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*Editorial Committee :*

N. M. JOSHI,  
S. G. VAZE,

*Vice-President and  
Secretary respectively of  
the All-India Civil  
Liberties Council*

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

*Edited by R. G. KAKADE, M. A., LL. B., PH. D.,  
Assistant Secretary, All-India Civil Liberties Council*  
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## The Press Commission's Report

Secs. 124A and 153A, I. P. C.

The Press Commission's recommendations appear to us to be extremely disappointing on matters of capital importance and fairly satisfactory on minor points so far as Freedom of the Press is concerned. The Commission has supported the restrictions, such as on the ground of "public order," added in Art. 19(2) by the Constitution (First Amendment) Act of 1951 and it also favours the retention of Rajaji's Press Act. But, from the summary of the report published, we only know that the Commission has arrived at these conclusions, but we are unaware of the reasoning on which they are based. It is therefore impossible to make any observations on the conclusions until the report itself is published. The only consoling circumstance about these reactionary recommendations is that four members of the Commission, including public men and journalists of such high eminence as Acharya Narendra Deo and Messrs. A. D. Mani and Chalapati Rao (chiefs of the two largest newspaper organizations in the country) have dissented from them.

Leaving these topics of the highest importance on one side for the present, therefore, we may comment here on some of the other topics on which the Commission has made recommendations. It has recommended what amounts to a repeal of the obnoxious provisions of sec. 124A and 153A, I. P. C. This is highly satisfactory, but the manner in which it reaches this conclusion appears to us to be somewhat odd. It says that sec. 124A is ultra vires of the Constitution even under the amended Art. 19(2) and that there is a possibility of sec. 153A also being so held. We have no reason to regret such a decision if the Supreme Court were to announce it, but we shall not at all be surprised if the Court takes the view that, since the Constitution Amendment Act has made "public order," in addition to "the security of the State," a ground for imposing valid restrictions on freedom of expression, the sections are not void. Under the Constitution as it originally stood, the sections were indubitably invalid, and the Punjab High Court in fact so declared in Master Tarasingh's case. But the situation underwent a material change after the con-

stitutional amendment was made. In this very issue of the BULLETIN, the readers will find a decision of a divisional bench of the Patna High Court in a case in which the whole question was thoroughly canvassed. Mr. Justice Das, who delivered the judgment of the Court, expressed his own individual opinion that the Privy Council's judgment in Sadashiv Narayan's case, expressly reaffirming the interpretation put upon sec. 124A in the Tilak case (to the effect that "the offence consists in exciting or attempting to excite certain bad feelings towards the Government," and that "disturbance or outbreak" was not a necessary ingredient of it), was "too literal," was yet constrained to say that, even on this interpretation (which constitutes the law of sedition at present), secs. 124A and 153A cannot be held to impose restrictions on freedom of speech and the press which are to be characterized as not "reasonable" within the meaning of the amended Art. 19(2). It is hard to combat the proposition, on which the decision is based, that commission of the offences mentioned in the two sections "may seriously affect the interests of public order."

The Commission, in making the recommendation that it has made, has in effect said that these sections should be interpreted as the expression "seditious libel" is interpreted in England and British Dominions (and there "seditious libel" covers both the offences mentioned in Penal Code.) In these countries, as was pointed out in the Memorandum presented by the All-India Civil Liberties Council to the Press Commission, an "external standard" of the offence of sedition was applied "to measure the nature and quality of hatred, contempt or disaffection which would render a person liable to prosecution," but this external standard is not applied in India. Otherwise the form of the words used are about the same. The external standard laid down in English decisions requires, as was said by Das C. J. in *Pratap v. the Crown* [A. I. R. 1949 East Punjab 305], "that in order to amount to sedition the words, etc., must generate hatred, contempt or disaffection of such intensity or depth as would be likely to result in violence or tumult or public disorder." The Commission has in effect recommended that the same external standard be hereafter applied in India in dealing with cases under the two sections. This is a commonsense view of the matter, and that is the view

that all journalists including the Press Laws Committee, have been pressing on the attention of the Government. We are glad that the Press Commission has adopted that view and recommended that intention to cause disturbance of public peace or knowledge of likelihood of violence ensuing" must be proved if anyone is to be convicted of the offences in question. But the Commission has come to this conclusion by what appears to us to be a somewhat devious route. Instead of arguing that if an expression so broad in meaning as "public order" is to be made a basis of restricting speech, which would necessarily give validity to laws which unduly abridge freedom of expression, and that the restriction should therefore be cancelled, it supports the restriction and still concludes that the laws must be repealed or radically altered. The Patna decision shows however that the constitutionality of the sections can well be sustained under the amended cl. (2) of Art. 19, without unduly straining the meaning of "reasonable," or, in the words of Mr. Justice Das, "by giving that expression a fair and reasonably wide meaning." We suppose the feeling of the Commission is that any new ground of restriction may be added to Art. 19 (2) without producing undesirable results, since the restrictions actually imposed have to be "reasonable," as judged by the Courts. But the Patna High Court's judgment proves what slender protection the introduction of the word gives. Anyway, the Commission's recommendation in this respect is satisfactory.

Similarly sec. 295A, relating to propaganda intended to outrage the religious feelings of any class, appears to the Commission to be of doubtful validity and in order to remove any doubt it suggests that the section should be limited in operation to those cases "where there is intention to cause violence or knowledge of likelihood of violence ensuing."

