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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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RENEWAL OF THE PRESS ACT

A "HUMANE" MEASURE: INDEED "THE MILDEST ACT IMAGINABLE"

Parliament last month put its imprimatur on the Press Ordinance reviving the powers of Rajaji's Press Act for two more years and depriving the jury before which press offences are tried of some of the vital powers which it had enjoyed under the old law. The overwhelming support which the enactment received is not surprising in view of the present composition of Parliament. What would have caused surprise would be if the Home Minister had shown greater respect for civil liberties in dealing with this matter than he had done when dealing with preventive detention in the last session. But he was no less flippant and cynical on this occasion than on the last.

He never could understand what objection could possibly be urged to a measure in which all the heads of "objectionable matter" listed in the Act were already criminal offences under the penal law. Nor could he understand the insistence of the Press as a whole that they should be dealt with under the ordinary law of the land instead of being treated as "a criminal tribe" and visited with special punishment under an extraordinary law. For him every law enacted by Parliament was an ordinary law, and a special law had no significance whatever. The punishment awarded under the so-called special law was also, according to him, much more lenient and therefore he thought the law should give no cause for grievance. Suppose the law prescribed a term of two years in prison and a fine of Rs. 5,000 for the writer of any offending publication and forfeiture of the printing press in which the publication was printed and also cancellation of its registration, it would be normal law, but would it enure to the advantage of writers and printers? Compared to such punishments which would escape the moral censure of people who are looking at the matter from a purely theoretical point of view, because imposed under the ordinary law, the present measure only said to the offending persons: "deposit a little security, and behave better in future." To stop short in this way at giving but a warning was surely a more humane procedure; the law, Dr. Katju argued, was in fact "the mildest measure imaginable."

At one stage he seemed to offer to the journalists a choice between the ordinary law which would punish a man directly he commits an offence and his law which would let off even an acknowledged offender with a warning, and he no doubt expected that the journalists with one voice would choose the latter after realising how very much worse off they would be under the alternative for which so far they had shown a clear and consistent preference. But Mr. Rama Rao, a respected member of the journalists' profession, declared in forthright terms that he and his brother journalists would any day prefer the operation of the ordinary criminal law to a law which would subject them to security proceedings, which penalty was not only severer but extremely humiliating. One thing that has to be remembered in this connexion is that in fact there is no choice whatever for the publisher or the printer concerned. Even assuming that the procedure under the special press law is milder, it does not at all follow that press offences will necessarily be dealt with thereunder. This law does not supersede the ordinary law, and press offences do not become exempt from the so-called severer penalties of the ordinary law, if the authorities choose to take proceedings under it than under the special law. The choice is for the Government and not for the Press. But the most fundamental objection to any such special legislation requiring the deposit of a security and calling for its forfeiture is something that

ALL-INDIA CIVIL LIBERTIES CONFERENCE

FIFTH SESSION: CUTTACK, 24th AND 25th APRIL

President: Jayaprakash Narayan

The Utkal Civil Liberties Union, which is affiliated to the All-India Civil Liberties Council, will hold the Fifth Session of the All-India Civil Liberties Conference at Cuttack in Orissa on 24th and 25th April. Mr. Jayaprakash Narayan is the President-elect. The Conference will commence work at 6 p. m. on 24th April in the hall of the Nari Sangh Sadan.

Accomodation has been arranged for delegates from outside the Orissa State in the Cuttack Hotel and the District Board Dak Bungalow.

is unheard-of in any civilized country. It is for that reason that the Press Laws Committee of 1948 made a unanimous recommendation for the total abolition of such a security system and the strengthening if necessary of the ordinary penal laws of our criminal code. But Rajaji ignored this recommendation altogether and maintained in substance the law which was in force under the British regime, while professing to repeal it. The British Government at least pleaded the existence of an emergency. Rajaji required no such excuse. He kept the old system alive when the situation was normal, and because he saw that under the guarantee which the Constitution provided for free speech and free press, the continuance of the system would become impossible, he first had the Constitution amended, enormously enlarging the scope of restrictions which could be validly imposed upon the exercise of the right. Dr. Katju cannot be accused of any greater concern for civil liberties than his predecessor.

We need not say much about the provisions in the new Act depriving the jury of the powers which Rajaji's Act had vested in it. We do not approve at all of the jury of the special composition provided, and do not much care what powers are given to it or withheld from it. But it should be noted that the provision enabling the Government to appeal against the jury's verdict goes against all precedent. As the All-India Civil Liberties Council in its resolution on Rajaji's Press Act pointed out, wherever a jury is provided, its verdict is final. The resolution said: "In England, for instance, it is the jury which finally decides whether an offence has been committed or not, and this is illustrated by Lord Kenyon's remark in Rex v. Cuthell (1799) that 'a man may publish anything which twelve of his countrymen think is not blamable.' To take the example of a country which has a separate Press Law, it is provided in Sweden that the criminal nature of printed matter shall be tried by a jury of nine members and that 'the matter shall be considered criminal if at least six jurors concur in that opinion.'" Rajaji evidently thought that the press should eventually be governed by a code evolved and enforced by the press itself, but Dr. Katju does not believe in this. His attitude of suspicion towards the press would not allow him to let the press regulate its own business, and this attitude became clear when he blandly declared that although the Press was unanimous in condemning his Act, the country supported it, and that the Press did not in actual fact represent the country. To be consistent, Dr. Katju should do away with the system of a press jury in regard to press offences altogether.

One gratifying feature of the debate in Parliament of this measure was the strenuous opposition offered to it by some Congress members, of whom the most prominent was Pandit Thakordas Bhargava. He said he was of the opinion that there was no kind of emergency which alone could justify the enactment of such extraordinary law, even when the Act was first passed in 1951, and that there was much less of an emergency now. Dr. Katju of course does not believe that any emergency is required in justification of the measure, but he could also show that there was a grave emergency in existence inasmuch as a States Reorganization Committee was engaged in deliberating on a most delicate question, and who could foresee what kind of journalistic outbursts a discussion of that matter in the press would not provoke. If every little question requiring a solution is supposed to create an emergency, it is obvious that this measure and other preventive measures must remain permanently on the statute book. When Opposition members pointed out that neither the prosecutions launched by the state Governments nor the examples of objectionable publications he cited made out a case for the continuance of the law, Dr. Katju only said that the prosecutions under the law were comparatively few because the State Governments thought that it was a dilatory measure which needed in their opinion much strengthening, and he promised that the Government would bring forward, after the report of the Press Commission was received, a measure which would be at once more comprehensive and more effective. One cannot say what the Press Commission's recommendations will be, but it would be difficult to believe that the Government would do anything to remove or even relax the fetters with which it has bound the Press, even if it does not rivet the fetters still more firmly in response to the demand of the State Governments.

