

The "Hindu" commented as follows on the Home Minister's speech in the House of the People when he resisted a motion to adjourn the House for the purpose of discussing the state of things disclosed by the detention of the three M. P.s.

Now, having regard to the clear finding of the Supreme Court about the illegality of the detention and certain other serious irregularities of procedure noted by Their Lordships, one would have thought that the Government would have taken the opportunity to express their regret for the conduct of the officers concerned and to give an assurance of its non-recurrence. Not only did the Home Minister fail to do this but his reply to the discussion tends to suggest that no very great harm has been done to the rule of law and the fundamental liberties of the subject safeguarded by specific clauses in the Constitution. Disquieting as this attitude is, it would be even more so if the Government and Governmental agencies and officers came to regard the vote of the House as amounting to taking a light view of transgressions of "the forms and rules of the law," in contrast to the serious view taken by the Supreme Court. We say this because, firstly, among other arguments, the Home Minister sought to make out that the detention of the three M. P.s without a judicial order of remand was only a "technical flaw", though the Constitution Bench of the Supreme Court thought it a serious enough flaw to merit the immediate release of the arrested persons; and, secondly, this kind of thing is happening too often to be passed off as an isolated lapse on the part of Authority. Both these aspects of the matter were forcefully brought

out in the Supreme Court's judgment in the habeas corpus application. Noting that there was no order remanding the petitioners, Their Lordships remarked, "This Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty in discharge of what they conceive to be their duty must strictly and scrupulously observe the forms and rules of the law. This has not been done in this case. The petitioners now before us are, therefore, entitled to be released and they are set at liberty forthwith." (We have taken the liberty of italicising the words which show that this was not an isolated case.)

In so far as these findings constitute a reflection on the general conduct of persons possessed of powers over the liberty of the citizen, it is a matter which should be the concern of Parliament, maybe in a different form from that in which it comes up before the Judiciary. So there is no force in the Home Minister's contention that "there is no point in bringing this issue before Parliament." As for his attempt to draw a red-herring across the trail

by suggesting that it would amount to interference in the working of the Judiciary, he seems to have forgotten that this was not the ground on which he objected to a discussion of the subject when it was raised on an earlier occasion. At that time he said that, as the matter was before the Supreme Court by way of an application for habeas corpus, Parliament should not debate it at that stage. Now that the Supreme Court has ruled that the detention was illegal, his discovery about the impropriety of a Parliamentary discussion looks like an afterthought. We still hope that the Home Minister would take an early occasion to dispel the misgivings which gave rise to the motion. For it would be disastrous (but not surprising) even if a few executive officers interpreted the "large majority" by which it was defeated, and some of his own statements in the House, as being tantamount to a condonation of official breaches of important provisions of the Constitution relating to Fundamental Rights of the individual.

THE RIGHT TO PRIVACY WRONGFUL SEARCHES AND SEIZURES

We have already dealt with this subject in a general way in our November 1951 issue and pointed out therein that not only does our Constitution afford no protection against arbitrary intrusion by the police such as the Fourth Amendment to the United States Constitution does, but that the Public Safety Acts in all the States affirmatively provide for police incursion into privacy without judicial authority in a way which is not sanctioned in any civilized country. We wish in this issue to dwell in greater detail on this vital topic of the security of one's privacy as a concept of ordered liberty which is basic to a free society, and in our treatment of it we shall refer to the practice of the United States in which country the rules concerning this immunity have been worked out in greater minuteness than anywhere else.

1.—THE BACKGROUND

Every man's house is called his castle. Why? Because it is surrounded by a moat, or defended by a wall? No. It may be a straw-built hut; the wind may whistle around it, the rain may enter it, but the king cannot.— Lord Chatham.

For the background of the insertion of a guarantee against unreasonable searches and seizures in the Fourth Amendment to the U. S. Constitution which enshrines the principle established in England, that a man's house is his castle not to be invaded by any general authority to search and seize his goods and papers, we must go back to early English history. In England it was customary from ancient times to issue search warrants for the recovery of stolen goods, but the warrants were always issued under very strict conditions as to the place to be searched or the things to be seized. However, in the reign of Charles II search warrants began to be issued for the purpose of arresting individuals