At this point an observation may be made. The Press Commission not only makes violence or breach of public order the essence of the offences of sedition, promotion of communal ill-will, and insult to religious faiths (it thinks that otherwise the sections of the Penal Code will or may be held to contravene even the amended Art. 19), but further makes the intention of bringing about this result or knowledge that this result is likely to come about a necessary ingredient of the offence. This is of course sound sense. But one wonders whether the Commission has taken note of the fact that the Press Act (which it supports) gives wide berth to *mens rea*. Rajaji, when enacting this law emphasized the point that the law takes no account of the intention of the person who comes thereunder. If a certain act is likely to lead to a certain result, irrespective of the intent or the knowledge of the likelihood on the part of the doer, he comes within the mischief of the law's provision. And the scope of a person unwittingly committing a press offence is very great indeed under the law, for the penal provisions apply not only to the writer who may perhaps

be assumed to have written an objectionable article with the deliberate intent of producing the result likely to follow, but also the printer and even the distributor who in 99 cases out of 100 has not even the intellectual capacity to know what he is selling. By the very reasoning which the Commission has followed in respect of sections 124 A, 153 A and 295 A, it should also, one would think, recommend at least a modification of the Press Act. But presumably it has not done so, since it is reasonable to suppose that such an important recommendation, if it were made, would have found a place even in the short summary which the Commission has published.

[Three other recommendations of the Commission have been considered in the "Comments" column.]

## Legislative Privileges Override Fundamental Rights

*In view of the tendency on the part of legislatures in India to invoke contempt proceedings against newspapers which criticise any legislative acts on the ground that such criticism is a breach of their privilege, and in view of the abridgment of the press freedom which results therefrom, the Press Commission has recommended that legislative privileges be suitably defined, as contemplated in Arts. 105 and 194 of the Constitution. In order to appreciate the urgent necessity of such definition, the following article describing the position as it stands at present will be found very useful. We may state here that the Indian Federation of Working Journalists urged in a resolution passed on 31st May last year (vide p. ii : 287 of the BULLETIN) that the privileges of legislative bodies "should be held to be subject to the other provisions of the Constitution and hence to the Fundamental Rights," which is not the case at present.*

This is the conclusion to which Mr. Chhail Behari Lal Saxena is driven in his survey (published in the Journal Section of the All-India Reporter in September, October and November last) of the constitutional provisions on the subject. He points out in these articles that while the Constitution has defined the powers of the Supreme Court and of the High Courts in States, it has left it to the Parliament and the State Legislatures to create, define and legislate their own powers, privileges and immunities, free from interference of the courts, and it has further provided that, until so defined, these legislative privileges shall be those of the House of Commons in England. But the Indian Parliament will be in a position, "unlike the Houses of Parliament in the United Kingdom" to create new privileges for itself and for the State Legislatures and have exclusive jurisdiction over matters relating to their powers, privileges and immunities to the exclusion of the courts of law in the land. Thus it follows, he says :

If the privileges of the Parliament are in conflict with the Fundamental Rights of the

individual, guaranteed in Part III of the Constitution, the Supreme Court and the High Courts are powerless to interfere, and the sole judge is the Parliament or the Legislature itself and not any Court.

#### THE POSITION IN ENGLAND

Mr. Saxena summarizes the position of the Parliament of England in this respect as follows:

(1) It has been recognized as settled that the High Court of Parliament, which is supreme, consisted originally of the King, House of Commons and the House of Lords. Neither House by itself is entitled to claim supremacy over the ordinary courts of law, for purposes of adjudication on the question of privileges.

(2) It is now more or less settled that the law of Parliament is a part of the law of the land and as such the courts are competent to take judicial notice of the existence of the privileges of the Parliament.

(3) It is now admitted that neither House can by itself create or add a new right or privilege. This means that the privileges are ascertainable and thus they are known to courts.

(4) That, within the four corners of the House the House is supreme and all its proceedings are beyond the powers and jurisdiction of courts.

(5) That, in matters of contempt, the House whose contempt is alleged to have been committed has exclusive jurisdiction to commit and it is beyond the scope of the court of law to interfere. In the matter of conflict between the Parliament and the courts, the House of Commons has, by taking recourse to suitable legislation, resolved the controversy. Since the controversy of *Bradlaugh v. Gossett*, 12 Q. B. D. 271 (1884), there is recently no known leading case on the subject and it must now be taken for granted that both the House of Commons and the courts have adjusted their respective spheres of activities and jurisdiction by more or less settled conventions.

#### THE POSITION IN INDIA

The writer's conclusions as to the constitutional position in this country are:

(1) That the Union Parliament and the Houses of Legislature of a State are superior bodies and not sub-

ordinate or inferior in status and jurisdiction to the Supreme Court of India or the High Court of a State respectively and thus they as such are beyond the jurisdiction of these courts as regards their powers, privileges and immunities. Their writs are inaccessible to them.

(2) That the powers, privileges, and immunities of the Parliament and the Houses of Legislature are not justiciable subjects and the Supreme Court or the High Courts have no jurisdiction to enquire into their existence, legality and propriety, and make their declaration and create new ones. It is the sole and exclusive jurisdiction of the Parliament or the Houses of Legislature of States to define, create, and inquire into their propriety and validity, and in the event of their conflict with the Fundamental Rights of an individual, to resolve the controversy.

(3) The Parliament and the Houses of Legislature of States are the sole and exclusive authorities to punish for breach of their privilege or a contempt of their authority and dignity, and the courts have no jurisdiction to interfere.

(4) A State Legislature is fully competent, and there is no illegality about it, to issue a warrant of arrest against a person who committed its contempt, outside the territorial limits of the State Legislatures concerned. The warrant is perfectly valid, legal and enforceable as a valid order of a competent authority like all other extra-territorial orders of State courts or ordinary courts of the land.