Newspaper Criticisms of the Press Act

THE "HINDU"

Dr. Katju's lawyer-like defence of the Press Bill does less than justice to the very real concern the country feels over attempts to circumscribe the most fundamental of all liberties. He asked, almost in the spirit of jesting Pilate, "What is the ordinary law of the land?" And he thought he had triumphantly demolished opposition by answering that if to-morrow the I.P.C. were amended to provide a life sentence for a press offence that would become "the normal law of the land": "how would you like it and how would the journalists like it?" he asked. The simple answer would be, "It would cease to be the I.P.C. and become the Code of Draco which no democracy would accept." Dr. Katju again and again contended that the Press Act contained much milder penalties than the Penal Code, though every one of the offences it sought to tackle were offences under the normal criminal law. But seeing that no-body (least of all journalists) appreciates the kindliness and delicate consideration which, according to the Home Minister, have prompted the Government to use the Press Act rather than the Penal Code, why does the Government persist in a thankless job? When somebody points out that the Press Act has been grossly ineffective so far as the real culprits are concerned and that the State Governments are unwilling to resort to it because

of the dilatory character of the procedure, Dr. Katju thinks it sufficient to reply that he will tell the State Governments to be more strict in enforcing the Act. And he does not seem to realise that, in assuming that the Press Commission is going to recommend a comprehensive piece of legislation to govern the Press, he is prejudging it.

What the Press means and has always meant when it said that there should be no special laws governing it, was that the ordinary criminal law which governed other persons should suffice to keep journalists and newspapers alike on the strait and narrow path. And the Government which are prompt to point out, when it suits them, that the Press can claim no special privileges under the Constitution, cannot very well impose special disabilities on it. But, from the fervour with which they cling to the Press Act, it is clear that they would eat their cake and have it too. Dr. Katju insists that there must be a special law for the Press. At the same time he rather illogically defends the two major amendments the new Bill introduces, on the ground that the provisions of the original Act, which they are intended to modify, are contrary to accepted legal practice and procedure. Normal procedure goes with normal laws. The special procedure laid down in the Press Act had to take into account the fact that the legislation itself was something abnormal, something that governed a particular and limited class engaged at great hazard in the discharge of a public duty. The devising of a judicial enquiry with the aid of a professional jury was itself a marked departure from the practice governing ordinary jury trials. Whether there is justification for constituting juries composed exclusively of journalists for trying press offences is a question over which there have been wide differences of opinion. But Dr. Katju cannot accept the system devised by his predecessor and yet refuse to accept the most distinctive feature of that system—its raison d'être, as one may call it. And that is the power vested in the professional jury to say not merely whether, the writing complained of is " objectionable matter" within the meaning of the Act but, further, whether granting it is that, there are "sufficient grounds for demanding security." Dr. Katju proposes to deprive the jury of the second right under the impression—mistaken if we may say so with all due deference—that it is the same as the right to decide on questions of law. Under normal criminal procedure, the right to decide on questions of law is exclusively that of the Judge, while the jury is competent to decide only on questions of fact. On the contrary, under the scheme of the Press Act, the question whether any writing is "objectionable matter" and the question whether there are sufficient grounds for demanding security are equally questions of fact. The latter deals with that margin of discretion which the Act regards as specially within the competence of the jury because of its special knowledge of journalistic ethics, of the public mind and other relevant factors.

Again, the Press Act did not permit, unlike in ordinary criminal cases, the Government's going on appeal against the verdict of the lower court. The reason is simple. While an enquiry under the Press Act is judicial in character, the demanding of security is not a judicial penalty for a proven offence but is intended in fact as a preventive measure. If the Government fails to convince the lower court that there is a case for such drastic action as the demand of preventive security would amount to, it would be preposterous to give the Government a second chance. It is a very unequal fight as it is, and the odds must not be made heavier, as the stake involved is the freedom of the Press.

THE "STATESMAN"

Dr. Katju's defence in Parliament of the Press (Objectionable Matter) Act and Ordinance has not been in the least impressive. He has been accused of using forensic tricks as a substitute for argument, and it is difficult to apply an alternative description to such a remark as: "I make a fair offer: do you want to be prosecuted under the ordinary law or do you want to take this lenient law?" The Home Minister is—or should be—perfectly well aware that the Press has repeatedly and publicly expressed its preference for the ordinary law; also that the epithet " lenient ", in connection with the 1951 Act or the amending Bill, is likely to arouse amazement. He is also aware that his "fair offer" can probably be made with impunity, since he has been addressing not journalists but legislators, including an overwhelming majority of party followers.

Regarding even the unamended Act our opinion is unchanged. Everybody knows that India, like many other countries, has a "gutter" as well as a respectable Press, sometimes the former can be very scurrilous indeed. No responsible person denies that laws are needed to control obscenity, defamation and incitement to violence. But such laws independently exist. Therefore, when Dr. Katju informs Parliament that most of the prosecutions under the 1951 Act have been for obscenity, that is no defence of the Act unless he also gives good reasons why Authority declined alternatively to proceed under section 292 of the Penal Code. Many suspect that the genuine reason for the Act was the difficulty and trouble of obtaining convictions under the ordinary law. Such trouble is said specially to arise in defamation cases, while incitement cases have been complicated by legal judgments which declared unconstitutional much pre-independence law on the subject. However, if that is the position the correct remedy is to amend and strengthen the ordinary law, if necessary by amending the Constitution, not to impose on the Press additional liabilities from which other citizens are immune.

Parliament and the public do not appear to have been given the detailed information about the Act's working to which they are entitled. The extent of its application,

for instance, seems to have varied markedly with geography, but the Minister supplied no explanation for local vagaries. He and others quoted, somewhat at random, samples of writing considered objectionable, and some of them are — though whether legally or only colloquially so may be another matter; but others were plainly trivial. There was no apparent indication upon which of them (if any) action had been taken under the Act, or with what result; in two Calcutta instances (one of them affecting Dr. Katju personally) so far as we are aware no action has been taken, so their introduction serves merely to darken counsel.