for State offences and searching the homes of political suspects with a view to discovering and getting hold of any incriminatory evidence against them. Such warrants originated in the Star Chamber but were issued by the Secretary of State. The object being to suppress political agitation by implicating people in seditious libel, these warrants naturally could not be specific like those previously issued for the search of stolen goods. They were what came to be called "general warrants" permitting the widest discretion to petty officials. Indeed, in these warrants neither the name of the person to be arrested nor the place to be searched nor the character of the goods to be seized was specified. "Under George III they became, in effect, authorizations to the so-called messengers to arrest anyone and to search any house in order to apprehend the unnamed authors of the alleged libels and seize their private papers." But they were put a stop to by the courts. When Wilkes and his associates brought suits for civil damages against the messengers who had ransacked their papers on the authority of general warrants and against the Secretary of State who had issued the warrants, Lord Camden strongly condemned unrestricted search and seizure, declaring that a Secretary of State issuing a general warrant was merely the King's private secretary and had not, as such, the authority of a magistrate to issue a warrant in order to bring a person before him for examination and to search his property and that while search for and seizure of contraband or stolen goods was legal under warrants fulfilling the conditions of strict particularity as to the location to be searched or articles to be seized, such search or seizure of one's property in order to secure evidence of

criminal or illegal action was contrary to law. Said Lord Camden :

Whether this proceedeth from the gentleness of the law towards criminals, or from a consideration that such a power would be more pernicious to the innocent than useful to the public, I will not say. It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem that search for evidence is disallowed upon the same principle. There too the innocent would be confounded with the guilty.

This decision sounded the death knell of the general warrant, which was abolished in 1766.

But, even after abolition of the general warrants in England, they were used in the American colonies under the name of "writs of assistance" under which British officers searched the houses of colonists for smuggled goods. These writs closely resembled the general warrants condemned by Lord Camden in that they lacked particularity like the latter and were good indefinitely in the hands of any officer. Just about the time when Wilkes was prosecuted and the papers of Algernon Sidney were seized and made use of as means of convicting him of treason, the resentment against writs of assistance became the hottest in the colonies, and James Oatis, then Attorney General of Massachusetts, resigned his office in order to plead against the writs in the colonial courts. His argument in Paxton's Case, Quincy (Mass) 51, will ever endure in American history, but the argument did not succeed in winning acceptance. This failure to secure the requisite safeguards for the liberty of the colonial people is believed to be the most potent cause of the American Revolution. Adams has said about the result in the case in which Oatis pleaded: "Every man of a crowded audience appeared to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born."

2.—FOURTH AND FIFTH AMENDMENTS

Naturally after independence was won, the Americans were very keen on having a provision in the Constitution "designed to bar violation of the private security of person or property as well as unlawful invasion of the privacy of the home of the citizens, by officers of the law, under alleged judicial or legislative sanction and to supply a remedy where such usurpations were attempted." Insertion of such a provision in the Constitution was the answer of the Revolutionary statesmen to the evils of searches without warrants and searches with warrants unrestricted in scope. The object was secured by the Fourth Amendment, which runs as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The Amendment requires that no police officer can invade the right of privacy unless there is probable cause for such invasion, and the existence of probable cause as the legal basis for making a search is to be determined not by him but by a magistrate. Judicial authorization of a search warrant on an application therefor by the police is the primary obligation laid upon the law enforcement officers by this Amendment as the sole justification for intrusion into a man's privacy. And in executing the warrant, the police can seize nothing but the things specified therein [*Byars v. United States*, 273 U. S. 28 (1937)]. The "search and seizure" guarantee is closely related to the safeguard against compulsory self-incrimination in the clause of the Fifth Amendment which says:

No person . . . shall be compelled in any criminal case to be a witness against himself.

The "intimate relation" between the Fourth and Fifth Amendments was thus described in the famous case of *Boyd v. United States*, 116 U. S. 616 (1886):

They throw great light on each other. For the "unreasonable searches and seizures" condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the Fifth Amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the Fourth Amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself.

And the rule of the U. S. courts is that admission of evidence procured by a search in violation of the Fourth Amendment "vitiates a conviction" (*Byars v. United States*).

3.—IMPORTANCE OF THE GUARANTEE

What a great importance is attached to the right of privacy of the home among fundamental human rights will be apparent from the following excerpts from the Supreme Court's judgments. In *Gould v. United States*, 255 U. S. 302 (1921), the Court said:

It would not be possible to add to the emphasis with which the framers of our Constitution and this Court have declared the importance to political liberty and

to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two (Fourth and Fifth) Amendments. The effect of the decisions cited is: that such rights are declared to be indispensable to the "full enjoyment of personal security;" that they are to be regarded as of the very essence of constitutional liberty; and that the guarantee of them is as important and as imperative as are the guarantees of the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of habeas corpus and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or "gradual depreciation" of the rights secured by them, by imperceptible practice of courts or by well-intentioned but mistakenly over-zealous executive officers.

In *McDonald v. United States*, 335 U. S. 451 (1931), the Court said:

We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.

The need for a detached judicial officer authorizing the police officers in searching for and seizing private property was thus emphasized in *United States v. Lefkowitz*, 285 U. S. 452 (1931):

The informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime.

