

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Apartheid—Residential and Social

The most crucial question for non-Europeans in South Africa now, and particularly since Mr. Johannes G. Strydom's advent to power, is not that they are denied political rights but that they are denied elementary rights which should belong to all human beings and should be sacred to any Government. That there is not the slightest hope for non-whites to obtain any rights with the consent of Government in any foreseeable future was made brutally clear by the Union Prime Minister when on 24th February he said at an interview given to a representative of the "New York Times," when asked what chance South Africa's 9,000,000 native population had of winning political rights, that "the natives could not hope, under the present sweeping segregation policy of the Government, for direct representation in the national Government." He could only hold out the possibility of self-government for nations in their own areas but said it was not "a problem for to-day's practical politicians." "It will not crop up for generations to come if you look at the backward state of the natives," he said: "We are dealing with the actual problem as it faces us to-day. They must remain under the trusteeship of the whites, which is the dominant race. I am not philosophizing about what will happen a hundred years from now." At this interview Mr. Strydom also expressed a wish that South Africa would receive capital from the U. S. A. (there is fear that overseas capital would cease to flow in because of the Strydom Government's extreme racial policy). The "New York Times" made scathing comments on the interview. Noting that the racial policy, instead of being gradually liberalized, is being hardened as never before, the paper says:

He (the Prime Minister) speaks in terms of "generations and generations to come" when he considers the possibility of self-government for South African Negroes. What this means is never. With this degree of despair liberal Americans cannot sympathize. South Africa may receive our technical advice. It may invite our investment capital. It cannot persuade us, as a nation, to accept its reactionary social philosophy.

Forced Resettlement of Negroes

The problem with which South African natives are immediately concerned is how to combat, if at all, the compulsory eviction of Negroes from the western areas of the city of Johannesburg. What usually happens to Africans who, leaving the reserves which are too small for them, come to towns in search of work is that if they are domestic servants they live in the servants' quarters of the white home, or if they are employed in white-owned factories or shops they live in a part of the town set aside for them and called a location. This location and all its lands and houses belong to the municipality. No African can buy land or a house in this area, he being supposed to live permanently in the reserves and to be a temporary sojourner in the white man's city. But in the western part of Johannesburg there are three townships (viz., Sophiatown, Martindale and Newclare), in which Africans can and do own land as freehold. They have built houses on it which belong to them. The Strydom Government has now resolved, in pursuit of its apartheid policy, to evacuate them, by forcibly removing the Africans to state-controlled housing estates located in the bush farther away from the city.

Complete evacuation of all the three areas will take quite a long time, because alternative housing has to be provided for those who are evicted. The dimension of this problem will be best understood from the fact that Johannesburg has a population of one million, a little more than half of whom are native Africans, and a large proportion of these live in the African freehold townships. For the present the Government has started its operations with Sophiatown and it is estimated that this area itself will take about eight years to be cleaned up. Why is Sophiatown being evicted? Because on the east and west of it have grown up two white suburbs, and these settlements have been clamouring for a long time for the removal of the African township farther to the west. In 1945 the City Council was prepared for such a scheme. It also met with the general support of the white population for a large majority of them, irrespective of party, favour residential segregation.

The Nationalist Government's present policy involves evacuation of 58,000 Africans living on some 440 acres of ground to the new location which is being prepared for

them at Meadowlands. These people will lose their freehold land and their houses, which will be razed to the ground, and they will be just tenants in the location, as is normally the case all over South Africa. This is of course being done under the plea of slum clearance, but the world knows that it is not slum clearance, but residential separation, pure and simple. And that is why it has attracted so much notice and evoked vigorous protests of liberals like Father Huddleston and the Bishop of Johannesburg who has said: "In the name of God we are bound to protest against this shameful thing." The deprivation of freehold rights of Africans, which are so rare for them, of course involves great injustice, but that is not the worst feature of this evacuation. The worst feature is, as Dr. Xuma has said, "the removal of human rights without consultation or consent." (It took 3,000 armed police to remove only 150 families.) Dr. Xuma characterises the whole scheme "as an offence against justice and morality."

Territorial Separation on a Grand Scale

In Parliament Dr. D. H. F. Verwoerd, Minister of Native Affairs, expounded the Government's policy of bringing about apartheid on a nation-wide scale in very clear terms. The "Manchester Guardian and Hindu Service" has thus reported the Minister's speech: "He revealed that the ultimate ideal to be achieved in, perhaps,

100 years' time, is the total territorial separation of races. The African will have his political and spiritual home in the reserves and will be admitted into the so-called white areas solely to suit the convenience of the white man. There he will be regarded as virtually a foreigner with negligible political rights, no title to property and liable to be moved from location to location whenever the need arises.

"The reserves, meanwhile, will be developed on a tribal basis, and Dr. Verwoerd believes that they are capable of holding ten times their present population of three millions. White capital and enterprise will not be allowed to develop the industries in the reserves but the establishment of industries by whites will be encouraged on the borders of the reserves so that the Africans can live in the reserves and work in these border industries on a migratory basis. That is the ultimate ideal."

"The coming 50 years or so will be regarded as a period of transition. Government will work according to a blue-print with set priorities, gradually rearranging residential areas in white industrial towns on a group basis, eliminating the African freehold title to property and withdrawing what is reckoned to be surplus black labour. Dr. Verwoerd gave the assurance that no industry would go short of labour but insisted that this labour must as far as possible be on a migratory basis."