No adequate defence has been offered for the high-handed procedure by which the 1951 Act was extended last recess by ordinance, when the extending Bill had not even been recommended for priority the previous session. When Dr. Katju declared that the Act would be replaced after the Press Commission reported, he practically swept away any justification for amending it now — which was also done originally by ordinance. His defence of the new change in the power of the jury rests upon a distinction between facts and law which is to say the least controversial, and may have the effect of laying the burden of political decisions upon the judiciary. Even with curtailed powers, he trusts juries so little as now to demand an official right of appeal. The Bill has, however, been passed by the House of the People. Protest is of no avail.

SEARCHES AND SEIZURES

No Recognition of Right to Privacy

Analogous to the American Fourth Amendment

SCOPE OF ART. 20(3) DEFINED

In a case decided on 15th March the Full Bench of the Supreme Court defined the scope of Art. 20(3) of the Constitution which lays down that "no person accused of any offence shall be compelled to be a witness against himself" and held that the Constitution of India did not recognise a fundamental right to privacy like the one guaranteed by the Fourth Amendment to the Constitution of the U. S. A.

FACTS OF THE CASE

The circumstances leading to the case, as stated in the judgment, were as follows. An investigation into the affairs of the Dalmia Jain Airways, which went into liquidation on June 13, 1952 was ordered by the Government and the report of the inspector appointed under section 138 of the Indian Companies Act indicated that "an organized attempt was made from the inception of the company to misappropriate and embezzle the funds of the company and declare it to be substantial loss and to conceal from the shareholders the true state of affairs by submitting false accounts and balance sheets. Various dishonest and fraudulent transactions were also disclosed which showed that false accounts with fictitious entries and false records were being maintained and that dishonest transfers of monies had been made. It was alleged that offences under sections 406, 408, 409, 418, 420, 465, 467 468, 471 and 477 (A) I. P. C. had been committed.

It was also stated that Seth R. K. Dalmia, who was the director and chairman, Dalmia Jain Airways Ltd., had been controlling certain other concerns, namely, Dalmia Cement and Paper Marketing Co. Ltd., Dalmia Jain Aviation Ltd., now known as Asia Udyog Ltd., and Allen Berry and Co. Ltd., through his nominees and that all these concerns were "utilized in order to commit the frauds."

It was further stated by the Registrar of Joint Stock Companies in his report to the Inspector-General, Delhi Special Police Establishment, that "to determine the extent of the fraud, it was necessary to get hold of books not only of Dalmia Jain Airways Ltd, but also of the allied concerns controlled by the Dalmia group," some of which were outside the Delhi State.

On the basis of this report, which was considered by the Special Police as the "first information report," an application was made to the District Magistrate, Delhi, under section 96 Cr. P. C. for the issue of warrants for the search of documents and in places as per schedules furnished. Permission to investigate in respect of some of the non-cognizable offences, mentioned in the first information report, was also asked for. On the same day, the District Magistrate ordered investigation of offences and issued warrants for simultaneous searches at 34 places all over India. The searches were made on November 25, 1953 and subsequent days and records seized from various places.

The petitioners contended that the search and seizure of documents constituted a violation of Art. 19 (1) (f) and Art. 20 (3) and prayed that the search warrants be quashed as being illegal and asked for return of the documents seized.

THE JUDGMENT

Mr. Justice B. Jagannadha Das delivered the judgment of the Court. His Lordship rejected the argument that violation of Art. 19 (1) (f) which guaranteed the right to acquire, hold and dispose of property was involved and proceeded to consider whether violation of Art. 20 (3) was involved, which he said was the only substantial question raised in the case.

Dealing with the interpretation of Article 20 (3) of the Constitution, Mr. Justice Jagannadha Das said that, broadly stated, the guarantee in Article 20 (3) was against "testimonial compulsion". It was suggested by the Solicitor-General, His Lordship said, that this was confined to the oral evidence of a person standing his trial or for an offence when called to the witness stand. They could see no reason to confine the content of the

constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound.

His Lordship said that the phrase used in Article 20 (3) was "to be a witness" and a person could be a witness not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness. There was also no reason to think that the protection in respect of evidence so procured was confined to whattranspired at the trial in the court room.

The phrase used in Article 20 (3), His Lordship continued, was "to be a witness" and not to appear as a witness. It followed that the protection afforded to an accused in so far as it was related to the phrase "to be a witness," was not merely in respect of testimonial compulsion in the court room but might well extend to compelled testimony previously obtained from him. It was available, therefore, to a person against whom a formal accusation relating to the commission of an offence had been levelled, which, in the normal course, might result in prosecution. Whether it was available to other persons in other situations did not call for decision in this case.

Considered in this light, Mr. Justice Jagannadha Das continued, the guarantee under Article 20(3) would be available in the present cases to these petitioners against whom a first information report had been recorded as accused therein. It would extend to any compulsory process for production of evidentiary documents which were reasonably likely to support a prosecution against them. The question then that arose next was whether search warrants for the seizure of such documents from the custody of these persons were unconstitutional and hence illegal on the ground that in effect they were tantamount to compelled production of evidence.

His Lordship in this way turned to the petitioners' contention that the guarantee of Art. 20 (3) extended not only to compelled production by an accused of documents in his possession, but also to such compelled production of oral or documentary evidence from any other person who might be one incriminated thereby as an accused in future proceedings. In this view a forcible search and seizure of documents was on the same footing as a compelled production of the documents by the person from whom they were seized. Dealing with this argument, His Lordship in his judgment said:

> Searches of the kind we are concerned with are under the authority of a magistrate (excepting in the limited class of cases falling under section 165 Cr. P. C.). Therefore, issue of a search warrant is normally the judicial function of the magistrate. When such judicial function is interposed between the individual and the officer's authority for search, no circumvention thereby of the fundamental right is to be assumed. We are not unaware that in the present set-up of the magistracy in this country, it is not infrequent that the exercise of this judicial function is liable to serious error as is alleged in the present case. But the existence of scope of such occasional error is no ground to assume circumvention of the constitutional guarantee.

Mr. Justice Jagannadha Das observed that a power of search and seizure was in any system of jurisprudence an over-riding power of the State for the protection of social security and that power was necessarily regulated by law. When the Constitution-makers had thought fit not to subject such regulation of constitutional limitation by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, they had no justification to import it into a totally different fundamental right by some process of strained construction.