In *Trupiano v. United States*, 334 U. S. 699 (1948), the Supreme Court said:

In their understandable zeal to ferret out crime and in the excitement of the capture of a suspected person, officers are less likely to possess the detachment and neutrality with which the constitutional rights of the suspect must be viewed. To provide the necessary security against unreasonable intrusions upon the private lives of individuals, the framers of the Fourth Amendment required adherence to judicial process wherever possible. And subsequent history has confirmed the wisdom of that requirement.

As a general rule, every search and seizure is unreasonable when made without judicial authority expressed through a search warrant, but the rule is subject to certain "minor and severely confined exceptions." First, a warrant for the arrest of a person is supposed to carry with it authority "to seize all that is on his person, or is in such open and immediate physical relation to him as to be, in a fair sense, a projection of his person." Then, there are some other exceptions which the common-law recognized as inherent limitations on the requirement of a search warrant, when, e. g., a suspect is fleeing or about to take flight, when the search is of a movable vehicle, when evidence or contraband is threatened with removal or destruction. In regard to search or seizure of automobiles, it was said in *Carroll v. United States*, 267 U. S. 132 (1927), that a difference was always recognised "between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be moved out of the locality or jurisdiction in which the warrant must be sought." The instances given above are in fact those in which it would be impossible to secure a search warrant. But where such exceptional circumstances do not exist a validly issued warrant cannot be dispensed with.

HABEAS CORPUS PETITIONS

Detention of Dr. Mookerjee and Mr. N. C. Chatterjee

HELD ILLEGAL BY THE SUPREME COURT

Dr. Syama Prasad Mookerjee, Mr. N. C. Chatterjee, Mr. Nandalal Sharma and Mr. Gurudatt Vaid were arrested on 6th March for alleged defiance of an order by the district magistrate of Delhi banning meetings and processions under sec. 6 of the Punjab Security of State Act. They were stated to have led a procession of Jana Sangh workers demonstrating near Chandni Chowk in support of the Praja Parishad agitation in Jammu.

A habeas corpus petition was filed on behalf of the arrested leaders in the Supreme Court. Counsel for the detenus argued that the non-production of the detenus before a magistrate after 24 hours of their arrests made the detention illegal under Art. 22 (2) of the Constitution (which says that every person "who is arrested and detained in custody shall be produced before the nearest

magistrate within a period of 24 hours") as well as under sec. 167 of Cr. P. C., which provides that the magistrate before whom the arrested person is produced will pass an order remanding him to custody. Referring to the statement made in the affidavit by sub-inspector Ram Nath that the necessary remand order under sec. 167 had been made by Mr. Dhillon, additional district magistrate, on 6th March, the day of the arrest, defence counsel contended that even assuming that there was such an order validly on record, that order could not in law amount to an order of remand under sec. 167, because in the present case Mr. Dhillon, who lodged the First Information Report with the police, was no more than a private individual making a complaint, and hence merely an important witness for the prosecution. He could not be regarded as a magistrate contemplated by sec. 167. The order under that section was a judicial order. "There is never an instance of a complainant himself becoming the judicial magistrate to investigate the complaint under sec. 167." The magistrate, acting under the section, must further pass an order in the presence of the accused person after hearing him or his counsel if any and must also specify the period for which the remand was ordered, as was not done in the present case.

The Constitution Bench of the Supreme Court, which heard the habeas corpus petition, held (12th March) that the detention of the arrested persons was illegal as there was no proper remand order on record to justify their detention after 24 hours of arrest, thus contravening Art. 22 (2) of the Constitution. As to the order of Mr. Dhillon passed on 6th March, Their Lordships observed that even assuming that it was a valid order of remand, it expired on 9th March and was no longer in existence.

But there was another remand order which was alleged to have been passed by Mr. Shingle, trying magistrate, about 3 p. m. on 9th March while adjourning the case till 11th March. As to this order, Their Lordships remarked that, as was required in law, this subsequent order obviously passed under section 344 of the Criminal Procedure Code, did not contain any direction for remanding any person to custody till that date. Their Lordships held that this subsequent order too could not be said to be an order of remand passed by a magistrate who had begun the trial of a case.

Their Lordships refused to take notice of some slips of paper handed over to the Registrar of the Court at 5-20 p. m. on March 11, one of which by an endorsement at the back purported to be a remand order. In the opinion of Their Lordships, these papers should have been placed before the Court as directed by the Court's express order dated March 10 wherein all the necessary papers of remand of the courts of both Mr. Dhillon and Mr. Shingle were asked to be produced.

Following an earlier decision of the Court in the case of Niranjan Singh, where it was laid down that the relevant time for judging the legality or otherwise of a deten-

tion was the time of the return of the rule, Their Lordships found that when the rule in the present cases was made returnable, that is, on March 10, no valid order of remand by a magistrate either under section 167 or section 344 of the Criminal Procedure Code was in existence. Their Lordships said:

Those who felt called upon to deprive other persons of their personal liberty in the discharge of what they conceived to be their duty must strictly and scrupulously observe the forms and rules of the law.

