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ARTICLES

Dr. Ambedkar as Constitution-Maker

Dr. Ambedkar, reputed to be the principal architect of the Indian Constitution, emphatically disowned that role, while speaking on the Andhra State Bill, and said : "I was a mere hack. I did what I was asked to do. I only carried out the wishes of the majority." And he was so thoroughly dissatisfied with his handiwork that he declared that "he would be the first person to burn it." This statement confirms the suspicion we have long had that the Fundamental Rights chapter of the Constitution did not reflect his mind, keen as we know him to be on preservation of civil liberties. The ultimate form which this chapter, as the other chapters, assumed was necessarily to depend upon the wishes of the Constituent Assembly as a whole, but the least anyone would have expected of Dr. Ambedkar was to have put forward his own views clearly and unambiguously, leaving it to the Assembly either to follow or not to follow his guidance. But evidently he approached his task as a limb of the Government, and not, as we think he should have, as an independent member of the Constituent Assembly free to make his own individual contribution to the framing of the Constitution.

Nowhere was the result of his considering himself as sitting in the Constituent Assembly in the capacity of Law Minister more disastrous than in regard to the constitutional provision concerning Freedom of Person. This provision as first drafted by the advisory committee of the Constituent Assembly was wholly satisfactory, and we are quite willing to believe it was due to the inspiration of Dr. Ambedkar that the draft was so satisfactory. The provision ran in these words : "No person shall be deprived his life and liberty without due process of law." The draft Constitution did not contain (as the Constitution finally adopted does not) a specific provision, corresponding to that in Art. I, sec. 9 (2), of the United States Constitution, forbidding suspension of habeas corpus in peace-time. Probably Dr. Ambedkar thought that such a provision would be too much even for the advisory committee composed as it was of such

erudite reactionaries as Sir Alladi Krishnaswamy Aiyar. Nevertheless, personal liberty would have been adequately guaranteed by insertion of the words "due process of law" in the Article relating to personal liberty, which in the advisory committee's draft stood as Art. 15. The Article was passed by the Constituent Assembly too in that form on 30th April 1947. But the implications of these words, which were borrowed from Art. V of the United States Constitution and which were borrowed by the framers of that Constitution in their turn from England, were subsequently made known, it appears, to the Government of India, which at the time included, it should be remembered, men like the late Mr. Vallabhbhai Patel, and the Government apparently put its foot down on those words when they knew what they connoted in constitutional law. Thereupon Dr. Ambedkar, as a loyal member of the Cabinet, changed the provision in the revised draft. It then assumed this form :

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

The fat was now in the fire. Mr. P. R. Das, President of the All-India Civil Liberties Council, was the first to show in the "Indian Law Journal" how completely nugatory the professed protection of personal liberty would become if the Constitution were to leave it to the legislature to set limits at will to that liberty. To remove all constitutional limitations from personal liberty, as would be the result if the revised draft of art. 15 were to be adopted, he pointed out, was in fact to score out Freedom of Person from Fundamental Rights. And in any case no purpose would be served by retaining such a provision in the Constitution, for, under the Article in this form, the executive alone would be prevented from depriving individuals of their personal liberty except as law provided, and no constitutional provision was required to ensure that the executive officials kept within the bounds of law as it might stand at any particular time. This exposure made a deep impression on the public mind and when the Article came up for discussion in the Constituent Assembly even several Congress members, fondly thinking that in such an important matter as framing the country's Constitution they were not to be

bound by a party mandate, denounced the revised draft of the Article in scathing terms, saying that personal liberty was too sacred a thing to be left in the discretion of a majority in the legislature either to safeguard or to abrogate. The debate had to be adjourned for several days, and when the question was raised again for final decision on the last day of the then session of the Assembly (13th December 1948), it fell to Dr. Ambedkar to explain the distinction between the original draft and the new draft, between the expressions "due process of law" and "procedure established by law."

He performed this task exceedingly well as befits a man of his expert knowledge of constitutional law. He agreed that the substitution of the new phraseology would effect a great change in the content of the provision. He said:

The "due process" clause, in my judgement, would give the judiciary the power to question the law made by the legislature (on the ground) whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was a good law apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles, and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering the matter is this. We have no doubt given the judiciary the power to examine laws made by different legislative bodies on the ground whether the laws are in accordance with powers given to them. The question now raised by the introduction of the phrase "due process" is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

Then he pointed out the two alternative courses that were open to the Constituent Assembly: (1) to impose limitations on legislative power, or (2) to give the rein to legislative discretion. He continued:

There are two views on this point. One view is this: that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase "due process." Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what

may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws.

Thus explaining the two points of view from which the question could be approached, he proceeded to say that he was unable to decide which point of view should prevail. He said:

It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla, and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

It is impossible to believe that Dr. Ambedkar could not really make up his mind as to which of the two alternatives should be adopted. He pleaded his inability to come to a decision, we are quite certain, only because he found that his individual opinion was in sharp conflict with the opinion held in the powerful sections of the Ministry. He fully realized that even in a democracy the personal liberty of minorities was likely to suffer at the hands of the party in power, unless constitutional limitations were imposed on the kind of legislation it might adopt by virtue of the brute majority at its command. Indeed, without such limitations the so-called democracy is not a real democracy. As was said by the Supreme Court of the United States in *Hurtado v. California*, 110 U. S. 516 (1884):

A government which holds the lives, the liberty and the property of its citizens, subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism.

But he saw—or rather pretended to see—difficulties in the other alternative: viz., judges being given power to override the legislature when legislation oversteps constitutional provisions. Dr. Ambedkar is surely not so innocent of law as not to know that that is the essence of all fundamental rights. If the legislative will is to be supreme, then there

can be no fundamental right, neither to personal freedom nor to any other freedom. As was observed by Justice Patanjali Sastri (now Chief Justice of the Supreme Court) in the Gopalan case, "It is of the essence of that conception (i. e., of the conception of a fundamental right) that it is protected by the fundamental law of the Constitution against infringement by ordinary legislation." If such legislative infringement of personal liberty, "the most important fundamental right" (in the words of Justice Sastri), is not provided against in the Constitution, this vital liberty would be at the mercy of legislative majorities and Art. 15 (which now is numbered 21) would mean, for want of "due process," as was expressed by an American judge in a similar context, "You shall not take away life or personal freedom unless you choose to take it away." And if the legislative will is to be unchallengeable and the doctrine of Parliamentary supremacy in all respects is to be adopted, then there can be no room for any Bill of Rights, whose avowed object is to set aside a region of freedom on which no authority, either executive or legislative, can trench. On such a basis the whole of the Fundamental Rights chapter of our Constitution will have to be deleted therefrom.