Holding that the searches concerned in the present case could not be challenged as illegal on the ground of violation of any fundamental right, the Court dismissed the petitions without making any order as to costs. Giving the decision on only the constitutional issues raised, the Court left it open to the parties to raise before the High Court on appropriate applications other allegations as to the "high-handedness and illegality of the searches." "But we cannot help observing," the judgment said, "that on these allegations and on the material that has come within our notice, there appears to be scope for serious grievance on the side of the petitioners, which requires scrutiny."

A Case in the United States

Here an account of a case (Salsburg *v.* Maryland) decided by the United States Supreme Court on 11th January last, might be given. Three men were convicted by a Maryland court of offences against gambling laws of the state on evidence illegally searched and seized by the police after entering the premises without warrant. The Court of Appeals affirmed the conviction and an appeal was made to the Supreme Court challenging the judgment on the ground that the evidence procured by illegal search and seizure should have been excluded.

As is well-known, the case of Weeks *v.* United States, 232 U. S. 383 (1914) has established that evidence illegally seized by federal officers is not admissible in federal prosecutions. But the rule of practice so announced for the federal courts does not necessarily hold good in the states, unless a state expressly adopts the federal practice. In this matter concerning the admission of illegally seized evidence, states make their own choice. Maryland, after the Weeks decision, substantially adopted the federal practice for prosecutions of misdemeanours in the state courts, retaining however the common-law practice in felony cases, the practice, namely, of admitting evidence in criminal prosecutions without regard to the legality of the way in which it was obtained.

The Supreme Court has ruled, though over dissents from some Justices, that the states' legislatures have

power to choose either the rule which excludes or that which admits illegally seized evidence in state courts, on the ground that (as stated in the instant case) "rules of evidence, being procedural in their nature, are peculiarly discretionary with the law-making authority." The appellants conceded this power, but took exception to the further discrimination made in Maryland later, in that lottery misdemeanours were made subject to the rule of exclusion while those for operating gambling pools (as in this case) were not. Again, one rule was in operation in one county and the other in another. It was contended that there was no rational basis for such classifications and that they hit the equal protection clause of the Fourteenth Amendment.

The Court ruled that whatever view might be taken as to the desirability of the classifications, they were "within the liberal legislative licence allowed a state in prescribing rules of practice." "The equal protection clause relates to equality between persons as such rather than between areas." Moreover, the Attorney General had suggested, as a justification for a legislative distinction between prosecutions for violations of state lottery laws and of gambling laws, that the former were of a more readily detected and easily proved character than the latter. The Court, therefore, came to the conclusion that Maryland's action was valid.

Mr. Justice Douglas dissented from the judgment. He said:

> I am still of the view, expressed on other occasions, that the Fourteenth and the Fourth Amendments preclude the use in any criminal prosecution of evidence, obtained by the lawless action of police officers who in disregard of constitutional safeguards, ransack houses or places of business without search warrants issued under the strict surveillance which the Constitution commands.

RELIGIOUS ENDOWMENTS ACTS

Sections of the Madras Act Held Void

Scope of the Articles Guaranteeing "Freedom of Religion"

A Constitution Bench of the Supreme Court, while declaring on 16th March certain provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, to be void as contravening Articles 19 (1) (f), 25 and 26 of the Constitution, defined the scope and meaning of the Articles which guarantee the right to "freedom of religion."

The decision was given on a petition questioning the validity of the Madras Act which sought to "consolidate the law relating to the administration and governance of Hindu religious and charitable instiutions and endowments in Madras State."

The Madras High Court on a petition under Article 226 from the respondent, who was a "mathadhipathi" (head of religious institutions), held a number of sections of the Madras Act, besides those that were invalidated by the Supreme Court, as unconstitutional. The Commissioner, Hindu Religious Endowments, Madras, preferred the present appeal to the Supreme Court.

The main respondent before the Court was one Lakshmindra Thirthaswamiar, mathadhipathi, of Shirur Math, which was one of the eight maths situated at Udipi in the district of South Kanara, in Madras. The maths were reputed to have been founded by Shri Madhwacharya, the well-known exponent of dualistic theism in the Hindu religion.

The Hindu Religious Endowments Board, functioning under an earlier Act of 1927, served a notice on the respondent stating that the Board was satisfied that in the interests of proper administration of the math and its endowments the settlement of a scheme was necessary. A draft scheme was sent along with the notice to the respondent pending a final order on the scheme to be passed on February 15, 1951. The respondent filed a petition before the Madras High Court on February 12, 1951, praying for a writ of prohibition to restrain the Board from taking further steps in the matter of settling a scheme for the administration of the math.

The main contention of the respondent was that having regard to the Fundamental Rights guaranteed under the Constitution in matters of religion and religious institutions belonging to particular religious denominations, the law regulating the framing of a scheme interfering with the management of the math and its affairs by the "Mathadhipathi" conflicted with the provisions of Articles 19 (1) (f), 25, 26 and 27 of the Constitution.

The Madras High Court dealing with the petitions on both the constitutional questions as well as on merits allowed the petitions. On the merits, the High Court held that in the circumstances of the case the action of the Board was a perverse exercise of its jurisdiction and that it should not be allowed to proceed in regard to the settlement of the scheme. On the constitutional issues raised, the Court pronounced "quite a number of sections" of the new Act to be void.

The unanimous judgment of the Supreme Court delivered by Mr. Justice Mukherjea dealt only with the constitutional issues raised in the appeal.

Mahant's Right to Property

The question in regard to Art. 19 (1) (f), which guarantees the right to acquire, hold and dispose of property, that was raised by the Attorney-General as intervener in the case was whether the respondent as a mathadipathi had a right to property in the legal sense in the religious institution and its endowments which would enable him to claim the protection of the Article.

Proceeding on the footing that Article 19 (1) (f) applied equally to concrete as well as abstract rights of property, Mr. Justice Mukherjea said :

> The ingredients of both office and property, of duties and personal interest were blended together in the rights of a mahant and the mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be destroy his character as a mahant altogether.
>
> It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonale if they are calculated to make him unfit to discharge his duties.

ARTICLES 25 AND 26

Dealing with Article 25, His Lordship observed that it was the duty of the mathadhipathi, who was a "religious teacher," to practise and propagate the religious tenets of which he was an adherent, and if any provision of law prevented him from propagating his doctrines, that would "certainly affect the religious freedom which was guaranteed to every person under Article 25." It was the propagation of belief that was protected by Article 25, "no matter whether the propagation takes place in a church or monastery, or in a temple or parlor meeting", the judgment added.