[The editorial comment that appeared in the "Times of India" on this case is reproduced on an earlier page in this issue.]

Adjournment Motion

On this subject the Maharaja of Patna on 25th March moved a motion in the House of the People, saying that the faith of the people in the rule of law had been shaken by the irregularities committed by the executive authorities, as revealed in the proceedings before the Supreme Court, and urged that it was the obvious duty of the Government to take strict action against the officials concerned. Mrs. Renuka Chakravarti, a Communist member, supported the motion, pleading that the executive authorities were flouting the Articles of the Constitution in hundreds of cases in which Kisan workers and others were brought up for trial, and she instanced the case of several persons who had not been produced before a magistrate after their arrest for long periods.

The Home Minister in reply observed that the Supreme Court had pointed out only "a technical flaw" in the procedure adopted and said: "There was no point in bringing this issue before Parliament. . . . If the motion is accepted, it will create a precedent fatal to the judiciary in this country." The motion was rejected by a large majority.

[Comment on this by the "Hindu" is given on an earlier page.]

BOMBAY SALES TAX ACT

Held Valid by the Supreme Court

By a majority judgment of 4 to 1, the Constitution Bench of the Supreme Court on 30th March allowed the appeal of the Bombay Government and declared the Bombay Sales Tax Act, 1952, to be *intra vires* of the State legislature except for rule 5 (2) (1) framed under it.

The appeal arose out of levy of sales tax under the Act on transactions which the respondents (the United Motors Ltd. and several other motor car dealers of Bombay) claimed to be outside the scope of the Act in view of the prohibitions contained in Art. 286 of the Constitution. The respondents moved the Bombay High Court for a writ in the nature of mandamus against the Bombay State preventing them from enforcing the provisions of the Act which they said were *ultra vires* and unconstitutional. The High Court issued the writ as asked for and declared the Act to be bad (see p. ii:216 of

the BULLETIN), and hence the appeal by the State of Bombay.

The High Court held that the definition of "sale" in the Act was so wide as to include the three categories of sale exempted by Art. 286 from the imposition of sales tax by the States and, therefore, the Act should be declared to be wholly void as the definition pervaded the whole of it and the whole scheme of the Act was bound up with the definition. It rejected the contention of the State that the rules framed by the Government under the Act excluded taxing of sales which were prohibited under the Constitution, and that the Act and the rules should be taken together, which would then save the Act from unconstitutionality.

The Chief Justice, delivering the opinion of the Supreme Court in the appeal, said: The explanation to Art. 286 (1) negated the theory that a transaction could be deemed to be sale only when property in the goods passed and laid down that if goods were actually delivered in the territory of a State as a direct result of such sale for consumption in that State, it would be a sale in that State liable to taxation. Therefore all transactions in the nature described in the explanation which took place in the State of Bombay were taxable. Thus the charging section in the Bombay Act could not be taken to cover the class of sales and purchases banned by Art. 286 (1) (a), i. e., sales and purchases which were to be regarded as taking place outside the State of Bombay.

As regards the other two categories of sales or purchases excluded by Article 286 (1) (b) and (2) of the Constitution, the Chief Justice said that it was true that the Act taken by itself, did not provide for their exclusion. But rules 5 and 6 framed under the Act which dealt respectively with deduction of sales in calculating the calculable turnover under sections 7 and 11 excluded these two categories in express terms, and these rules were brought into force, simultaneously with the charging sections 5 and 10 on November 1, 1952. The position, therefore, was that on the date when the general tax and the special tax became leviable under the Act, sales or purchases of the kind described under Article 286 (1) (b) and (2) stood excluded from taxation and the State of Bombay could not be considered to have made a law "imposing or authorizing the imposition of a tax" on excluded sales or purchases. The Act and the rules having been brought into operation simultaneously, His Lordship said, there was no obvious reason why the rules framed in exercise of the power delegated by the legislature should not be regarded as part of the "law" made by the State. But the Chief Justice declared that rule 5 (2) (1) was ultra vires of the rule-making authority and, therefore, void. As to severability, the Chief Justice said it was a sound rule in dealing with taxing statutes to extend severability to include separability, separating taxes levied on authorized subjects from those levied on exempted subjects.

Mr. Justice Bose who delivered a dissenting judgment came to the conclusion that the Bombay Sales Tax Act, 1952, was ultra vires of the State legislature. He would assume without deciding, he said, that the rules excluded all sales which were exempt under the Constitution. Nevertheless, he was not prepared to agree that rules could save an Act. Rules were made by a subordinate authority which was not the legislature and he could not agree that the validity of the Act of a competent legislature could be made to depend upon what some subordinate authority chose to do or not to do. The rules were not passed by the legislature and in theory the particular shape they took was not even in contemplation.