(5) In a case of a breach of the Parliamentary privileges or contempt of the Parliament or the Houses of Legislature, courts cannot interfere and cannot quash the warrant of arrest validly and legally issued by the Parliament. The sole jurisdiction rests with the Parliament issuing the warrant and not with the courts. The question of the validity and invalidity of such warrants cannot be gone into by the courts and it is the Houses of Legislature or the Parliament, as the case may be, which can go into them.

(6) In the event of the committal for the breach of the Parliamentary privileges or the contempt of Parliament, it is the House whose contempt was committed or the privileges infringed which is the sole competent authority to try, deal (with) and punish the offender and not the courts of the land.

## COLOURED VOTERS IN THE CAPE THEIR POLITICAL SEGREGATION

The Malan Government is still at it. Defeated twice before, it tried once again to get the Union Parliament to pass a measure depriving the Coloured people of Cape Colony of their much-prized century-old franchise on the common roll in May and June. But it again failed to obtain the required two-thirds majority of both Houses of

Parliament and is now utilising the Provincial Councils elections for securing a mandate for the removal of the Coloureds from the common electorate.

This political segregation of the Coloured people, who have themselves sprung from the whites and most of whom have more than 50 per cent. white blood in their

veins, has such an important bearing on race relations that we would like our readers to pay close attention to this subject. A bill was first passed in 1951 to abolish the vote of the Coloured people of the Cape on an equal footing with the Europeans, but because the bill was passed by simple majorities in the two Houses in disregard of the entrenched clause of the Constitution, the Appellate Division of the Supreme Court declared it invalid. Then, in March 1952, the Government resorted to the preposterous expedient of setting up a High Court of Parliament in order to overrule the decision of the highest judicial tribunal of South Africa. But in November of that year the so-called High Court of Parliament itself was declared a nullity by the Appellate Division. In July 1953 the Government came forward with a Constitution Amendment Bill proposing to alter the entrenchment clause by a simple majority, but this Bill could become law only if it were passed by a two-thirds majority, and the Government failed to get it. But, not deterred by this defeat, the Government introduced an Appellate Division Bill which, if it were passed into law, would have set up, in the words of the Leader of the Opposition, "a Star Chamber for South Africa." Under this most infamous measure the Government would have been enabled to appoint as judges men who are politically reliable, mere stooges prepared to carry out the dictates of the Government. Fortunately, however, good sense dawned on the Government and the bill was not proceeded with. But this is not the end of the story. In May of this year the Government made a nother try at securing the passage of a bill for getting the Coloured voters off the common roll, this time by the correct constitutional procedure, viz., by obtaining a two-thirds majority at a joint sitting of Parliament.

The Prime Minister, Dr. Malan, explained when he introduced the Bill why the removal of the Coloureds of the Cape from the common electoral register was such an important matter in his eyes. His point of view, although fundamentally wrong, should be clearly understood. All European groups in South Africa, however sharp their internal differences may be, are wedded to the maintenance intact of the domination of the white people, who are only 21 per cent. of the total population, the Africans being in an overwhelming majority of 67.5 per cent. The Coloured people, i. e., people of mixed races, are less than one-third of the whites and should cause no worry to the latter, particularly because they are attached to the whites' way of life. But the trouble is that they are concentrated in the Cape Colony. About a million people belonging to the mixed races live in this province, and only a little more than a lakh are to be found elsewhere. This concentration enables them to exercise a great influence on the Parliamentary elections in this Province, much greater than what the whites would like it to be. They are under several handicaps in the matter of elections. There is no adult franchise for them; they have to fulfil educational and economic qualifications in order to be eligible for voting. Even so,

Coloured women are denied the franchise. There is no system of compulsory registration of voters for them, as there is for the whites, so that many of the eligible voters do not in fact exercise the franchise to which they are legally entitled. As a result of these handicaps, the Coloured people do not pull their full weight in the elections. Thus, while the number of Coloured voters is at present 48,000, that of European voters is over five lakhs, although the white population is about the same as the Coloureds in the Cape. There is really no reason therefore for the whites to be disturbed about the non-racial or common franchise which the Coloured people have.

But the Nationalist Party is greatly disturbed because though the actual position may not be very alarming, the potential position appears to it to be very grave. In the first place, Dr. Malan said, the franchise qualifications offer no serious barrier. The educational qualification that is prescribed for the Coloured voter is that he should be able to sign his name and write his address, and there are not many Coloured people who do not now fulfil such a simple qualification. Education is fast growing among them. In fact the number of Coloured children at school (and there are 2,000 Coloured schools) is now more than that of white children by 20,000 in the Cape, whereas some fifteen years ago white children outnumbered Coloured children by 50,000. The economic qualifications, viz., ownership of a house worth £75 or earning of a wage of £50 per annum are also such that, on account of the depreciation of the value of money, most Coloured persons can comply with them. The qualifications thus have in effect ceased to operate. The only reason, therefore (the Prime Minister argued), why the number of Coloured voters is comparatively low at present is that a large number of people who are entitled to be registered as voters do not take care to get themselves registered. And it is this large unregistered residuum that makes the Government so apprehensive about the future of the whites. Dr. Malan said, behind the registered Coloured voters "there lies a slumbering giant which can become active at any time and exert its influence. . . . If all the Coloureds are to be registered who can be registered, there will not be 48,000 on the voters-roll, but no fewer than 1,50,000. . . . This means nothing less than that the position of power of the Europeans in the Cape Province will be tremendously affected." Moreover the growth potential of the Coloureds is much greater than the growth potential of the whites; according to Professor Sadia, the former increase by more than 100 per cent. within one generation, whereas the latter increase only by 54 per cent. The dynamics of population change will affect the whites very adversely. "In fifty years' time," said Dr. Malan, "the Coloureds in the Cape Province will number 20,00,000 more than the Europeans. That will simply mean that by that time the position of domination of the Europeans will be entirely lost."