Mr. Justice Mukherjea said about interpretation of Article 26 that as the Article contemplated not merely a religious denomination but also a section thereof "the math or the spiritual fraternity represented by it can legitimately come within the purview of this Article." His Lordship said :

> Freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well, subject to the restrictions which the Constitution itself has laid down. Under Article 26 (b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connexion with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature.
>
> It should be noticed, however, that under Article 26 (d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law, and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right, guarranteed under clause (d) of Article 26.

SECTIONS OF THE ACT INVALIDATED

The judgment basing its decisions on the above general observations relating to the Articles held that sections 21, 30 (2), 31, 55, 56 and 63 to 69 of the Madras Act conflicted with the fundamental rights of the respondent as mathadhipathi of the math in question.

Section 21 of the Act empowered the Commissioner appointed under the Act and his subordinate officers and also persons authorized by them to enter the premises of any religious institution or place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act. Section 30 (2) of the Act laid down that the trustee, while incurring expenditure out of the funds in his charge should be guided by such general or special instructions as the Commissioner or the Area Committee might give in that connection.

Section 31 of the Act enabled the trustee to spend the surplus left with him for the purposes specified in section 59 (1) with the previous sanction of the Deputy Commissioner.

Section 55 of the Actwhich dealt with the power of the mahant over the *pathakanikas* laid down that he should spend it only for the purposes of the math. Section 56 gave power to the Commissioner to require the trustee to appoint a manager for administration of the secular affairs of the institution and in case of default, the Commissioner could make the appointment himself. Section 63 to 69 related to notification of religious institutions.

"FEE" OR "TAX"?

On the question of the validity of section 76 (1) Mr. Justice Mukherjea said that our Constitution made a distinction between a "fee" and a "tax" and the State legislature was competent to levy a "fee" in respect of the subjects on which it could legislate. But the levy of fees should, in the face of the legislative provision, be correlated to the expenses incurred by Government in rendering services, since a fee was to be regarded as a sort of a return or consideration for services rendered.

But it might be noticed that the contribution that had been levied under section 76 of the Act had been made to depend upon capacity of the payer and not upon the quantum of benefit that was supposed to be conferred on any particular religious institution. Further, the institutions which came under the lower income group and had income less than Rs. 1000, annually, were excluded from the liability to pay the additional charges under

clause (2) of the section. These were undoubtedly some of the characteristics of a " tax " and the imposition bore a clear analogy to income-tax.

The ruling, therefore, was : the High Court was right in holding that the contribution levied under section 75 was a tax and not a fee and consequently it was beyond the power of the State legislature to enact this provision.

The appeal was dismissed.

Orissa Act

On the same day the Constitution Bench disposed of two petitions filed by two mahants questioning the validity of the Orissa Hindu Religious Endowments (Amending) Act, 1952, substantially on the same grounds as the Madras appeals, and the judgment followed the same lines.

The Court held that sections 38 and 39, and the proviso to sec. 46 of Act were ultra vires of the Constitution and issued a writ restraining the State Government from enforcing these sections against the petitioners. Dealing with sec. 38 and 39, Their Lordships said :

> The settling of a scheme in regard to a religious institution by an executive officer without the intervention of any judicial tribunal amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blended with his office.

The judgment said there was nothing wrong in the provision of section 46 itself, but legitimate exception could be taken to the proviso appended to the section.

> The purposes specified in sec. 46 are all conducive to the benefit of the institution and there is no reason why the discretion of the trustee in regard to the spending of surplus for such purposes also should be still further restricted by directions which the Commissioner may choose to issue.

Dealing with sec. 49 of the Act, which required every math or temple having an annual income exceeding Rs. 250 to make annual contributions, Their Lordships said the contribution could legitimately be regarded as fee and hence it was within the competence of the provincial legislature to enact this provision. " The fact that the amount of levy is graded according to the capacity of the payers, though it gives it the appearance of an income-tax, is not by any means a decisive test," the judgment added.

BOMBAY PUBLIC TRUSTS ACT

Sections Declared Invalid

The Constitution Bench of the Supreme Court, on 18th March, declared cluses 3 to 6 of section 47, part of section 44 and a part of sections 55 (c) and 56 (1) of the Bombay Public Trusts Act, 1950, to be ultra vires of the Constitution.

The decision of the Court was given in appeals preferred by Ratilal Panachand Gandhi, vahivatdar of a Jain public temple situated in Vejalpur, district Panchmahals, Bombay State, and the Parsi Panchayat of Bombay, against the judgment of the Bombay High Court, which had dismissed their applications made under Article 226 of the Constitution challenging the validity of the Bombay Public Trusts Act, 1950.

The applications, out of which the appeals in the Supreme Court had arisen, were in the Bombay High Court for the issue of a writ directing the State of Bombay and the Charity Commissioner to forbear from enforcing or taking any steps for the enforcement of the Bombay Public Trusts Act and, particularly, the provisions relating to registration of public and religious trusts managed by the petitioners and payment of contribution levied in respect of the same.

The grounds urged in support of the petitions were that a number of provisions of the Act conflicted with the Fundamental Rights of the petitioners guaranteed under Articles 25 and 26 of the Constitution and that the contribution levied on the trusts was a tax which it was beyond the competence of the State legislature to impose.

The Bombay High Court dismissed the two applications holding the whole Act to be valid and the petitioners came in appeal to the Supreme Court against that judgment.

In its judgment the Supreme Court, after defining the scope and meaning of Articles 25 and 26 of the Constitution, which guarantee the right to " freedom of religion, " examined the provisions of the Bombay Public Trusts Act, in the light of its observations on the constitutional guarantees applicable here, and declared certain provisions of the impugned Act to be ultra vires, violating the guarantees contained in Articles 25 and 26 of the Constitution.

Dealing with section 44 of the Act, Mr. Justice Mukherjea, who delivered the judgment of the Court said that the provision in question laid down that the Charity Commissioner could be appointed to act as trustee of a public trust by a court of competent jurisdiction or by the authorities of the trust. If the authorities of the trust chose to appoint the Charity Commissioner as trustee, His Lordship said, no serious objection could possibly be taken to such action, but if the court was authorized to make such appointment, the provision of this section appeared to them to be open to objection.

If they took for example, Mr. Justice Mukherjea continued, the case of a religious institution like a math at the head of which stood the Mathadhipathi, the latter was a trustee according to the provisions of the Act and if the court was competent to appoint the Charity Commissioner as a superior of the math, the result would be disastrous and it would amount to a flagrant violation of the constitutional guarantee which religious institutions had under the Constitution in regard to the management of their religious affairs.