On the question of severability, His Lordship said that he could not see how the good can be separated from the bad in this case even if the explanation to sec. 2 (14) could be expunged unless the Constitution was to be read as part of the Act and they were to read into the Act certain new provisions. But, in his opinion, Mr. Justice Bose said, judges were not entitled to rewrite an Act. Offending provisions could be struck out but if they did that, the whole Act went because the defect here was that all sales were permitted to be taxed provided they were within the State of Bombay, and the rule-making authority was not restricted to taxation which was constitutionally permissible.

In the result Their Lordships set aside the declaration made by the Bombay High Court and quashed the writ issued by it except in regard to rule 5 (2) (1).

SATHI LANDS ACT, BIHAR

Act Declared Invalid

STATE'S INTERVENTION IN A PRIVATE LEGAL DISPUTE

The Constitution Bench of the Supreme Court on 20th February allowed the appeal Ram Prasad Narayan Sahi and Ram Rekha Naryan Sahi v. the State of Bihar. The appeal concerned the Sathi Lands (Restoration) Act, 1950. Their Lordships declared the Act void and issued a writ in the nature of mandamus directing the State of Bihar not to take any steps in pursuance of the Act or to interfere with possession of the appellants in respect of the lands comprised in the lease referred to in the Act.

The appeal arose out of a petition by the appellants before the High Court at Patna under Article 226 of the Constitution praying for a writ of mandamus directing the opposite party, the State of Bihar, not to take any action under the Sathi Lands (Restoration) Act passed by the Bihar legislature in 1950. The Act was passed to restore to the British State 200 bighas of land settled on the appellants by the Court of Wards which is managing the estate on behalf of Maharani Janki Koer, respondent No. 2, who is the present disqualified proprietress of the Bettiah Estate. The Court of Wards had settled the land with the appellants under section 18 of the Court of Wards Act 1879 and the Act purported to restore the land so settled as

the settlement was contrary to law. The High Court of Patna dismissed the petition but certified the case under Article 132 (1) of the Constitution.

The genesis of this legislation is thus explained in the counter affidavit filed on behalf of the State of Bihar, the first respondent :

Report against the settlement of these lands with the petitioners as well as some other lands to Sri Prajapati Mishra and the unlawful manner in which these settlements were brought about, was carried to the Working Committee of the Indian National Congress, which body, after making such enquiry as it thought fit, came to the conclusion that the settlement of these lands with the petitioners was contrary to the provisions of law and public policy and recommended that steps should be taken by the State of Bihar to have these lands restored to the Bettiah Estate. In pursuance thereof a request was made to return the lands to the Bettiah Estate. While Sri Prajapati Mishra returned the land settled with him, the petitioners refused to do so.

The statement of objects and reasons of the Sathi Lands (Restoration) Bill runs thus :

As it has been held that the settlement of Sathi Lands in the District of Champaran under the Court of Wards with Sri Ram Prasad Narayan Sahi and Sri Ram Rekha Prasad Narayan Sahi is contrary to the provisions of the law and as Sri Ram Prasad Narayan Sahi and Sri Ram Rekha Narayan Sahi have refused to return the lands to the Bettiah Estate, Government have decided to enact a law to restore these lands to the Bettiah Estate.

Mr. Justice Mukherjea and the Chief Justice, Mr. Patanjali Sastri, delivered separate judgments. The Chief Justice, in his concurring judgment, said on the constitutional issue :

Recently we had before us a case from Hyderabad, Ameerunnisa Begum versus Mahboob Begum, where the duly constituted legislative authority of that State intervened in a succession dispute between two sets of rival claimants to the estate of a deceased person and "dismissed" the claim of the one and adjudged the property to the other by making a special "law" to that effect. And now comes this case from Bihar of an essentially similar type. The appellants assert title to certain lands in Bettiah Estate under a settlement which they claim to have lawfully obtained from the Court of Wards, while it is now alleged on behalf of the Estate that the settlement was not for the benefit of the Estate and was contrary to law, as the Court of Wards did not then "apply its mind" to that question. This is purely a dispute between private parties and a matter for determination by duly constituted courts to which is entrusted, in every free and civilised society, the important function of adjudicating on disputed legal rights, after observing well-established procedural safeguards which include

the right to be heard, the right to produce witnesses and so forth. This is the protection which the law guarantees equally to all persons, and our Constitution prohibits by Article 14 every State from denying such protection to anyone. The appellants before us have been denied this protection.

A political organization of the party in power decides after making such inquiry as it thought fit that the settlement in question was "contrary to the provisions of law and public policy," and the State legislature, basing itself on such decision, purports to declare the settlement "null and void" and directs the eviction of the appellants and the restoration of the lands to the Estate.