Starting from the premise that the whites must for all time be in an unchallengeable position in the country although they form but a fifth of the total population, he

came to the conclusion that the growing power of the Coloureds must be checked betimes. This can best be done by taking them off the common roll and giving them a fixed representation in Parliament (four seats in the House of Assembly and one in the Senate), whatever be the strength of their electorate. When the voting power of the Coloured population is thus pegged, there will be no fear thereafter of the white franchise being swamped as there is now. Dr. Malan's bill in fact wanted to apply to the Coloureds the same remedy as was applied to the Africans in 1936, when the latter were removed from the common roll and were given special representation in Parliament, the same as is offered to the Coloureds now. The danger of the Natives swamping the Europeans was much larger, since they outnumber the whites in the proportion of 67.5 to 21, but the immediate danger was almost negligible. For, in 1936, when this change was brought about, i. e., when the Natives were put on a separate roll, there were only 11,000 Natives in the whole country who were entitled to vote. And the Native electorate could not grow fast as, economically and educationally, they are very much worse off than the Coloured people. Yet, removal of the Natives from the common electorate was effected with the consent of Gen. Smuts, who was then the Leader of the United Party. Dr. Malan's argument, therefore, was that if the Party now in the Opposition as then helped in the political apartheid of the Natives, whose voting strength then was but 11,000 and who could not acquire qualifications as rapidly as the Coloureds, the Party should now support the political apartheid of the Coloureds, whose voting strength was already as much as 48,000 and which could grow quickly. That was the only way to protect the European franchise in a country where the Europeans were outnumbered by other races by 4 to 1. And he made fun of the United Party who, putting themselves "on a pinnacle of morality," condemned the bill as something wicked.

The Rhodeses, Hofmeyrs, Merrymans and Schreiners, noted in their generation as specimens of liberalism, were cited as showing that they too were in favour of adopting restrictive measures with a view to protecting the white minority. And in a sense Dr. Malan is right. For none of them was really prepared to go all the way to give full equality to the other races. Full equality will become possible only when the Europeans will give up their claim to dominate the country for ever, and none of them statesmen was ever willing to give up this claim. All that they had urged was to mete out justice to other races as far as possible, i. e., within the limits set by perpetual white domination. And, after all, what was the argument of the United Party in opposing this measure? What was necessary to be done in the case of the Natives need not be done in the case of the Coloureds. In the first place, they argued, the number of Coloured voters will not grow in the near future to such an extent as to constitute a threat to the dominant position of the whites. Mr. Strauss, the Leader of the Opposition, said: "If the qualifications for adult Coloured males were to be abolished altogether, there

would still be seven European voters to every one Coloured voter. Where is (then) the danger of swamping the European electorate?" In the next place, the Coloureds are not like the Natives. They are "a responsible and co-operative element in our body politic. They have always shown themselves to be the faithful ally, of the white men in South Africa." They "have always been a support and a sustaining power to the white men." They are "an appendage of the European population." They have "a natural bias toward the European and a bias away from the other non-Europeans of South Africa." Not one of them joined the defiance movement carried on by the Natives and Indians. And did not the Coloured people help the whites in 1936 to remove the Natives from the common roll? The measure, if passed into law, would only destroy their good-will and drive them into the anti-European front. The stand taken by the United Party was thus not so much on moral principles as on considerations of expediency. Their contribution was certainly useful inasmuch as it tended to check the racial aggressiveness of the Nationalist Party, but from the very nature of the case it had a very limited appeal. The Malan Party, defeated in Parliament, is already asking for a mandate from the people in the provincial elections for putting the Coloured people on a separate roll and giving them a fixed representation in Parliament.

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## COMMENTS

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### Dr. Lohia's Arrest

Dr. Ram Manohar Lohia, General Secretary of the Praja Socialist Party, was arrested on 4th July at Farrukhabad under the U. P. Special Powers Act, 1932, for having exhorted the people in two or three speeches not to pay the enhanced irrigation rates. As his application for a writ of habeas corpus before the Allahabad High Court is yet to be disposed of and as the trial is to commence comments on these proceedings must be withheld. But we may well comment on the U. P. Government's policy of applying an ancient law to the propaganda that was carried on by Dr. Lohia. Surely, ordinary law does provide a remedy against speeches inciting to violence or breaches of law if such things are proved against anyone. How can the U. P. Government think then of some special legislation, now almost forgotten by the people, enacted by the Britishers when they were faced with a well-organized and wide-spread no-tax campaign and a mass movement of civil disobedience followed by a series of most gruesome acts of violence?

The legislation was then opposed by all sections of the people whom Congressmen were fond of describing as reactionaries. Although the legislation was opposed on the ground that conciliatory instead of repressive measures alone would meet the situation, no one could suggest that the position from the point of view of

law and order was anything but grave. The legislation which was sought to be justified on the ground that a concerted movement of non-payment of taxes could be met successfully, if at all, by taking extraordinary powers is now being employed by the Congress Government in U. P. to put down an individual's advice to the people to withhold payment of irrigation rates which he considers excessive.