In their opinion, His Lordship said, the provision of section 44 relating to the appointment of the Charity Commissioner as a trustee of any public trust by the court without any reservation in regard to religious institutions like temples and maths was unconstitutional and should be held to be void.

Mr. Justice Mukherjea said that the same objection would apply to the provisions of clauses 3 to 6 of section 47. The court could, His Lordship said, certainly be empowered to appoint a trustee to fill up a vacancy caused by any of the reasons mentioned in section 47 (1), and it was quite a salutary principle that in making the appointment the court should have regard to matters specified in clause 4 of section 47.

But the provision of clause 3, His Lordship observed, to the extent that it authorized the court to appoint the Charity Commissioner as the trustee, could not be valid in regard to the religious institutions of the type they had just indicated. To allow the Charity Commissioner to function as the Shebaith of a temple or the superior of a math would certainly amount to interference with the religious affairs of that institution.

His Lordship accordingly held that the provisions of clauses 3 to 6 of section 47, to the extent that they related to the appointment of the Charity Commissioner as a trustee of a religious trust like a temple and math, were invalid.

Dealing with sections 55 and 56 of the Act, which authorized the Charity Commissioner and the court in certain cases to apply the trust property or its income to the purposes which they considered expedient or beneficial, Mr. Justice Mukherjea said that a religious sect or denomination had the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this included the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution.

To divert the trust property or funds, His Lordship continued, for purposes which the Charity Commissioner or the court considered expedient or proper, although the original objects of the founder could still be carried out, was an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. They held, therefore, Mr. Justice Mukherjea said, that clause 3 of section 55 which contained the offending provision and the corresponding provision relating to the powers of the court contained in the latter part of section 56 (1) should be held to be void.

The Court rejected the contention of the appellants that the provisions of section 58 relating to the levy of contribution upon each public trust, was a "tax" which was beyond the competence of the legislature to collect, and not a "fee". The Court held that the contribution "is not a tax but a fee which comes within the purview of Entry 47 of List III in Schedule VII of the Constitution." Thus the Court allowed the appeals in part.

INDIVIDUAL CITIZENS AND CORPORATE BODIES

Guarantees of Fundamental Rights Applicable to Both

The question whether the fundamental rights enumerated in the Constitution are intended to be enjoyed by corporations as well as citizens came up for decision in the Rajasthan High Court in the case of Maharaja Kishengadh Mills Ltd. *v.* State of Rajasthan which was decided by Ranawat and Dave JJ. on 26th February 1953.

The Government of Rajasthan made an order under sec. 10 (3), Industrial Disputes Act, directing the Mills which had been closed down because they were being run at a loss, "to withdraw the lock-out at once." The Mills, applied for a writ of mandamus on the ground that there was no lock-out and that the closure of the Mills was due solely to the fact that there was no hope of running them at a profit, and that an order under sec. 10 (3), Industrial Disputes Act, which empowers Government to prohibit the continuance of any strike or lock-out "in connection with (an industrial) dispute" could not be made in the present case. It came out in the hearing of the case that Mr. Dutta whose services the Government had secured to inquire into the affairs of the Mills reported that the working of the Mills under the existing circumstances involved a loss of more than a lakh of rupees every month to the management. This gave corroboration to the contention of the Mills that the closure was not a lock-out at all. Their Lordships accepted the contention of the petitioner that sec. 10 (3), Industrial Disputes Act, was not applicable to the facts of this case. They said :

> A strike or lock-out which is itself a dispute would not justify an order under sec. 10(3) for its prohibition because the language of sub-sec. (3) requires that a strike or lock-out should be in connection with a dispute in order that an order for its prohibition might be made by the Government. Where a strike is not in connection with a dispute but is itself a dispute, the matter is quite different and would not justify an order of prohibition. The discretion of the Government therefore which has been exercised in the present case in making an order of prohibition is beyond the scope of sec. 10 (3).

It was contended on behalf of the petitioner that under Art. 19 (1) (g) of the Constitution it was open to him to close down the Mills temporarily or permanently, and that he was at liberty to carry on the trade or occupation and he was also at liberty to close it down. In reply to this it was urged on the other side that the provisions of the Article applied to citizens of India only and that as the petitioner was a corporation he could not be included within the definition of a "citizen." On this point Their Lordships agreed with the contention of the petitioner and, in so deciding, they relied upon the following observations of Mukherjee J. in Chiranjitlal Chowdhury *v.* Union of India, A. I. R. 1951 S. C. 41 :

> The fundamental rights guaranteed by the Constitution are available not merely to individual citizens but to corporate bodies as well, except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural

persons. An incorporated company therefore can come up to this Court for enforcement of its fundamental rights and so may the individual shareholders to enforce their own.

On the basis of these observations Their Lordships said in the instant case:

> We are of the opinion that fundamental rights guaranteed by the Constitution to citizens are available to corporations as well, except where the language of the provision and the nature of the rights compels an inference to the contrary. The fundamental rights in the present case of the petitioner would be ragarded as infringed by the order of the Government prohibiting it from closing down the Mills, in case he be regarded as having closed the business on account of apprehension of losses. The business of the petitioners is not of the nature of a public utility service, or he has not taken any assistance from the Government to start his business. Under these circumstances interference by the Government in the matter of the continuance of his business cannot be deemed to be reasonable in the meaning of Art. 19 of the Constitution of India.

The Court thus declared that the order of the Government by which the petitioner had been ordered to run the Mills during the pendency of an inquiry by the Industrial Tribunal was illegal.

PRESS ACT, 1951

High Court Upholds two Challenged Sections

The Chief Justice and Mr. Justice Tendolkar, at the Bombay High Court, on 25th March held sec. 11 and sec. 3(5) of the Press (Objectionable Matter) Act of 1951 to be valid.

A book in Gujarati entitled "Aghorvan" was printed by Mr. Shantilal Vadilal Shah at the Gujarat Printing Press of Ahmedabad, whose keeper was Mr. Nandlal Chunilal Bodiwala. As Government thought that the book contained passages likely to promote enmity or hatred between two communities, Hindus and Muslims, proceedings were instituted under the Press Act calling upon the keeper of the press to deposit Rs. 3,000 as security. While the matter was pending before the Sessions Judge, Government declared all copies of the book to be forfeited under sec. 11 of the Act. Messrs. Bodiwala and Shah filed petitions in the High Court and the above ruling was given in disposing of these petitions.