It is true that the ruling interpretation of any of the rights incorporated in a Bill of Rights may in any particular case be delivered by the Supreme Court even by a majority of one Judge. But that is not peculiar to cases involving Fundamental Rights; that may conceivably happen in all other cases. And if according to Dr. Ambedkar, it is so nonsensical to allow one Judge to set aside the whole of the legislature, why should he, one wonders, rail at the absence of a provision in the Constitution, for which he pleaded in speaking on this occasion, enabling the Governor of a province to veto a law passed by the legislature on the ground that it does not give adequate protection to the interests of minorities. Why does he suppose that the wisdom of this particular individual will be superior to the collective wisdom of the legislature as a whole? Anyhow, he knows that the chief, if not the sole, purpose of any Bill of Rights is to check legislative excesses and aggressions. If the legislature is to be supreme, there can be no Fundamental Right, and in arguing as he did on the issue of personal liberty, Dr. Ambedkar was really putting forward a plea for dropping the chapter in our Constitution on Fundamental Rights in its entirety. The truth is, as he has now blurted out, that he was acting under orders and he spoke in the way he did because he felt that that was the only way in which he could carry out the orders he had received. Dr. Ambedkar is the last person to be subservient to anyone. Only because of his misconceived loyalty to the Government in which he had allowed himself to be included he gave expression to such absurdities. He has, we must say with very great regret, done the utmost disservice to the country thereby.

Thus the Article which was originally intended to secure Freedom of Person was shorn of all its reality, and it stands in its present form, meaningless and purposeless, in the Constitution. But to leave no doubt in the mind of anyone that detention without trial even in peace-time was sanctioned by the Constitution—suspension of habeas corpus in a crisis was never in question, for the Emergency Provisions chapter in the Constitution provides for suspension of *all* Fundamental Rights in emergencies—Art. 22 was later added by the Constituent Assembly, making this a unique feature of any democratic Constitution, republican or monarchical. In the first Preventive Detention case which was heard by the Supreme Court, that of Gopalan, the Justices, in the course of their judgment upholding the validity of the preventive detention law, pointed out the uniqueness of our Constitution in this respect. E. g. Justice Sastri refers to "this sinister-looking feature, so strangely out of place in a democratic Constitution which invests personal liberty with the sacrosanctity of a fundamental right, and so incompatible with the promises of its preamble," and says, while pointing out why he is constrained to sustain the constitutionality of the law,

The outstanding fact to be borne in mind in this connexion is that preventive detention has been given a constitutional status. (Para. 119.)

Justice Mahajan says :

Preventive detention laws are repugnant to democratic constitutions and they cannot be found to exist in any of the democratic countries of the world. . . . Curiously enough, this subject (preventive detention) has found place in the (Indian) Constitution in the chapter on Fundamental Rights. (Para. 133.) Preventive detention means a complete negation of freedom of movement and personal liberty and is incompatible with both those subjects, and yet it is placed in the Constitution (relating to Fundamental Rights). (Para. 134.)

Justice Das says :

Our Constitution has accepted preventive detention as the subject-matter of peace-time legislation as distinct from emergency legislation. It is a novel feature to provide for preventive detention in the Constitution. There is no such provision in the Constitution of any other country that I know of. . . . To many of us a preventive detention law is odious at all times, but what I desire to emphasize is that it is not for the Court to question the wisdom and policy of the Constitution which the people have given unto themselves. (Para. 209.)

Justice Mukherjea says :

Detention in such form (i. e., detention without trial) is unknown in America. It was resorted to in England only during war time. But no country in the world that I am aware of has made this an integral

part of the Constitution, as has been done in India. This is undoubtedly unfortunate, but it is not our business to speculate on questions of policy or attempt to explore the reasons which led the representatives of our people to make such a drastic provision in the Constitution, which cannot but be regarded as a most

unwholesome encroachment upon the liberties of the people. (Para. 165.)

That Dr. Ambedkar should have made himself the author of such a provision in the Constitution cannot but cause profound grief to us. Little wonder that he would rather set fire to the Constitution.

A STORY OF POLICE TORTURE SATARA JALMANDIR THEFT CASE

[*Contributed*]

This highly sensational case involved a theft that took place on the night of 23rd July 1952, in the Bhavani Temple belonging to the family of the Rajas of Satara, direct descendants of the great Shivaji Maharaj. The temple, it was alleged, was broken into and the golden idol of the deity Bhavani and other valuable articles worth nearly Rs. 60,000 were stolen. On 30th July Messrs. S. N. Apte and N. S. Bhavne and six other persons were arrested in connection with the theft. Of these four were Brahmins and four were Mahars. No property was found with the accused then or at any later date, though a few paltry articles, it was reported, were found hidden on a hill some time afterwards. The police were unwilling to give any information regarding the accused, either to their relatives and friends or even to their legal advisers. A habeas corpus application was therefore made to the High Court on behalf of one of the accused. Later, the City Magistrate, Mr. Chaudhari, refused to grant bail to any of the accused. But on an appeal being preferred to the Sessions Court the magistrate released six of the eight accused on bail, just two days before the date of the hearing of the bail application in the Sessions Court. The Sessions Judge granted bail to the remaining two accused, Messrs. Apte and Bhavne also, to whom bail had been refused by the magistrate. Allegations were made in the Sessions Court by the accused that they were subjected to torture and ill-treatment, while they were in police custody, for the purpose of extracting confessions from them. These allegations were referred to by the Sessions Judge in his judgment on the bail application. They also received publicity in Poona and Bombay papers. The Additional District Magistrate of Satara, Mr. Dasharath, was therefore ordered by the State to enquire into these allegations and submit a report. He did so and the allegations of ill-treatment by the police were held by him as not proved; and this report which failed to convince anybody was hurriedly published by the State for public information.