This is not a solitary instance. Time and again, the Congress leaders who condemned all coercive measures adopted by the British Government are themselves adopting those very measures or measures of like nature. When the mover of the Special Powers Bill, who was a Britisher, introduced the bill, he defended it on the ground that it was "intended for the protection of society and for the use, not only of the Government but of its successor." He made this prediction, knowing well, we suppose, that the Congress, as the best organized party, would succeed the British Government. He felt sure that the Congress leaders would somehow overcome their scruples about repression and coercion and would be glad of an instrument, forged by the Britishers, ready to hand. The same was the case with the Press Act. When Congressmen opposed the measure tooth and nail, the Home Member of the Government of India, who was we believe Mr. Hailey, said with unerring foresight that those who opposed the bill then would themselves use its powers on assumption of office. This prediction too has come true, for though the old Press Act formally stands repealed, its place has been taken by no less severe a law, with the system of securities, unheard of anywhere else, being maintained intact. What was then suppression of liberties has now become safeguarding of them!

### Press Commission's Suggestions

#### Sec. 144. Cr. P. C. and the Press

The Press Commission has supported the recommendation of the Press Law Inquiry Committee of 1948 to the effect that sec. 144, Cr. P. C., under which the Government at present holds itself competent to suppress any matter appearing in a newspaper or the issue of the newspaper itself, should not be made applicable to the Press, since that was not the intention of the framers of the Code. It will be recalled how much Bajaji, the Home Minister of the Government of India, relied in the debates of the Press Act of 1951 on the use of this section for also the purpose keeping newspapers in India on the straight path. The section can well be an instrument of oppression in the hands of magistrates, and it will be some relief to the Press if the Government of India gives effect to the recommendation by means of an administrative order that no prohibitory orders be issued any longer against newspapers.

In this connection the Press Commission has commented on the report of Mr. Justice P. B. Mukherjee

(vide p. iii:24 of the BULLETIN) on the police assault on pressmen in the Calcutta maidan on 22nd July last year, in which Mr. Mukherjee held that the pressmen committed a breach of an order under sec. 144, saying that reporters could not claim exemption from the operation of such a prohibitory order by reason of the fact that they were newspaper reporters. The Press Commission agrees with this statement of the law as everyone must, but points out the difficulties under which newspapermen would labour if means were not devised whereby they could move about in groups for the purpose of reporting on meetings such as that held in Calcutta. We ourselves pointed out (p. iii:43) that for their own protection newspaper reporters must on such occasions work in groups and they must be allowed to do so, as they invariably are in the United States. The Commission's recommendation in this respect is that when an order is issued prohibiting an assembly of more than a certain number of persons, the authorities concerned may grant, in the order itself, special exemption to bona fide reporters who should be asked to wear distinctive badges in token of exemption and carry the permit on their persons. This is a useful recommendation.

#### Government Advertisements

On the question raised by the Bombay Government's withdrawal of all State advertisements from the "Times of India," the Press Commission says: The liberty and freedom to place advertisements wherever he likes which a private advertiser enjoys cannot be conceded to the Government which is a trustee of public funds and, therefore, bound to utilise them to the best advantage of the public. The Government should place advertisements, having regard to the following considerations: (1) circulation of the paper and the rates charged by that paper; and (2) readership designed to be reached by the particular advertisement. Advertisements should be distributed to as many suitable papers as satisfy the above criteria. However, advertisements cannot be claimed as a matter of right and Government would be justified in withholding them from papers which habitually indulge in journalism which is obscene, scurrilous (which includes elements of coarseness, vulgarity and abusiveness), or gives encouragement to violence or endangers the security of the State.

#### Defamation of Public Servants

The Press Commission perhaps was asked by the Home Minister of the Government to express its view on the proposal he has included in the bill for the amendment of the Criminal Procedure Code, making defamation of public servants a cognisable offence. Anyhow it has considered the proposal and turned it down. The proposal, if passed into law, would give police officials the power to arrest a person suspected to have defamed a Government

servant without warrant and make a search and seizure of his papers. What a powerful engine of oppression this power can be in the hands of the police can well be imagined, and it is not surprising that the Press Commission has emphatically rejected it.

The Commission has, however, suggested an alternative which, though not open to the serious objection mentioned above, is still not free from objection. It is to the effect that if a public servant feels aggrieved by allegations made in respect of his public duties but is unwilling to bring an action against the person concerned in the normal way, some other public servant to whom the aggrieved official is subordinate may be allowed, by a change in the existing law, to lodge a complaint on his behalf, whereupon a magistrate with jurisdiction will take cognizance of the alleged offence. It is further proposed that the magistrate should then be required to make an investigation of the complaint himself or cause such an investigation to be made.

This latter proposal seems to be superfluous, for when a complaint is received by a magistrate, he is bound, we suppose, to have an investigation made. But the question is: Why should anyone else be enabled to start proceedings if the aggrieved person himself does not desire to start them? It may be that the Government may be anxious to see that no public servant against whom grave allegations are made should be allowed to remain in such an anomalous position, bringing discredit upon the Government itself. Such an anxiety on its part one can easily understand and appreciate. But the only thing to do in that case is to call upon the official against whom the allegations are made to clear himself of them. Then the official concerned will have somehow to get over his unwillingness to bring the matter into court if he wishes to retain his position. Anyhow the intervention of any other person will then be unnecessary, as indeed it will not be justifiable.

The principal objection on the ground of theory to the Commission's recommendation for alteration of the law is that the proposal would give a privileged position to public servants. The doctrine we have learnt from the British system of jurisprudence is to treat public servants on such matters on the same footing as ordinary citizens, and we feel that no departure from it should be made and a special status given to public servants over and above that which private persons enjoy. Apparently the Press Commission does not think much of this equality before the law which is the boast of the British system. The Commission has similarly approved of a departure, much too lightly in our opinion, in respect of the whole treatment of the Press. It is the fundamental principle of the English law that the Press should not be accorded any special privileges, nor be made to labour under any special disabilities but should be governed by the same law as is applicable to common citizens. This was the objection unanimously urged by the Press to the special

Press Act of 1951. But the Commission seems to have made light of it and recommended retention of the Act. Four members of the Commission have dissented from the Commission's recommendation in regard to defamatory allegations against public servants as they have dissented from its recommendation in respect of the Press Act. They have recorded the opinion that the proposed change in the law of defamation is unjustified.