POWER OF FORFEITURE

It was urged on behalf of the petitioners that sec. 11, which gave power to Government to declare forfeited a publication provided the Advocate-General or the principal law officer certified that the publication contained objectionable matter, was ultra vires of Art. 19(1) (a), which guaranteed freedom of speech and expression.

Their Lordships said that sec. 11 undoubtedly constituted a restriction upon the right to freedom of speech and expression. But they had to consider whether the restriction was reasonable and in the interest of public order. In this connection, Their Lordships referred to the two safeguards provided under the Act. The first was that the order of forfeiture could be made only if the Advocate-General certified that the publication contained objectionable matter. Therefore, no action could be taken merely on the opinion of the executive.

The other important safeguard was that the party affected could approach the High Court under sec. 24 of the Act. In view of these safeguards, Their Lordships thought that the restriction imposed was reasonable.

Their Lordships then referred to the security proceedings under sections 4 and 5 of the Act and the proceedings under sec. 11, and said that the object of sec. 11 was to prevent immediately the circulation of a publication which contained objectionable matter. Their Lordships added that it would be impossible to safeguard public order if the State had to wait for a judicial decision before it could act and forfeit any objectionable matter. The very essence of sec. 11 was that the power should be exercised promptly and expeditiously, and, in Their Lordships' opinion, it could not be said that absence of any limitation on the power under sec. 11 would constitute an unreasonable restriction upon the freedom of speech and expression.

In order that the State should function properly, it was essential that it should be armed with all necessary powers. The Press could be a source of great usefulness, but it could also be equally a source of great danger. It must be left to the State to decide when that power should be exercised.

"PUBLIC ORDER"

Referring to the question whether cl. (3) of sec. 3 which defined "objectionable matter" was beyond the competence of Parliament on the ground that "public order" was a matter which should be legislated only by the State legislature exclusively, as "public order" was in the State List, Their Lordships said that the substance of legislation was not "public order" but "newspapers, books and printing presses," which was in the Concurrent List of the Constitution.

Their Lordships said that the entries in the Lists had to be construed liberally and the legislature must be deemed to have the power and the competence not only to legislate on the topics covered by the entries, but also to legislate upon matters which were subsidiary and ancillary to the topics. While passing the Act, Parliament was dealing with newspapers and books and even assuming that it had incidentally trespassed upon the field of the State legislature on the topic of "public order," the trespass was a minor one and did not constitute an encroachment upon the field reserved for the State legislature.

Their Lordships, therefore, held both the sections valid. In the result the petitions were dismissed.

Detention

Grounds too Vague

DETAINEES ORDERED TO BE RELEASED

Mr. Subodh Banarjee, M. L. A, and Mr. Sudhamony Das Gupta of West Bengal were arrested under the Preventive Detention Act and detained in the Dum Dum Central Jail. The grounds of detention served on them stated, inter alia, that they were active and important members of the "All Parties Teachers' Struggle Co-ordination Committee," which took up a programme of actively supporting the teachers' strike in Calcutta and in West Bengal. The order of detention was challenged in the Calcutta High Court on the ground that the grounds served upon the detainees were too vague.

K. C. Das Gupta and Debabrata Mukherjee JJ. on 26th March directed the release of the petitioners, holding that the grounds of detention were too vague and did not allow the petitioners to make adequate representation against the order of detention as provided in the Constitution.

COMMENTS

Kashmir's Detention Law

The Kashmir Legislative Assembly passed on 27th March a Bill amending the then existing Preventive Detention Act. The amended law, it was explained by the Government, was intended to fulfil the promise made in the Constituent Assembly that the new laws would confer the same civic rights on the State's citizens as were available to the citizens of India, and it appears that the promise has been kept so far as personal liberty is concerned, for the provisions of the law generally follow the lines of the Indian Act. The Deputy Home Minister said: The Act provided for a limited period of detention; the person detained would be given reasons for his detention; he could make representation against his detention; he could apply for review to Advisory Boards whose recommendation would be binding upon the Government; and the detenu could in person approach the members of Advisory Boards. Detention can be resorted to under the amended law as well in the interest of "supplies and services essential to the community" as in that of "the security of the State" and "public order." A member criticised the Bill as conferring under certain sections thereof which would enable the Government to detain a person for life. One wonders whether the Kashmir Act lacks that provision in the Indian Act which fixes the maximum duration of a detention order as one year and provides that any detention beyond this period can be only in virtue of a fresh order issued on the basis of fresh grounds. No one had expected that the Kashmir law would be an improvement on the Indian law, and even if it is a little worse, no one would make any serious complaint, knowing well how Kashmir has made a radical change in the guarantee of rights enumerated in our Art. 19 by subjecting the exercise of these rights to any kind of restrictions that the Kashmir Legislature itself may deem reasonable (which in effect means that all constitutional protection has been withdrawn from these rights).

Fair Procedure in Legislative Inquiries

In our last issue at p. iii: 62 we gave a summary of the suggestions made by some civil liberties bodies to the committee appointed by the Governor of New York to recommend to the legislature of the state a code of fair play for legislative investigations. The committee, which was presided over by Judge Lockwood, has now submitted its report. Its recommendations are thus summarised by the "New York Times":

> Under the Lockwood committee's proposed code of fair procedure for investigating agencies a witness is to be supplied with a copy of the code; he is to have in advance a "general statement of the subject of the investigation"; he shall have the right to counsel, to advise him of his rights in private or public hearing subject to "reasonable limitations"; his counsel may propose relevant questions to be asked him; a witness shall have the right to a transcript of his testimony at a public hearing; after examination a witness may file a brief sworn statement relevant to his testimony, this to become part of the record; any person believing himself defamed, or his reputation damaged, may appear personally in his own behalf or file a statement to be recorded; where a temporary state commission has more than two members, at least two shall be present at any private or public hearing; finally, substantial non-compliance by any agency with major provisions of the code shall relieve a witness of compulsion to testify, and shall be his "complete defence" against disciplinary action.

Supporting these recommendations as valuable, the "Times" notes some omissions, the most prominent of which is the omission of the right to cross-examine accusers and confront them.

Residential Segregation in S. Africa

The Malan Government has introduced in the Union Parliament a bill involving the compulsory removal of non-Whites (who number about 58,000) living in the Western areas of Johannesburg to new areas six miles away. Obviously, this is part of the Government's apartheid programme for the country. But the Government claim that it is only a slum clearance scheme, unconnected with racial segregation. The Opposition members discounted this plea, saying that if it was a question of mere slum clearance there were other slums which merited prior consideration. It is to be noted that the scheme would be carried out over the head of the City Council of Johannesburg if the latter body should raise any objection. The Government would set up a Board which is to be given power to override the City Council if necessary, though the cost of the removal scheme estimated at several million pounds is to be recovered from the Council.