The reasons given for this extraordinary procedure are indeed remarkable for their disturbing implications. It is said that "there was agitation amongst the tenantry of the locality and opposition on the part of persons living in the locality against the appellants' possession of the lands which led to breach of the peace and institution of criminal cases." Whenever, then, a section of the people in a locality, in assertion of an adverse claim, disturb a person in the quiet enjoyment of his property, the Bihar Government would seem to think that it is not necessary for the police to step in to protect him in his enjoyment until he is evicted in due course of law, but the legislature could intervene by making a "law" to oust the person from his possession. Legislation such as we have now before us is calculated to drain the vitality from the Rule of Law which our Constitution so unmistakably proclaims. It is to be hoped that the democratic process in this country will not function along these lines.

C. L. U. NEWS

Bombay C. L. Union's Protest AGAINST THE DISCRIMINATORY POLICY OF THE GOVERNMENT

The Government of Bombay has issued a circular directing its officers to give State advertisements to newspapers in a specified order of priority and not to give any advertisements to newspapers not mentioned in the list. One of the papers which is altogether excluded from this so-called "preferential list" (which is a "secret" document) is the "Times of India," which the Chief Minister has himself admitted has the largest circulation in the Bombay State.

Against this discriminating policy the Bombay Civil Liberties Union protested on 21st April at a public meeting. The resolution passed at the meeting was as follows :

This public meeting, held under the auspices of the Bombay Civil Liberties Union, views with grave concern the discriminatory policy of the Bombay Government in giving advertisements to newspapers.

This discrimination is evident from the confidential circular issued by the Bombay Government, giving a preferential list in order of priority of newspapers for the purpose of Government advertisements in which the names of *The Times of India* and allied publications do not find a place, although these newspapers have a large circulation. This discrimination, as disclosed in the correspondence between Bombay's Chief Minister and the General Manager of *The Times of India*, is based on the policy that newspapers that are critical of the Government are not to be given Government advertisements.

In the considered opinion of this meeting, such a discriminatory policy on the part of the Government deserves to be condemned in the strongest language, as it strikes a severe blow at the freedom of the press and consequently restricts the civil liberties of the people. The meeting, therefore, urges that the confidential circular issued by the Government should be withdrawn forthwith.

Mr. Ashok Mehta moved the resolution, and Miss Maniben Kara and Messrs. Harris and P. R. Lele spoke to it. The meeting was presided over by Mr. N. M. Joshi, President of the Union.

M. P. Union's Protest

At an emergent meeting of the executive committee held on 20th March under the chairmanship of Mr. R. S. Ruikar, the Madhya Pradesh Civil Liberties Union protested against the "unfair and unjust discrimination" made by the Bombay Government in withholding advertisements from the "Times of India." The resolution said: "If the executive of any State makes such unfair and invidious use of its powers to give advertisements because of the political views of a newspaper, it will in effect be a grave attack on the liberty of the press in that State and make the press subservient to the executive."

The meeting also congratulated the Supreme Court on the promptitude and spirit of independence shown by it "in upholding the civil liberties of the citizen" in the recent case of detention of Dr. Syama Prasad Mookerjee, Mr. N. C. Chatterjee and others.

COMMENTS

Crisis in the Human Rights Commission

The announcement by the United States, at the opening meeting of the Human Rights Commission in Geneva, that it could not accept the two draft Covenants on Human Rights in their present form and the declaration by the British delegate that Britain too had grave doubts about the utility of the Covenants unless they were radically altered have created a crisis which makes the future of an international pact on human rights extremely uncertain. The Indian delegate, Mrs. Kamaladevi Chattopadhyaya, expressed the feeling of everyone

that the American decision not to ratify the Covenants "knocks the bottom out of the Commission's work." But it must be remembered that if the United States, which more than any other nation values a Bill of Rights, cannot adhere to the Covenants as drafted, it can only be because the drafts are most unsatisfactory, leaving too many loopholes for invasion of fundamental rights by national Governments. As the British delegate, Mr. S. Hoare remarked:

Some of the remarks in the U. S. statement are only too true. As long as the Covenants remain so vague and general, many States would refuse to bind themselves to them. The British Government doubts whether any considerable number would be able to ratify the Covenants in their present form.

Australia has joined with the United States in declaring that if the Covenants are to remain as unsatisfactory as they are, it will not ratify them. And if the warning given by France is heeded, viz., that the refusal of the U. S. to ratify the Covenants "should lead the Commission to renewed energy and courage," the Covenants may yet be salvaged. But if in their present form they do not appeal to democratic countries, the latter cannot be very much blamed.