## Proposed Constitutional Amendments

The All-India Congress Committee, which met at Ajmer in the fourth week of last month, did not, contrary to expectations, consider the report of the Constitution Sub-Committee of its Working Committee embodying proposals for the amendment of the Constitution. Nor did the Working Committee, which had already expressed its general approval of the amendments proposed, pass upon the amendments in detail. It contented itself with a consideration of the reaction on the changes in the Constitution, as reflected in the opinions of the various State Governments and Congress Committees on the one hand and in those of public bodies on the other. Among the latter the Deccan Sabha of Poona is prominently mentioned as a body to whose resolutions particular attention was paid. And we may say incidentally that the resolutions of this body follow in all essentials the line of criticism that we ourselves adopted in the leading article that appeared in the BULLETIN last month on this subject.

It does not mean, however, that because neither the Working Committee nor the All-India Committee was in a position to confirm or modify the proposals, the proposals are for the present put in abeyance. On the contrary, the Constitution Sub-Committee has been authorized to by-pass both these top bodies and to submit to Government direct the proposals in the form in which the Sub-Committee might choose to finalize them, as if they were the views of the Congress Party as a whole. To adopt such a course on an admittedly controversial subject may appear strange, but such a large discretion has been given to the Sub-Committee obviously because Pandit Nehru himself is the chairman of the Sub-Committee. Apparently, it was felt that when the Sub-Committee is headed by the Prime Minister, all the intervening stages could be safely cut out, and that the chairman might be left to pick and choose between the proposals and give them whatever shape he thought expedient. It is expected that the Sub-Committee will submit its final proposals to Government by the end of this month, so that they may come before Parliament in the form of bills for consideration in its winter session.

As regards the proposal to enlarge the scope of Art. 19 (2), which specifies the restrictions that may validly be imposed upon the right to Freedom of Expression, it would appear that the Sub-Committee would include it in



its final report which is to go to Government. So far as one knows about the form of this proposal which the Sub-Committee has in mind, it is to add to "public order" another clause as a basis of restriction which would give validity to laws under which Governments would be enabled to outlaw any expressions deemed to be "objectionable in public interest." The Working Committee thought it best await publication of the Press Commission's report, which was not available when it met in Ajmer. The summary of the report that has since been published does not give countenance to any such amendment, as is proposed by the Sub-Committee. It makes a certain recommendation in regard to writings supposed to be defamatory of public servants, but the Sub-Committee's proposed amendment has a much wider scope, viz., to put a curb on scurrilous writing in general. We do not know whether the Press Commission has made any recommendation on this larger subject, but one thing that is clear is that while the Commission does not favour the cancellation of the additional restrictions introduced by the Constitution Amendment Act of 1951 such as on the ground of "public order," it says clearly however that the members of the Commission "do not suggest any changes in the amended form of the Article," i. e., Art. 19(2), "as it stands to-day." Nevertheless the feeling in Congress circles is so keen on amending the Constitution so as to put an effective check on what is dubbed as yellow journalism that it would be well to assume that Parliament will soon have to deal with a proposal to still further widen the ambit of the restrictions already enormously widened by the amended Article.

As to the amendment of Art. 31 concerning rights of property, it would seem that the proposal that would come before Parliament would have a much more modest scope than what one was led to believe from the Sub-Committee's report. It would be limited perhaps to the Government temporarily taking over industrial property, for the purpose of improving employment or production, without the payment of compensation. The object is to get round the Supreme Court's judgment invalidating the taking over of the Sholapur Mills in the case of *Dwarkadas v. Sholapur Spinning and Weaving Co.* (reported at pp. iii:37-39 of the BULLETIN). It will be recalled that in this case the Court decided that taking possession of the Mills by Government, although ostensibly for the purpose of managing the concern on behalf of the Company, amounted in effect to deprivation of the Company's property without compensation and was thus in contravention of Art. 31 (2). Mr. Justice Das said in this case that the act was "in substance, nothing short of expropriation." If the acquisition of industrial property without compensation for a short period for the good of the community is intended to be validated by the proposal for amending Art. 31, it will certainly wear a different complexion from what it did in the Sub-Committee's report.

### The Congress View of Freedom of Expression

The public has an inkling, from the reports published in some newspapers, of the spaciousness of the views which the State Governments manned by the Congress Party and the State Congress Committees entertain on the kind of curbs which, in their opinion, it is essential to put on freedom of expression so that the constitutional guarantee in respect of it may not be abused. While they support the suggestion made by the Constitution Sub-Committee of the Congress Working Committee that an additional restriction must be introduced in Art. 19 (2) in order to put an effective check on scurrilous propaganda, they do not stop there. They would like to see some further restrictions introduced. Saurashtra wants the Article to be so framed as to remove all possibility of the abuse of freedom. Ajmer insists that Art. 19 (2) should be so enlarged as "to enable the Central Government to pass more stringent Press Laws than exist at present." Himachal is particularly solicitous of Ministers and would have the Article so amended as "to discourage the tendency to level mischievous charges against them." Delhi is not satisfied that restrictions on freedom of speech and freedom of the press can now be imposed in the interest of friendly relations between India and foreign powers. Why not extend this very commendable idea to the shores of India itself? it argues, and suggests as another basis of restriction "friendly relations between various sections and communities." Delhi is distracted by communal tension and would like to have greater power under Art. 19 (2) to assuage it. Assam is more concerned about the demand of the Nagas to have a separate State for themselves and, in order to be able to suppress it, has advanced the idea that it should have the power to impose restrictions in the interest of "maintaining the integrity of the State." These Governments have not cared to ask themselves what freedom of expression will remain if all their expansive ideas are given effect to.