Later there arose three offshoots from this main theft case. (1) Contempt of court proceedings were taken out by the State in the High Court against Mr. R. N. Mandlik, a member of the Bombay Legislative Council, on the ground of causing interference in the course of justice by the publication of a statement by him after interviewing the accused and making some other inquiries

at Satara. The editor of the "Kesari," Mr. J. S. Tilak, was also made a co-respondent in the case for publishing this statement in his paper. (2) The State filed an application before the High Court praying that some disapprobatory remarks made by the Sessions Judge against the City Magistrate in his judgment on the bail application be expunged. (3) A third application was made by the State to the High Court for transfer of the main theft case from the City Magistrate before whom the case was pending to another court outside the limits of the North and South Satara, Poona and Kolhapur districts. After the disposal of all these applications the case was ultimately tried by the Resident Magistrate, Mr. V. V. Athalye, at Satara and all the accused were discharged for want of any evidence of guilt against them.

Technically speaking, the discharge of the accused at the committal stage meant the end of the case. But the case involves several other issues, legal and moral, of the highest consequence, police methods in the investigation of crime being one of them, and these issues, even of greater import to the general public, have yet remained unsettled. And it is for the purpose of bringing this aspect of the matter to the notice of the readers that this article is written. Though nothing remains to be done so far as the immediate interests of the accused are concerned, and though one would not wish for a prolongation of the case which already had dragged on for more than a year, one could not but regret that judicial pronouncements were not available, as they would have been if the case had entered on further stages, on the conduct of public officials, which would have greatly contributed to the public weal.

* * *

The first thing to note about this case is — and that was the source of all the irregularities that took place — that the police for reasons known to them gave a communal complexion to the whole affair, for which there was no warrant. At the outset the D. S. P. of Satara, while refusing the pleader, Mr. Bhagwat, to interview the accused, gave in his affidavit this reason for his refusal, viz., that, "in view of the mounting communal tension in the city against certain arrested persons, any disclosure of what transpired in the interview by the pleader would be a grave danger to the public peace and seriously prejudice the police investigation which had reached a critical stage." This affidavit shows that the police were interested in raising a communal bogey and creating communal

tension. Not only was legal aid refused to the accused, which was their right, but the refusal was based on a wholly imaginary ground. A further attempt was made to deprive the accused of legal aid by persuading the State Government to apply to the High Court for transferring the case to a far-away district. The Government was misled by the police cry of communal tension into making this application. They apparently did so for the protection of the accused at the hands of communal hooligans, and they put forward the very same plea of "tense atmosphere" in the application. But the result would have been, if the application had succeeded, in making it extremely difficult for the accused to have the benefit of legal assistance. The accused too had applied to the High Court for transfer of the case to another court than that before which the case was pending, but in Satara city itself, showing that they were not alive to any communal tension which might affect their interests adversely. The State's transfer application incidentally reminds us of a famous case in East Africa. It is well-known that in the Jomo Kenyatta case the Government of Kenya took out contempt of court proceedings against Mr. D. N. Pritt for alleging that the out-of-the-way place for trial of the case was nothing else but an arrangement for denial of justice, by depriving the accused of easy access to legal aid. The Supreme Court, however, rejected the plea on the ground that it was criticism of the Kenya Government's action and not of the Court and hence no contempt of court was involved. In the instant case too the Bombay High Court dismissed the State Government's application on the ground that the accused were the best persons to know where their interests lay. This decision fortunately saved the accused from being handicapped in their defence by being deprived of legal aid. And the fact that no communal disturbance took place in the city or outside as a result of the discharge of the accused by the Resident Magistrate goes to show that the plea of communal tension, raised by the police, was merely a device to load the dice against the accused on a plausible ground.

The question here arises as to why a magisterial instead of an independent judicial inquiry was thought advisable by the Government in order to ascertain the truth of the allegations of torture and ill-treatment of the accused by the police. Could not Government perceive at least after the report had come to them that the enquiring magistrate had not acquitted himself creditably of the responsibility entrusted to him? Could they not see that he had gone so far as to make condemnatory remarks against Mr. Bhagwat, pleader, and Dr. Agashe, both very respectable citizens of Satara, without hearing them and affording them any opportunity to clear their position? Did the magistrate think that he was free to pass any remarks in the report against any outsider without reference to him? But more than that, we ask, was it not his duty to put the onus on the police to prove how the accused came to have injuries and marks of injuries when they were in their custody?

That was perhaps the most crucial point of the inquiry. If the accused had these injuries on their bodies before coming into police custody, the police themselves would have made much capital out of it by parading this fact as evidence of the accused having taken part in the dacoity and got themselves hurt in the escapade. But as personal examination, which invariably takes place when the accused are taken into police custody, did not reveal any injuries, the onus of proving how the injuries came to be caused lay exclusively on the police. Who else, if not the police, could explain the matter? The inquiry cannot be said to be in any way complete without bringing out a satisfactory explanation of how the injuries were caused. Nor were the injuries of a minor nature since they included a fracture of the bone and the accused had to be sent to a hospital for treatment. But, without making this essential inquiry, the magistrate concerned certified that the injuries were not proved to have been inflicted by the police. We therefore make bold to say that the inquiry was but a farce; it merely whitewashed the actions of the police. It would not be strange if this happened, taking into consideration the fact that magistrates' own stability and promotions depend, in large measure on secret police reports. It is therefore absolutely necessary that the State should institute an independent inquiry into accused's allegations of police torture. The fact that the case has been decided can be no excuse for not holding such an inquiry. The Resident Magistrate, who held that the prosecution had failed to prove their case, had before him allegations of police torture which, according to the magistrate, would make one's hair stand on end such as making an accused person sit on ice, but he felt he could not go into the truth of them, as only prosecution evidence was before the Court (which, however, he found had no evidentiary value whatever) and he could only leave the investigation of the allegations, as he says in his judgment, to the Government and the accused. These grave allegations, not having undergone judicial scrutiny, must now be thoroughly investigated by the Government in order to put a stop to abuses current among the police and give a sense of security to the public, which is the Government's primary duty.