Similarly, in the United Nations, the United States announced its refusal to ratify the Convention on Freedom of Information "because it has become loaded down with reservations and restrictions which, in our view, are inconsistent with press freedom and, accordingly, unacceptable."

Punjab Detentions Criticised

DR. KUNZRU'S DENUNCIATION

The detention of 14 persons in the Punjab who belonged to the Jana Sangh and Hindu Mahasabha (referred to on p. ii:231 of the BULLETIN) were the subject of criticism in the debate at the hands of the Opposition parties in Parliament on the motion of thanks on the President's Address, and Pandit Kunzru, who is not associated with either the Jana Sangh or the Hindu Mahasabha, was about the fiercest. He denounced the arrests and detentions as a misuse of the Preventive Detention Act. He complained that no adequate explanation had been given for these detentions. The Punjab Chief Minister had said at a press conference that the action had been taken because the agitation in Jammu was contrary to the decisions of Parliament and therefore contrary to democracy; that the Praja Parishad's activities constituted treason (1) and that the Government could not allow violent activities to go on. Mr. Kunzru said that however much one might disapprove or disagree with the Parishad's aims or activities, the reasons advanced were not good grounds for depriving 14 persons of their liberty without trial. If the organizations had indulged in illegal or violent activities the Government could surely have prosecuted them. For the action taken under the Preventive Detention Act, it

was not enough that the activities were unlawful. They must be of such a character as to jeopardise the security of the State. The country was entitled to know at whose instance and for what reasons the action had been taken by the Punjab Government. The reason why the agitation had gathered strength appeared to be that the July agreement had not yet been fully implemented. The least the Government could do was to give an assurance to the people of Jammu that, notwithstanding the delay that had already occurred, the entire agreement would be expeditiously implemented.

Mr. Kunzru next referred to the sad state into which the fundamental rights of the Kashmir and Jammu State had fallen. He said that during the debate in Parliament on the July agreement, the Prime Minister had said that in regard to fundamental rights there would have to be some modifications in view of the special conditions of the Jammu and Kashmir State. Even then the impression left was that the fundamental rights, though modified, would be incorporated in the Indian Constitution itself. But from the speech of Sheikh Abdullah in the Kashmir Constituent Assembly, it looked as if it would be incorporated in the State Constitution or law. What use would it be if the fundamental rights were to be made subject to the will of the State legislature? Again, why should not the actions of the Jammu and Kashmir Government be challenged in the Supreme Court?

Detention of Goondas

While agreeing generally with our condemnation of preventive detention, a correspondent upbraids us for not making any discrimination between the detention of political suspects and that of blackmarketers and goondas and evil-minded men in general. He argues that though detention is bad in principle, it should not be objected to in the case of men who are a danger to society if that is the only or the quickest means of protecting society from their nefarious activities.

We must confess we have no sympathy whatever with this reasoning; we cannot discriminate between the detention without trial of political leaders on mere suspicion and such detention, say of men supposed to be in the gang of Bhupat in Saurashtra. We condemn both equally strongly. If we once begin tolerating invasions of civil liberty in the case of men who may well be regarded as gangsters and depraved criminals, we shall soon end in having the civil liberty of "good men" being invaded. Civil liberty is indivisible: the law must be the same for all. That the intentions of the Government are good makes no difference.

The principle to follow in such cases is that laid down by Justice Brandeis in *Olmstead v. United States*, 277 U. S. 438 (1928). *Olmstead* was the ring-leader of a gigantic conspiracy of bootleggers, who used two sea-going vessels to carry on rum-running and earned a profit of over two million dollars a year. The conspirators were convicted

on evidence obtained by wire-tapping. The *Olmstead* gang could not evoke the sympathy of any right-minded person: nor would any one suspect that the officials of the Government had any other concern than to bring the offenders to book. But what does Justice Brandeis say about this?

It is immaterial that the intrusion (of the prohibition officers) was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

Similarly, Justice Murphy said in *Goldman v. United States*, 316 U. S. 129 (1942) with reference to the Fourth Amendment to the Bill of Rights:

Its protecting arm extends to all alike, worthy and unworthy, without distinction. Rights intended to protect all must be extended to all, lest they so fall into desuetude in the course of denying them to the worst of men as to afford no aid to the best of men in time of need.

This is precisely what we would say about the detentions carried out on a large scale by the Government of men supposed to be desperate criminals, obviously with the best of motives.

Censorship of Obscene Matter

What the people at large think about this subject in the United States will be apparent from the recent reports of two committees appointed to investigate whether there should be a federal law to censor obscenity. A Congressional sub-committee, which, under the chairmanship of Representative Oren Harris, investigated for several months into alleged offensive and indecent material on radio and television, reported in January last that though there was cause for complaint about poor taste, objectionable humour and the prevalence of crime programmes, no legislative action should be taken. For "the potential evils inherent in government controls might be even greater than the evils that such controls might be designed to remedy." Mr. Levy, staff counsel of the American Civil Liberties Union, giving evidence before the committee, said that responsibility for "good taste" be left to local radio stations and that any attempt to censor or regulate the content of radio programmes would violate the First Amendment.