### Another Characteristic Suggestion

#### ABOUT ARREST AND DETENTION

Another characteristic suggestion made by a Congress Government is to alter the normal rule, embodied in Art. 22(2), that "every person arrested and detained in custody shall be produced before the nearest magistrate within twenty-four hours of such arrest." The alteration proposed is that this provision be made applicable only in the case of persons charged with offences under the Penal Code.

This provision is already inapplicable under the subsequent clause of Art. 22 to persons arrested for "preventive detention." The Penal Code's definition of offences is so wide that not only a person who has committed a pre-judicial act but is about to commit it or likely to commit it comes within its mischief. So in one sense preventive detention is sanctioned by the Code, but then evidence will have to be produced to prove that he was really about to commit the offence. But because Government wants to have the power to detain persons on mere suspicion with-



out being required to produce evidence, it has enacted the so-called Preventive Detention law, which the Constitution itself allows.

There is therefore reason (though no moral justification) for not making the provision of Art. 22(2) applicable to cases of preventive detention. But what reason can there be for making any other exception? The object obviously is to have the power which the Preventive Detention Act confers on Governments for use against persons who are arrested and detained under any special legislation. Mr. Ram Manohar Lohia, for instance, detained in custody for a breach of the U. P. Special Powers Act, could under the suggested amendment of Art. 22, be kept in custody for days before being produced before a magistrate as indeed it is alleged that he was. As special legislation abounds in India, one can well imagine what a great latitude it will leave to Governments for harassing a political opponent by merely proceeding against him under some special law instead of under the Penal Code. That any responsible organization should put forward such a suggestion is a matter of profound surprise.

## SECS. 124A AND 153A, PENAL CODE

### Constitutionality of the Laws

#### A JUDGMENT OF THE PATNA HIGH COURT

At an annual conference of the Bhagalpur Adibasi Mahasabha held in March 1949 at Lakhikundi in the Santal Parganas, Debi Soren, who presided over the conference, and Mrs. Hanna Bodra and Yanus Soren, who were the principal speakers, were said to have made speeches which excited or attempted to excite disaffection towards the Government established by law, and which (in the case of the last two) also promoted or attempted to promote feelings of hatred between different classes of the people. They were therefore prosecuted—the first under sec. 124A and the others under that section and under sec. 153A, I. P. C. The sub-divisional magistrate of Dumka found all the accused guilty and sentenced them to pay a fine of various amounts. From this judgment an appeal was filed in the Patna High Court, and on 24th September 1953 Das and Rai JJ. allowed the appeal (24th September 1953).

Mr. Justice Das, who delivered the judgment of the Court, held in the first place that none of the speeches complained of came within the mischief of sec. 124A or 153A, as the speeches, "shorn of all exaggerations," only "put forth a claim for Jharkhand and, in putting forth that claim, asked for the co-operation of all classes of people." His Lordship said: "I do not think that it is a fair construction of the speeches read as a whole to say that they created disaffection towards Government established by law or brought or attempted to bring that Government into hatred or contempt, or promoted feelings of class hatred."

But the case is important in a wider sense because the Court discussed therein the question as to whether secs. 124A and 153A are inconsistent with the fundamental right of freedom of speech and expression guaranteed under Art. 19 (1) (a) and therefore ultra vires of the Constitution. This view was pressed on the Court on behalf of the appellants, mainly relying on the decision in *Tara Singh Gopi Chand v. State* (A. I. R. 1951 Punj. 27), in which the East Punjab High Court held that the two sections were void. But His Lordship Mr. Justice Das

pointed out in the instant case that the East Punjab High Court's decision had no longer applicability inasmuch as the Constitution (First Amendment) Act, 1951, had since "considerably widened" the scope of clause (2) of Art. 19 which enumerates the restrictions that may be validly imposed upon the exercise of the right to free speech. The clause as it originally stood mentioned, as a ground of restriction, the security of the State or the overthrow of the State; the amendment refers also to public order. His Lordship said: "The clause is no longer confined to the security or overthrow of the State [on which Weston C. J. had relied in considering sec. 124A in the *Tara Chand* case] but includes also public order. In other words any reasonable restriction on the exercise of the right conferred by sub-cl. (a) of cl. (1) in the interest of public order is now permissible, and any such reasonable restriction imposed by any existing law will be valid and good."

The question then arose whether secs. 124A and 153A could be held to impose only reasonable restrictions on the freedom of expression. It was contended on behalf of the appellants that the law of sedition as now interpreted was inconsistent with the restrictions allowed by cl. 2 of Art. 19. For in *Emperor v. Sadashiv Narayan* (1947) the Privy Council's decision amounted to the laying down of the rule that excitation of feelings of disaffection was as much within the mischief of sedition as exciting disorder, and the Privy Council in this case expressly reaffirmed the view expressed by Strachey J. in *Bal Gangadhar Tilak v. Queen Empress* to the effect that "the offence consists in exciting or attempting to excite certain bad feelings towards the Government," and that "disturbance or outbreak" was not a necessary ingredient of the offence. Such a wide interpretation, it was contended, did not imply only reasonable restrictions in the interest of public order.