* * *

We should now like to refer to the City Magistrates' attitude in the conduct of the case, which is perhaps even more open to criticism. We do not think that there is any need for an inquiry in his case as the Sessions Court's judgment has fully exposed him. In order to convince our readers of the grave objectionableness of some acts of omission and commission in his conduct of the case, we summarise some of the salient points in the judgment of the Sessions Judge, Mr. Ghaskadbi, as follows:—The City Magistrate, remanded the accused to police custody for 14 days, and while first refusing to let any of them out on bail on 23rd August, he relied for this order on the confession said to have been made by four of the accused to the police, but the magistrate does not state in his

order which of the accused made the confessions, when they were made, before whom they were made, and what their contents were. A mere statement that four accused have made confessions cannot constitute "reasonable grounds" required for refusal to release an accused person on bail. When on 28th August the Magistrate granted bail to six accused, refusing it to Messrs. Apte and Bhawe, he again refers to the confessions, but the way in which this reference is made leads one to suspect whether even the magistrate had the confessional statements before him. The pleader of one of the accused complained in this court that the confessions had not been shown to him, as was required by law, and the pleader for the prosecution did not answer this charge; on the contrary, he stated that two of the four confessions had disappeared from the magistrate's record. The government pleader himself does not appear to have had a look at them, and it is doubtful whether even the magistrate had ever these confessions before him. Nor are they included in the papers sent by him to this court. The magistrate in the first place had no authority to dispose of bail applications after his order refusing bail had come to this court for revision. But not only did he dispose of the applications but forwarded a copy of his order an hour before the applications came for hearing in this court. His object, it is evident, was not merely to inform this court that six of the accused had already been released on bail, but to create difficulties in the way of this court passing a similar order in respect of the two accused, Messrs. Apte and Bhawe, whom he had remanded to police custody. Among the persons let out were four accused whose confessions must have produced in the mind of the magistrate suspicion about their guilt, but the magistrate used the very same confessions in refusing bail to Messrs. Apte and Bhawe. "The action of the City Magistrate is highly culpable." It would be unjustifiable to keep these accused in police custody any longer, and they were ordered to be released on bail.

The portions in this judgment reflecting on the City Magistrate's conduct were objected to by the State Government, who applied to the High Court praying that these remarks be expunged. Chagla C. J. and Dixit J. rejected the application. They observed:

This is an application of an extraordinary character. The State is prosecuting the accused and at its instance the bail application of the two accused was resisted before the Sessions Court. The Sessions Judge refused to accept the contention of the State and enlarged the accused on bail. The State does not choose to come in revision against the order of the Sessions Judge. It accepts it as correct. . . . And yet the State makes an independent application to correct certain reasons given by the Sessions Judge in order to arrive at his conclusions. . . . Any criticism of the judicial work of a magistrate is legitimate. It might be said that the language used (by the Sessions

Judge) was strong. . . . That is, however, no ground for making an application for expunging the remarks. Since the State apparently has accepted the Sessions Judge's judgment and acquiesced in it, we feel it ought to act upon the judgment and take suitable action against the magistrate. For, if the Sessions Judge's remarks are taken no notice of, the question naturally arises, what are the higher courts for?

Now about the contempt of court proceedings which the State took out against Messrs. Mandlik and Tilak, who were provoked into publishing the results of their independent inquiry, even while the case was sub judice, by the Government's publication of the Additional District Magistrate's report to the effect that the accused's allegation of police torture were not proved. The High Court naturally found them guilty but recognized the motive that prompted them to publish the impugned article, thinking it to be their duty to point out the other side of the case. The Court also took notice of the fact that "it was the magisterial inquiry report released to the press by the Government that induced the respondent (Mr. Mandlik) to make his own investigation," and said, "The Government was ill-advised to do so," adding that "the Government also had resorted to an action which brought them within the prohibited field."

In this connection, what astonishes us most and about which we feel disturbed, is not so much the actions of the police or the magistrates, who generally belong to the category of petty officers and often have petty minds, as the anxiety of the State and its overzealous efforts in trying to absolve its officers from blame for their actions and shield them from public criticism. No doubt, in doing so, the Government, in each of the three offshoot cases referred to above, instead of succeeding in absolving the officers from blame, have only exposed themselves to judicial rebuffs. Their own prestige and dignity have suffered in public estimation in the attempt to save that of their officers. If Government want to regain the prestige which they have lost in this affair, it could not be done by persisting in their mistaken attitude and callous disregard for the innocent persons who have suffered in this case. The Government rightly denounce communalism among the people. Is it not then their duty to punish their police officers very severely for fomenting communal feelings by their actions to serve their own unworthy ends? That the police have used third degree methods for extorting confessions in this case will be taken by the public for granted, unless the Government establishes after an independent inquiry that they were not so used. Anyhow, it is known that brutal methods are frequently applied by the police as an aid in criminal investigation, and such abuses are a continuing reproach to the police force. The Government must use their best endeavours to stop such police violence and brutality. This is a question, not merely of civil liberty, but of humanity.

RIGHTS TO FREEDOM DRAINED OF THEIR SUBSTANCE

"Reasonable Restrictions" in Art. 19 THE LIMITED PROTECTION AFFORDED BY "REASONABLE"

How limited is the protection which the rights to freedom enumerated in Art. 19 of the Constitution enjoy by reason of the exercise of those rights being allowed to be curtailed only when "reasonable restrictions" are imposed thereon, was made clear in *P. Arumugham v. State of Madras* [A. I. R. 1953 Mad. 664] decided on 24th October 1952.

A question raised in this case was about the constitutionality of sec. 16 (1) of the Madras Restriction of Habitual Offenders Act, 1948. Under this section all the restrictive provisions of the Act, such as limiting the movements of persons who are notified as habitual offenders or placing them in a settlement, are made automatically applicable to certain persons who may not be habitual offenders, without even the Government having any discretion in the matter of notification. It is provided in the section that "every person who stood registered under the Criminal Tribes Act, 1924, at the commencement of this Act" is to be declared to be subject to the 1948 Act, and that "this Act shall apply to every such person accordingly." It was contended in this case that absence of any provision in the section for giving a reasonable opportunity to a person deemed to be subject to the restrictions imposed by the Act to show that there was no cause for the application of the Act to him offended against Art. 19 (1) (d) of the Constitution which guaranteed the right to free movement, subject only to "reasonable restrictions" on the exercise of the right under Art. 19(5).

This contention was supported by citing the U. S. Supreme Court's judgment in *Minnesota ex rel. Pearson v. Probate Court*, 309 U. S. 270 (1940), which goes to show that "before the fundamental rights of a citizen are curtailed adequate safeguards should be provided to ensure against the misapplication of the provisions of a statute which has the effect of so curtailing his rights." This case related to a statute which empowered the government to apply those provisions which can be applied to insane persons also to persons having "a psychopathic personality," i. e., to those persons "who, by an habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire." The statute authorized such persons to be committed to an asylum. It was argued on behalf of the appellant that the procedure authorized by the statute does not adequately safeguard "the fundamental rights embraced in the conception of due process." The Court refused to

accept this argument, pointing out the safeguards in the statute. Chief Justice Hughes, who delivered the opinion of the Court, said:

The facts must first be submitted to the county attorney who must be satisfied that good cause exists (for application of the statute): He then draws a petition which must be "executed by a person having knowledge of the facts." The probate judge must set the matter for hearing and for examination of the person proceeded against. Provision is made for his representation by counsel and for compelling the production of witnesses in his behalf. The court must appoint two licensed doctors of medicine to assist in the examination. The statute gives a right of appeal from the finding of the probate judge.