South America's Declaration of Belief

IN HUMAN RIGHTS AND INDIVIDUAL LIBERTY

The Tenth Inter-American Conference, representing all the Latin American Republics, adopted on 24th March, at its session in Caracas (Venezuela) a resolution reaffirming its belief in democracy and opposition to totalitarianism and guaranteeing human rights and freedoms to all persons. This is but a reiteration of the American Declaration of Rights and Duties of Man, adopted by the Bogota session in 1948, soon after the Universal Declaration of Human Rights was passed by the United Nations.

It would appear that it would be a good thing for Latin America to pledge its faith in this way in human rights and the freedom of the individual. Only the nature of many of the twenty-one countries included in this hemispheric declaration makes one suspect whether the declaration will serve any useful purpose in a tangible way. Venezuela, in which "republic" the Conference was held, Dominica, Nicaragua and Peru (to name but a few of these countries) are living under a totalitarian dictatorship, and a declaration of belief in democratic institutions could only be regarded as an empty form for these countries. Moreover, in many of these countries sweeping restrictions are imposed on exercise of human freedoms like freedom of speech, press and assembly and freedom from arbitrary arrest under the plea that they are required for the purpose of preventing public order and political stability from being impaired at the hands of subversives. Nor is there any prospect that there will be any immediate let-up of these restrictions as a result of the high-sounding pronouncements embodied in the Caracas Declaration.

Still it may be thought that it is useful—even for dictators— to keep a good goal in sight and to have noble aspirations about democracy and individual liberty. The

"New York Times" takes comfort in the hope that even the dictators who blithely subscribe to the declaration will find in the end that this formal declaration has come home to roost. It says: "The very fact that totalitarian dictators feel impelled to sign such declarations shows that that they must bow to public pressure in theory, even if they ignore the aspirations in practice. . . . The dictators will sign a pledge that they may not intend to honour, but history in the long run takes care of those who do not live up to their pledge."

GLEANINGS

Liberty Under Law

JUSTICE JACKSON'S PLEA

Associate Justice Robert H. Jackson warned the American people on 30th January not to let either the extreme Left or the extreme Right induce them to give up their tradition of " liberty under law. "

In a speech delivered to the New York State Bar Association he said the Government, in protecting the people against a Communist " counter-revolution, " must use due process of law in dealing with the individual. But, he added, care must be taken not to discredit due process and other constitutional guarantees by interpreting them to mean liberty without law.

"Nothing can do the cause of liberal government more harm in the long run," the Supreme Court jurist asserted, "than to give the American people the impression that our Bill of Rights is useful only to our enemies, or is a mere refuge for criminals.

" More importantly, perhaps, " he went on, " we must not fall into the error of accepting lawless action from the Right as the solution of lawlessness from the Left."

Justice Jackson spoke at the Association's annual dinner in the Waldorf-Astoria Hotel, ending its four-day seventy-seventh annual meeting. The sessions drew more than 1,000 judges and lawyers from over the state.

In his speech Justice Jackson termed Mussolini, Hitler, Stalin and lesser dictators all part of a "counter-revolution against our whole American revolutionary philosophy" with its basis of " liberty under law."

He attributed the success and prestige of the American system to the doctrine, " government by laws and not by men." The United States Constitution, he said, is based " on the philosophy of the essential unity of liberty and law."

" This philosophy ", he said, " held that dissent, opposition and grievances, real or fancied, were most dangerous to stability and good order when underground, unvoiced and hence unanswerable, and that freedom of speech, press and assembly would bring smouldering discontents and oppositions to the surface where they could be satisfied or reasoned with. "

" However, " he added, " we must never forget that it is implicit in this philosophy that the discontented have a duty as well as a right to voice openly their dissatisfactions, and that the contented have the obligation to tolerate and answer overt opposition, however distasteful. "

In the foregoing passage Justice Jackson orally stressed the word " openly, " and italicized it in his prepared manuscript.

" We must also remember, " he went on, " that this concept of liberty had no tolerance of any form of lawlessness, no belief that there could be freedom except under law. "

In the cold war battle of ideas, he said, Americans should not complacently assume that the totalitarian " rebellion against liberty " is wholly without provocation. " Conditions develop, which, uncorrected, tend to confirm the critics of our institutions, " he said.

" The expanding authority of Government, its encroachment on the fields once left to individual choice, can be compatible with individual liberty only if our officials are as much bound by law as our private citizens," he said. "No individual should be subject to official condemnation, control or intrusion except at times and for reasons declared by law and applied to him by procedures which comport with our concept of due process of law. "

In warning against misinterpretation of due process and the rest of the Bill of Rights to give the impression they are useful only to subversives and criminals, Justice Jackson declared:

" The impression that liberty had that result has helped totalitarianism to win support for the overthrow or suppression of liberty elsewhere."

He pointed up his caution against accepting lawless action from the Right as the solution of lawlessness from the Left by citing the history of Germany between the two World Wars. He said:

" The record teaches no lesson, to those who will read, more impressive than the manner in which fear of Communism led many moderate Germans to cast their lot with the Hitler cause, while fear of Nazism led a constantly increasing number to embrace the Communist party.

" It became somewhat of a race between right and left-wing radicals to see which could first seize power and overthrow the republic to keep the other from doing so. Nothing would be more ominous for free government than growth of a similar negative and fatalistic attitude which embraces one extreme to counterbalance another, or leads us to think we must choose between arbitrary authority on the one hand or lawlessness on the other."

He urged lawyers to hold to their faith in law to help keep the United States from being forced to choose between " the two deadly horns of this false dilemma."

" Communism, most powerful of the present reactionary groups, depends upon military forces only as an auxiliary to its chief reliance, which is the deterioration of free institutions, the indifference of the masses and revolt by well-organized and disciplined minority," the Justice asserted.

" It can never succeed among our people so long as they understand and appreciate the meaning, vitality and enduring character of the American tradition and what is involved in preserving it in all its integrity. No one can do more than the organized bar to bring these truths home to our people by precept and example.

"We must stand firmly for liberty under law and join in the Kipling petition :

From panic, pride and terror,
Revenge that knows no rein—
Light haste and lawless error,
Protect us yet again.

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