"Speaking personally," Mr. Justice Das said, "and with very great respect, it appears to me that the interpretation put by the Privy Council upon the provisions of sec. 124A is unduly literal." But his conclusion was that "even on the interpretation given by the Privy Council the provisions of secs. 124A and 153A, Penal Code, impose reasonable restrictions 'in the interests of public order,' giving that expression a fair and reasonably wide meaning." And he came to this conclusion in the following way. He said:

Sec. 153A condemns, amongst other things, such speeches as promote feelings of enmity or hatred between different classes of the citizens of India. Acts which promote such feelings or attempt to promote such feelings undoubtedly affect public order in its wide meaning, though there may be no immediate incitement to violence.

Sec. 124A condemns, among other things, such speeches as bring or attempt to bring into hatred or contempt, or excite or attempt to excite, disaffection towards the Government established by law in India. . . . The expression "in the interests of public order" has a wide connotation and should not be confined to only one aspect of public order, viz., incitement to violence or tendency to violence. Public order can be affected in other ways also; and creating disaffection, hatred or contempt towards the Government established by law may seriously affect the interests of public order, even though there may be no tendency to incitement to violence. Incitement to violence no doubt directly affects the maintenance of public order; but the expression "in the interests of public order"

is not confined merely to such incitement. It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection towards it.

The appeal was allowed because of the Court's ruling that the speeches complained of were not covered by secs. 124A and 153A.

[This has been referred to in the first article in this issue.]

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## RULERS' IMMUNITY FROM CIVIL ACTION

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### Sec. 87B, C. P. C., Held Valid

One Bhimji Narasu Mane filed a suit against the Raja of Jath before the civil judge of Jath claiming certain reliefs, but he had not obtained sanction from the Government of India prior to instituting the suit, as required by sec. 87B of the Civil Procedure Code, which provided immunity to Indian rulers against civil action unless previously sanctioned by the Central Government. A preliminary objection was taken on behalf of the Ruler of Jath that the suit was not maintainable in the circumstances.

The civil judge held that no previous sanction of the Government of India was now required under the present that it was right and proper even in a democratic setting Constitution because the section in question was invalid as contrary to Art. 14, which guaranteed equality of the law for all persons within the territory of India, and then referred the matter to the High Court as a constitutional point was involved. Chagla C. J. and Dixit J., in disposing of the reference at the Bombay High Court on 28th July, held that sec. 87B was valid.

The view taken by the trial judge was thus stated by the Chief Justice in giving judgment: "Article 14 of the Constitution guaranteed equality before the law and it was strange that in a democratic State, the former rulers of Indian States should not be as much liable to the process of the court as any other citizen. One would expect that the rule of law applied to all citizens and every one in India was subject to that rule of law and if courts existed to enforce that rule of law, everyone in India should be equally subject to the process of the courts."

The Chief Justice referred to the White Paper on Indian States and pointed out that the Ruler of Jath had entered into a merger agreement with the Government of India for the merger of his State with the Indian Union and that the Government of India had, in consideration of this, guaranteed to the Ruler his personal rights. Art. 291(1) guaranteed a privy purse to the Ruler, as to all other rulers, and these rights were safeguarded by Art. 362, which cast upon the legislature and the executive the obligation that "due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in cl. (1) of Art. 291 with respect to the personal rights, privileges and dignities of the ruler in an Indian State."

Dealing with Art. 14, the Chief Justice said that that Article did not rule out the creation of a class or classes

by the legislature to which a particular law was not made applicable.

What Article 362 had done was that it conferred certain privileges upon a class, namely, certain rulers of the former Indian States, who had been recognised as such by the President. There was, therefore, a classification made on a reasonable basis. In Their Lordships' opinion, therefore, Article 362 did not contravene Article 14.

It was to this special and narrow class of rulers that the exemption under section 87B of the Civil Procedure Code applied. The Constitution-makers themselves felt that the Indian rulers should have certain privileges, and it was impossible for Their Lordships to say that there was no reasonable basis for the classification made under section 87B of the Civil Procedure Code. Consequently, Their Lordships held that section 87B was valid and previous consent of the Government of India was necessary before filing a suit against a ruler recognised as such by the President.

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### Outlawing the Communist Party

The feeling against the Communists is so great now in the United States that we often hear of proposals to ban them. Recently a Judiciary Sub-Committee of the Lower House of Congress gave its approval to a private bill to outlaw the Communist Party as such. Only three weeks ago the House itself approved a resolution which, if given effect to, would not ban the Communist Party by name, but would ban those engaged in "advocating or conspiring to advocate the overthrow of the Government of the United States by the use of force or violence." This latter proposal only amounts to putting the Smith Act into operation against the Communists. But since under the Smith Act every single Communist has to be prosecuted and a conviction obtained against him, the employment of this weapon cannot possibly secure the outlawing of the Communist Party, which those who favour the resolution desire. As the Government itself is against banning the Communist Party *eo nomine*, there is no danger of private bills seeking to do this being passed into law.

First of all, there is the theoretical objection that the Constitution does not allow any such thing, the doctrine which the Constitution supports being, as the "New York Times" puts it, that "guilt is personal; a man may be guilty of conspiracy, but the guilt is nevertheless his own guilt, not the guilt of a group or party." Secondly, there is the practical objection that Attorney General Brownell has stated, viz., that "outlawing the (Communist) Party would merely drive it farther underground and make it harder to control." On this matter enlightened opinion is that to which expression has been given by the "New York Times," when it says:

The question is, of course, not whether we dislike communism but how best, in the light of our traditions and present responsibilities, to deal with it. We can't put the whole party in jail. Probably we will have to continue to proceed against individuals for specified offences, just as we do against murderers and burglars. And certainly persons charged with being members of a Communist conspiracy should continue to have the same rights—as they have had, to the last ounce of judicial patience—as burglars and murderers.