Chief Justice Hughes added:

We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity or, as here, with a psychopathic personality as defined in the statute, and the special importance of maintaining the basic interests of liberty in a class of cases where the law, though "fair on its face and impartial in appearance," may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings. But we have no occasion to consider such abuses here, for none have occurred.

On the analogy of this reasoning of the U. S. Supreme Court, it was argued on behalf of the petitioner in the instant case that the procedural provisions of the Habitual Offenders Act are not reasonable, and for that reason sec. 16 (1) should be declared void as denying due process. It may be that a person proceeded against under the section was given an opportunity, when he was notified under the Criminal Tribes Act, 1924, to show cause against his being made subject to that Act. But that may have taken place quite a long time ago, and that would not be enough. He ought to be given a fresh opportunity now to show cause against application of the Habitual Offenders Act to him. Rajamannar C. J. and Venkatarama Aiyar J. of the Madras High Court, who disposed of the petition, saw some force in the petitioner's complaint and said: "It would have been better, if, before the new Act of 1948 was made applicable, the person concerned had been given an opportunity to show cause against it and the Government had a discretion either to issue or not to issue a notification [such as was served on the applicant] under sec. 3 (1)." Their Lordships added: "Nevertheless we do not feel constrained to hold that on this account sec 16 (1) is void." The reason why they did not feel so constrained follows, and that is

of general application, to which we wish to draw the particular attention of the reader. The reason is:

The expression "reasonable" is so wide and elastic that a Court should not ordinarily strike down any restrictive provision as void as being not reasonable unless it appears to the Court that a different view *could not be taken* with any justification.

(Italics ours.) It was generally believed that just because the expression "reasonable" in "reasonable restrictions" is far-reaching, the guarantee afforded by it against arbitrary official action is the stronger, but it now turns out that the very width of the expression may lessen the protection it gives to individual liberty instead of increasing it.

Banning of Meetings under sec. 144, Cr. P. C.
 "NOT OPEN TO THE COURT" TO PASS ON
 PROHIBITORY ORDERS

Like the Punjab High Court in Master Tara Singh's case (vide p. ii:55 of the BULLETIN), the Allahabad High Court on 17th March 1953 upheld the validity of sec. 144, Cr. P. C., in so far as it authorizes magistrates to prohibit meetings in the interest of public order (A. I. R. 1953 All. 577).

Mr. V. G. Deshpande, Secretary of the Hindu Mahasabha, on coming to Lucknow on 15th March, was served with an order by the city magistrate prohibiting a meeting in which, according to the information of the magistrate, Mr. Deshpande was to speak in support of the Jammu Praja Parishad's agitation. The reason given in the prohibitory order was that "in the prevailing communal excitement in the city such a speech was likely to cause further excitement and breach of public peace and tranquillity." Mr. Deshpande filed an application with the Lucknow Bench of the Allahabad High Court praying that the case against him before the Judicial Officer be disposed of by the High Court.

The plea of Mr. Deshpande was that the situation in Lucknow was normal, that the speech he wanted to deliver was not likely to disturb the public peace, and that the magistrate was not justified in prohibiting him from speaking under sec. 144, Cr. P. Code. It was further urged that the section itself "is ultra vires as it places unreasonable restrictions on the right of a citizen conferred by Art. 19 (1) (a) of the Constitution," as "it places in the hands of a magistrate unlimited power, and a magistrate can, at his sweet will and pleasure, interfere with the fundamental rights given in the Constitution."

Malik C. J. and Hari Shankar J. rejected the application. On the question as to whether sec. 144, Cr. P. C. (or that part of it which relates to banning of meetings), runs afoul of the Fundamental Rights enumerated in the Constitution, Their Lordships said:

Art. 19(1)(a) guarantees to the citizens of India freedom of speech and expression, but it is subjected

to the restriction imposed under Art. 19(2), which *now* provides after the recent amendment that the State has the right to impose reasonable restrictions in the interest of public order.

The word "now" which we have put in italics suggests that, under the unamended Art. 19(2), sec. 144 would have been held unconstitutional, but the qualification added by the amendment, viz., "public order," saves it from unconstitutionality. That was also the view, it appears, of the Punjab High Court in Master Tara Singh's case decided on 20th December 1951. For in that case the Court said:

It is clear that this section (sec. 144) is saved by Art. 19 of the Constitution as it reads *now* [here, too, the italics are ours], for any law in the interests of public order is good law.

On the facts of Mr. Deshpande's case Their Lordships of the Allahabad High Court said:

We must confine ourselves to the facts before us which raise only one point, namely, whether a magistrate has a right, when he apprehends a breach of the peace, to pass an order under sec. 144, Cr. P. C., and direct a person not to make a speech which might tend to that result and whether it is open to the Court to consider whether there were good grounds for the apprehension. The question whether there was apprehension of the breach of the peace must be left to the magistrate. After all he is primarily responsible for maintenance of law and order and it is for him to judge whether there was a reasonable apprehension justifying an order under sec. 144, Cr. P. C. Unless the order passed by a magistrate is on the face of it absurd or is mala fide there is no reason for the Court to interfere.

The view here expressed that a magistrate's subjective discretion should decide in what circumstances a prohibitory order would be warranted and that it is outside the competence of the courts to go into the question as to whether circumstances did in fact exist in which a speech is likely to lead to the apprehended breach of peace—except when the prohibitory order is mala fide—goes, it appears to us, beyond the view expressed in Master Tara Singh's case in which the Court, while holding that sec. 144 as a law is intra vires in view of the amendment of Art. 19(2), took care to say that "issuing of such an order (for banning a meeting) in a particular set of circumstances may be ultra vires of the Constitution," thus envisaging clearly that application of the law in those circumstances may be pronounced by the courts to be unconstitutional and that such ruling would be possible not only in cases where the mala fides of the magistrate have been proved (which is well-nigh impossible), but in other circumstances also. If the constitutional amendment of 1951 has really made suppression of free speech a matter of pure

subjective judgment of local magistrates, without any restraint being imposed on it by the Constitution, it would indeed be a matter of the utmost gravity. For these authorities would then obtain absolutely uncontrolled power over speech—and also over publications—inasmuch sec. 144 is occasionally used, as we have pointed out on p.51 of the BULLETIN “to stop publication of specific matter in a newspaper or even to stop a newspaper,” notwithstanding the Press Laws Enquiry Committee's recommendation to the contrary.