Similarly, a committee appointed under the chairmanship of Representative E. C. Gathings, reached a similar conclusion with regard to federal censorship of allegedly indecent paper-bound books, comics and magazines. ACLU's executive director Malin, who tendered testimony before this committee, said that while there is no constitutional right to "dirt for dirt's sake," the enforcement of present state obscenity laws with full trial

by jury would be the most effective way to handle the problem. Any further laws curbing printed matter would run afoul of freedom of the press. Pointing out that there are balancing forces at work, he said:

American homes, schools, churches and synagogues are all mustered to do battle with any evil tendencies, if such there be, that crime books may bring out. . . . There may be, in the absence of censorship, some risk that some persons along the line may possibly get hurt. . . . Risk there is in all life, and we must take this risk on the side of freedom.

Civil Liberties in "Cold War"

BRITISH POSITION EXPLAINED

Because the United States was being harshly criticised in England for the American "witch-hunt" of Communists and Britain on the other hand was being subjected to criticism in the United States for her apparent leniency towards Communists in public office and elsewhere, the British Home Secretary, Sir David Maxwell Fyfe, on 4th February explained to a group of American correspondents the philosophy underlying the British Government's attitude to civil liberties *vis a vis* security during the "cold war" period.

He made the point that during a "hot war" people's minds were adjusted to the need for a temporary sacrifice of civil and other liberties for the sake of retaining the basic liberties at the end.

But under conditions as they exist today, Sir David continued, when there is no end of the "cold war" in sight it is essential to retain all the liberties that go to make up the warp and woof of a free way of life and specifically to insure that freedom of controversy that is so vital to democracy.

Sir David asserted that the retention of these liberties and the maintenance of national security required extremely fine decisions. The British Communist party for instance is not proscribed and Sir David declared that it was his Government's view that a member of the party was entitled to hold a public or private position provided his work did not involve secrets relating to the nation's security. Known Communists, he said, have been barred from jobs where they have access to secrets but where possible have been assigned to other tasks.

Curb on Appointment of Church Officials

The Communist Government of Poland last month issued a decree sharply limiting the right of the Roman Catholic Church to make its own appointments to high church offices. The decree requires Government consent for appointments of bishops, archbishops, etc., and also for promotions and transfers in Poland. The avowed aim

of the decree is to eliminate all vicars except those who are loyal to the Communist regime. The official Communist party organ declared:

The decree provides that only "patriots" will be appointed; that only persons who will support the Polish State's interests will hold appointments.

The decree also requires all members of the church hierarchy to take an oath of loyalty to the Communist regime. It provides further that any member of the hierarchy who "carries on activities contrary to law or supports or conceals them . . . shall be removed from his post, either on the initiative of his superior church authorities or on request of State authorities."

Abuse of "Emergency" Powers

The recent decision of the Philippine Supreme Court invalidating the President's use of "emergency" powers is of more than passing interest. There has been of late a long-standing contest between the executive and legislative branches of government. The legislative branch has been often obdurate, and the President has tried to by-pass it by the use of war-time powers, regarded by many legislators as arbitrary. The issue on which the Supreme Court ruled in this particular instance was not a matter of serious disagreement between the legislature and the executive. The President had applied a considerable sum to typhoon relief under his emergency powers. There was no quarrel with this objective and the Senate had already entertained a bill making a similar appropriation. But the President's intervention was objected to on the ground that he had no authority to do what he did. The emergency exists only technically, but in substance it has ceased to exist; and in such circumstances the use of "emergency" powers by the President was unjustifiable. This contention the Supreme Court has upheld.

That the proclamation of an emergency by the executive should be subject to challenge in a court of law is itself a matter of great moment. In most of the constitutions which provide in advance for an emergency a proclamation to this effect is not within the purview of judicial review. It is well-known how, under the Weimar Constitution, the German Republic was governed largely by Art. 48 of that Constitution and how this Article, coupled with the use of the power of dissolution, led to Hitler's dictatorship. Our own Constitution provides for no judicial review as to the constitutionality of a proclamation of an emergency by the President, who is only subject to a very limited control of the legislature. The United States Constitution contains no provisions at all for an emergency. Only the right to the writ of habeas corpus is capable of being suspended "when in cases of a rebellion or invasion the public safety may require it," and ultimately it is for the Supreme Court to decide whether conditions in fact do exist warranting the suspension of habeas corpus. Looked at from this wider constitutional point of view, the decision of the Supreme Court of the Philippines has great significance.