We shall only repeat here the opinion an eminent jurist of the U. S. gave us when we asked him as to what the fate of a law like sec. 144 would be in the Supreme Court in his country. He replied :

I am convinced that our Supreme Court would not uphold any statute which permitted the banning of meetings in advance merely because disorders were anticipated.

The Press Commission may well take note of the Allahabad High Court's interpretation of our criminal code in so far as its enforcement against the press is concerned.

If this interpretation, by the Madras and Allahabad High Courts, of the constitutional provisions concerning fundamental rights, and the reasoning on which the interpretation is based are correct, then it means in effect that all the great rights inscribed in Art. 19 are drained of much of their substance ; that those rights are barren of customary safeguards ; and that, as Justice Rutledge said in *Estep v. United States*, 327 U. S. 114 (1946), this “would make the judicial function a rubber stamp in criminal cases for administrative or executive action,” substituting administrative discretion for constitutional limitations.

NOTES

Elimination of Segregation

IN STATE-OPERATED SCHOOLS IN THE UNITED STATES

A Washington report dated 23rd August states : “The Defence Department, under Presidential prompting, has set the autumn of 1955 as the ‘target date’ for the elimination of segregation in State-operated schools on military posts. If the States fail to take this action in the next two years, officials said, there is a strong possibility of the Federal Government taking over the schools and operating them on a non-racial basis.”

Reservation of Separate Amenities Bill

Some more details of this bill introduced by the South African Government, to which we referred on p. ii : 297, are now known. The bill, as our readers are aware, had its origin in the Appeal Court's verdict against the Government to the effect that regulations on State railways were invalid if they did not provide for “substan-

tially equal” treatment for different races. Now the bill authorizes racial segregation on all public places and in public premises—irrespective of whether, in so segregating the whites and non-whites, provision of equal accommodation is made or not. It declares that any person in charge of public premises or public vehicles may, “whenever he considers it expedient,” reserve whole or part of accommodation for the exclusive use of a particular “class or race,” and it lays down that when anyone has thus set apart whole or part of the space in public places and vehicles for the people of one race, such setting apart shall not be invalid merely on the ground that no such space has similarly been set apart for the people of any other race, or that the space reserved for any race is not substantially of “the same character, standard, extent or quality” as the space made available for other races. The law, when enacted, will be retrospective so that recent decisions on segregation on railways and post offices will automatically be set aside. Heavy penalties are provided for breaches of the law ; e. g., the maximum penalty for wilfully entering or using premises reserved for members of another race will be a fine of £50 or three months imprisonment or both. The House of Assembly passed the bill on 4th September and sent it up to the Senate on the 9th.

Removal of a Communist M. P. from the South African Parliament

South Africa's Suppression of Communism Act, 1950, provides for the ejection of a member of Parliament if he is or was a Communist or a pro-Communist, and the procedure followed is that on a motion of the Government a select committee is appointed as a fact-finding committee to determine whether the member concerned answers to that description, and after the committee has reported to that effect, the Government brings in a motion for the expulsion of the member. In this way Mr. Sam Kahn, who was already a member of the House of Assembly at the time of the passing of the Act, was banned from the House last year as being a Communist. He was a representative of the African community. The Africans can no longer be represented in Parliament by men of their own race. Under the Native Representation Act they can cast their ballots only in favour of Europeans. Mr. Kahn was one of the three members who came in on African vote. And he was put out of the House under the anti-Communist Act.

This sent a wave of indignation over the whole of the African community, and perhaps as a reaction of the move on the part of the Government, the community again sent up a known Communist to represent them—Mr. Bunting, who was editor of the Communist organ, the “Guardian,” at the time the paper was suppressed under the anti-Red Act. A select committee was appointed on the very first day the House of Assembly met during the current session of Parliament, and as a result of the committee's report he also, like Mr. Kahn, must have by now been driven out of

the House. This sort of witch-hunting can have but a disastrous effect on the already worsening relations between the ruling white and the subject native communities. Africans have already a very meagre representation in Parliament—and only indirect at that—and even if that is to be cut down in this way, it is easy to imagine how their passions will be inflamed and how the growing racial ill-feeling would be consolidated. Mrs. Ballinger, the Leader of the newly formed Liberal Party, brought this to the attention of the Government and deprecated the move as a direct attack on democratic principles. Parliament pre-eminently is a place where there should be the utmost political tolerance and free inquiry and free criticism; and it is a fundamental principle of every democratic society that the people's choice as exhibited in the representatives sent up to legislative bodies should not be interfered with. The stakes in this issue are of the highest—not confined to Communist politics alone.

USE OF THIRD DEGREE METHODS

Accused's Confession and Prosecution Witness's Evidence EXTRACTED BY RESORT TO FORCE AND COMPULSION

A case, in which figured a prosecution witness (who was an accused in another case) had force applied to him in obtaining evidence in the instant case and an accused whose confession could be suspected to be involuntary was decided in the Allahabad High Court on 11th August.

Eight persons were prosecuted in connection with the murder of a widow, Shrimati Champi, on 9th August 1949. Two of these persons, Pooran Chand and Ram Chandra, who were convicted and sentenced to transportation for life in the lower court, appealed to the Allahabad High Court. Desai and Nasirullah Beg JJ. allowed the appeal, holding that the evidence against the appellants was not sufficient to prove the charge against them.

The case turned on the alleged confession made by Pooran Chand on 20th October, 1949. The previous day his brother appeared in court, stating that though Pooran Chand was released on bail by the court, he was still kept in the custody of the police, and that he was threatened by the police so that any confession which he might make could not be voluntary. The prosecuting inspector on the other hand produced Pooran Chand in court and prayed that his confession be recorded. And Pooran Chand himself made an application, stating that he desired to make a confession but that his people were compelling him not to make it.

Their Lordships said in their judgment that the magistrate concerned would have been well advised in making an enquiry from Pooran Chand as to how long he had been kept in police custody before his confession was recorded. Unfortunately no such question was put to Pooran Chand at all.

Their Lordships said that apart from the evidence produced by the proceedings of the Court, there were traces in the investigation itself which would cast a shadow of suspicion on the alleged confession. Thus it had come out in evidence that one Durga Das who appeared as a prosecution witness admitted in his cross-examination that he was detained in the thana for three or four days

and beaten by the police. He had further stated that the police took a written statement from him by force and that he sent a petition to the collector or S. D. M. complaining about the said conduct of the police. It had also been admitted by the investigating officer that subsequently the case was withdrawn against Durga Das and he was released on bail. It also appeared that this man appeared in court to support the prosecution. In the above circumstances, the counsel for the appellant had argued that the withdrawal of the case against this witness and his release was a reward of the police to this witness for giving his evidence in court. Whatever the truth behind this insinuation might be, the fact remained that it had come out in prosecution evidence itself that the police did resort to third-degree methods during the investigation of the case. If it was possible to resort to force and compulsion against an ex-accused, there was nothing to prevent the same party from using similar methods against the present accused, namely, Pooran Chand.

Their Lordships were of opinion that the prosecution had failed not only to establish the voluntary character of the alleged confession but also its truth. In this view of the matter, the confession lost all evidentiary value and must be eliminated altogether as a piece of evidence in the case. The evidence adduced on behalf of the prosecution in support of the confession as well as the extra-judicial confession being of an untrustworthy type, the prosecution could not be said to have succeeded in establishing the case against the appellants beyond any shadow of doubt. The appeal was, therefore, allowed.

ACCUSED KEPT LONG IN POLICE CUSTODY, APPARENTLY FOR

"Extracting Information from Unwilling Persons"

One Harbans was charged with murdering one Shyama on 2nd September 1952. He showed the investigating officer a pistol lying in a rubbish heap in a field, which had a fired cartridge case in its barrel. On the strength of this evidence and that of some witnesses he was convicted. Later, he filed an appeal in the Allahabad High Court against his conviction and sentence to death. Dayal and Asthana JJ. dismissed the appeal, holding that "the circumstances proved against the accused established that he must have been the actual person who shot at Shyama, or at least was one of the persons who acted together in getting Shyama shot by some one of them."

The circumstances surrounding the trial, however, lend this case a particular distinction, and it is for that reason that the case is reported here. Shyama was arrested on 3rd September 1952 and remained in police custody for about two weeks thereafter. The investigating officer submitted a report on 4th September requesting the magistrate to sanction a remand for seven days for keeping the accused in police custody, because he was to be interrogated regarding two accused persons whose names and addresses were not known. The magistrate granted the remand for five days. Their Lordships said: "His order gave no reasons (as required under sec. 117, Cr. P. C.) for this extraordinary order when the police report made out no case for such a long detention. To interrogate the accused in order to find out the names of two unknown persons alleged to be concerned in the crime could not have necessitated such a long detention in police custody unless it be considered justified that the arrested person be subjected

to either persistent cajoling, inducement and persuasion or to persistent harassment and torture.

The arrested person was just to be asked, in case he admitted his participation in the crime, as to who his confederates were and his answer was to be accepted without any further attempt to extract further information. The report did not give any adequate reason, and the magistrate did not appear to have worried himself with respect to the adequacy of the reason, for granting remand to police custody. They would not be surprised, said Their Lordships, if the magistrate did not consider at all that "a remand to police custody must be rare and not a routine thing."

But this remand for five days was not all. On 9th September the police submitted another report to the same magistrate for a further remand for three days. The purpose of further interrogation was not mentioned in this report, and the magistrate "seemed to have sanctioned this remand as a matter of course." Similar was the third report for a further remand on 12th September and the order thereon. Their Lordships concluded this part of their judgment, by saying :

Such a long detention in police custody under the orders of a magistrate for a flimsy reason was most unjustified, to use the mildest expression.

Their Lordships ordered a copy of their judgment to be sent to the Chief Secretary to the Government for such action as they considered necessary "for the proper observance of the provisions of the Code of Criminal Procedure by magistrates and for the police not keeping accused in their custody unnecessarily, apparently for the purpose of extracting information from unwilling persons."

ELECTION PETITION

Decision of the Election Tribunal Final

CORRECTION OF THE DECISION "ALMOST IMPOSSIBLE"

Mr. Ranchhodlal Liladhar Vayade of Baroda filed a petition in the Bombay High Court against the affirmation by the Election Tribunal of the rejection by the Returning Officer of Mr. Vayade's nomination paper when he stood as a candidate from the Okha-Dhari-Kambha constituency of the State Assembly. The ground for the Election Tribunal's decision was that Mr. Vayade had not completed his nomination paper in the prescribed form, as required by sec. 33 of the Representation of People Act, "in that the serial number of the petitioner's name in the electoral roll was not given." But, as it happened, the serial number could not be given, as Mr. Vayade's name was entered on the electoral roll only one day previous to the last day for filing nomination, and it was argued by counsel for the petitioner that the Election Tribunal had not taken into consideration sec. 36 (4) of the Act, which stated that no nomination paper should be rejected for a technical defect.

The Chief Justice and Mr. Justice Shah dismissed the petition, in view of Art. 329 of the Constitution, under which decisions of the Election Tribunal were final and subject to be questioned before the High Court under Art. 227 only if the Tribunal was found acting without jurisdiction or in excess of its powers. Their Lordships said :

Now if we were a court of appeal or if we were deciding the election petition, very likely we would have found it very difficult to take the view that the non-compliance on the part of the petitioner was of a substantial character. Implicit in the decision of the Tribunal was the finding that the non-compliance was not of a technical and non-substantial character.

We regret to say, in this particular case, the Tribunal has not taken into consideration the most relevant provisions of the Act or at least they do not show in their judgment that they have taken these provisions into consideration.

When Election Tribunals are given vast powers under the Constitution, they should carefully consider not only what the grievances of the petitioner are but also the relevant provisions of law which are to be taken into consideration in deciding the petition presented by the petitioner.

The responsibility is all the greater when the law makes the decision of a Tribunal final. If there is a higher court, the Tribunals can feel that if they go wrong they can be corrected. When the law makes correction almost impossible, they should, in giving their decisions, give complete satisfaction to the parties that appear before them so that the parties should feel that the final authority set up under the Constitution has taken every provision of the law into consideration and has come to a fair and proper conclusion.

However dissatisfied we may be by the judgment of the Tribunal and however different a view we might have taken, it is after all for the authority set up under the Constitution to decide on merits, and if we were to interfere in this case it would really be an interference on merits, which in no view of Art. 329 this Court is entitled to do.

COMMENTS

Detention of Sheikh Abdullah

When preventive detention is resorted to in our own country for suspicion of such offences as blackmarketing and hoarding, one cannot reasonably expect that the detention of Sheikh Abdullah in Kashmir, which has acceded to India only on a partial basis, because of "a threat to the security" of the Kashmir State, will arouse any resentment in this country, particularly as it is thought that the detention will enure to the advantage of India in that it will lead to closer ties being established with this country. The dissolution of the Sheikh Cabinet and the removal of the Sheikh therefrom seem to be justifiable inasmuch as the Cabinet was divided and the Sheikh was in a minority in the Government over which he presided. But not so justifiable was his detention, which followed upon his being made to give up the Premiership. It is not even asserted that Sheikh Abdullah was planning a coup and that it became necessary for the new Government therefore to anticipate it by a coup of its own.

The only substantial difference that arose in the Ministry appears to be in regard to the future constitutional status of the Kashmir State. It is said that he was carrying on propaganda in favour of an independent Kashmir in opposition to others in the ministry. But he was always known to favour such independence. It is not a thing that has been only recently discovered. It is also said that he was making or contemplating approaches to Pakistan for accession to that country. That is not altogether impossible, for India offered Kashmir only limited accession to this country, and one who wants Kashmir to be fully independent, perhaps under the aegis of the U.N., might therefore be tempted, as another string to his bow, to turn to Pakistan, if he could secure even less onerous terms from that country than from India.

And when the future of the State is to be determined by a plebiscite, Sheikh Abdullah must have felt that he was within his rights in carrying on propaganda for educating the public to the advantages of an independent Kashmir, to which he seems all along to have pinned his faith. Anyhow, to hold a plebiscite in Kashmir State when the strongest protagonist of one view is behind prison bars cannot but strike anyone as a farce. He must be let out of gaol and allowed full opportunity to influence the people of Kashmir in his own way, just as others will be free to exert their influence in other ways. We do not say this out of any political predilection. Every Indian will naturally desire that Kashmir should opt for accession to India—and full accession at that. But no one can deny that a plebiscite in Kashmir, with Sheikh Abdulla in prison, can only be a mockery of a plebiscite. If it be the charge of the new Government against Sheikh Abdullah that his design was to annul Kashmir's accession to India even, while the accession is legally in force and before a plebiscite is held, that is certainly a matter which could be established, and there was therefore no reason why he should not have been placed on trial. We for our part look upon his detention merely as a question of civil liberty, and take our stand on the principle that no one should be deprived of his liberty except in the event of an imminent danger to the security of the community.

Banning Access to Sources of News WORKING JOURNALISTS' PROTEST

At a meeting of its executive council held in New Delhi at the end of August, the Indian Federation of Working Journalists condemned the practice followed in some States of preventing the press from having direct access to the legitimate sources of information. The resolution concerning this subject said that some of the State Governments were prohibiting secretaries and heads of departments at the headquarters and responsible officers in the districts from having contacts with the press or giving them any information. "The Uttar Pradesh Government, the latest in the field," the resolution added, "has not only banned such direct access, but has sought to control and canalise the supply of news by organising a parallel news service through its own officials. Similar restrictions on the flow of information are also in operation in Pepsu. This is not only a threat to the livelihood and legitimate work of a large number of correspondents, but a serious encroachment on the freedom of the press."

Compelling the Press to Identify Correspondents

In another resolution the Federation protested against newspapers being compelled to reveal the names of the correspondents responsible for any news appearing therein. Attempts were also being made by Government authorities and legislative bodies, said the resolution, to force correspondents and newspapers to reveal their sources of information, which was against the established practice and sound journalistic ethics, the resolution said. It added: "Certain State Governments have made approaches to newspaper managements with a view to causing or seeking summary dismissal or suspension or transfer of 'inconvenient' correspondents. The Federal Executive Council strongly condemns this growing trend on the part of such Governments, which, if unchecked, will

lead to regimentation of the press and demoralisation in the ranks of pressmen, thus injuring the healthy growth of the press."

In Pakistan also a similar thing is happening. Recently, the Punjab Government served notices on editors, printers and publishers of two Lahore newspapers asking them to present themselves before the CID Inspector of Police and produce all documents, drafts, proofs, etc., pertaining to certain news items to assist police investigation of cases under sec. 5 of the Official Secrets Act. The editors of all Lahore newspapers met on 24th August and protested against the issuing of such notices in a resolution.

Urging the Government to withdraw these "ill-advised" notices, the resolution said: "It is quite obviously the Government's intention to ask the editors to reveal the source of their news. Particularly, since the relevant news items refer to routine Government activity and their veracity is not doubted, the Government's action, if tolerated, will seriously hamper the newspapers' legitimate function of gathering and publishing news."

The resolution called on journalists not to surrender the inherent right of the press to gather news and to protect the source of information, and said that if the Government did not withdraw the notices, they would be compelled to consider "effective steps to vindicate a right that is recognized and respected all over the world."

Centre's Advertisement Policy

NO "BLACK-LIST" OF NEWSPAPERS

The Minister for Information and Broadcasting in the Government of India was asked in Parliament to define the principles which govern the giving of State advertisements to newspapers in the Central and State Governments. Stating that the State Governments use their own discretion in this respect, he replied:

The principles which are kept in view in the matter of giving Government of India advertisements to newspapers and periodicals are: to secure the widest possible coverage within the funds available, to reach the masses in all walks of life, particularly by the advertisements that carry a message to the people, and, in selecting newspapers, to pay due regard to effective circulation, regularity in publication, classes of readership, adherence to expected standards of journalistic ethics and other factors such as production standards and the language and areas intended to be covered.

He added:

"The Government of India does not maintain a "black list" of newspapers to which advertisements should not be given. It is not the Government's intention to try and control the policy of individual newspapers by giving them advertisements. Generally, all Government advertising is done through an advertising agency. It is not a fact that only those newspapers which support the Government receive advertisements. Actually the bulk of Government advertising goes to those journals which are critical of the administration. The Government is, however, disinclined to give advertisements to papers which persistently indulge in communal propaganda."