DENIAL OF THE RIGHT TO COUNSEL SENTENCE HELD INVALID BY THE SUPREME COURT

The United States Supreme Court on a habeas corpus petition recently ordered the release of a person who was undergoing a sentence of life imprisonment, holding that the petitioner was invalidly sentenced inasmuch as he had been denied an opportunity to obtain counsel and thus had been denied a hearing in the proper sense of the term. In view of the fact that cases often occur in India, in which by various subterfuges persons who are in custody or on trial are deprived of the valuable right to have consultations with counsel, the U. S. case will be found to be of great interest and particularly the extract from a twenty-year old judgment, in which the importance of this right is stressed.

William C. Chandler, a Negro, was indicted on 10th March 1949 on a charge of breaking and entering a business house and stealing therefrom sundry articles of the aggregate value of \$3. Intending to plead guilty to the charge of housebreaking and larceny, he appeared in court without attorney. But when the trial started, he found that he had to face a charge not only of housebreaking and larceny, but also one of being a habitual criminal. It was the Government's case that he had been convicted of felony on three previous occasions, and this being his fourth offence he was liable, as provided by the criminal law of

Tennessee (to which state he belonged), of being tried on the habitual criminal charge, conviction under which carried a mandatory sentence of life imprisonment. Chandler had not been previously informed that this accusation would be brought against him, but when he realized that he was in danger of life imprisonment, he asked the court to postpone proceedings so as to enable him to obtain counsel on the habitual criminal charge. His request was summarily rejected, a jury was empaneled, and the case proceeded immediately to trial. The petitioner entered his plea of guilty to the housebreaking and larceny charge. The jury accepted the plea, and he was sentenced to three years' imprisonment on that charge. The judge then asked the jury if they found the petitioner an habitual criminal; they said they did. "The entire proceeding, from the empaneling of the jury to the passing of sentence, consumed between five and ten minutes."

Chandler desired to challenge the validity of his habitual criminal sentence in habeas corpus proceedings, but the earliest opportunity he could get to do so was after serving his three years' term in jail, for the Tennessee law provides that a defendant sentenced on both a felony charge and an habitual criminal charge must first serve his sentence on the felony charge before he can attack the

constitutionality of the sentence on the habitual criminal charge. Accordingly, three years after the trial took place, Chandler applied to the Circuit Court for habeas corpus relief, challenging the validity of his sentence as an habitual criminal on the ground among others that he had been denied an opportunity to obtain counsel in his defence. The Circuit Court accepted the facts as put by him; nevertheless it upheld the validity of his sentence, the supreme court of the state affirming the decision. Chandler then went to the United States Supreme Court praying for a writ of certiorari to review the decision of the Tennessee courts, and the Supreme Court in a unanimous judgment ruled that the sentence awarded to the petitioner was invalid.

The reasoning on which the Tennessee courts had upheld the sentence on the habitual criminal charge was that the Habitual Criminal Act of the state does not create a separate offence, but only enhances a defendant's punishment on being convicted of a fourth offence of felony; and that since Chandler did not want legal aid on the housebreaking and larceny charge he had by that fact alone in effect waived his right to counsel on the habitual criminal charge. The high court, however, rejected this contention. It observed that the Habitual Criminal Act of Tennessee provides that the increased punishment to be imposed on an habitual criminal cannot be imposed unless the jury specially finds that the defendant is an habitual criminal as charged. Thus the applicability of the Act to any defendant charged with being an habitual criminal has to be determined by a jury in a judicial hearing. "That hearing and the trial on the felony charge, although they may be conducted in a single proceeding, are essentially independent of each other. Thus, for example, it is possible that the jury in the instant case might have found petitioner guilty on the housebreaking and larceny charge and yet found him innocent of being an habitual criminal." And since Chandler had asked for a postponement of the case so that he might obtain counsel, "it is clear beyond doubt that petitioner did not waive counsel on the habitual criminal accusation." The Court then quoted a famous passage from the judgment in *Powell v. Alabama*, 287 U. S. 45 (1932), italicising two sentences in order to supply emphasis:

What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without

the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. *He requires the guiding hand of counsel at every step in the proceedings against him.* Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect? *If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.*" (Italics added.)

The Court proceeded: "A necessary corollary is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth. By denying petitioner any opportunity whatever to obtain counsel on the habitual criminal accusation, the trial court deprived him of due process of law as guaranteed by the Fourteenth Amendment."

Treaties as "Supreme Law"

An Issue of the Constitutional Law of the U. S. A.

An interpretation of the general statement in Art. VI of the United States Constitution, viz., that all treaties are "the supreme law of the land," was sought in a recent case which came before the Supreme Court, but the Court avoided the issue, following the rule that the Court is not to consider constitutional issues when a case can be decided without this consideration.

An American soldier, Keefe, stationed in France, was convicted by a French court of stealing a taxi cab and was sentenced to five years' imprisonment in a French prison. (The offence was committed while Keefe was absent without leave.) This France could do under the Status of Forces Treaty, which recognised the right of France to try an American soldier who committed a crime against French law. Keefe's wife filed a habeas corpus petition challenging the validity of the treaty which she claimed had deprived her husband of the protection guaranteed by the U. S. Constitution and praying that the Secretary of State obtain Private Keefe's release from French custody.

The constitutional question that arose in this case was whether a treaty with a foreign power might destroy the rights of an American citizen specifically guaranteed by the Constitution and whether the federal courts might properly examine the validity of a treaty. It was contended on behalf of Keefe that since Art. VI provided

that treaties should be made under the authority of the United States and that Congress must act pursuant to the Constitution, the American judiciary had the constitutional power under Art. III to examine the treaties.

The Government, however, asserted that as Private Keefe was not detained by any officer of the United States or under the authority of the United States Government, there was no one within the jurisdiction of a Federal Court who could effectuate his release. The legality of his detention could not thus be determined in habeas corpus proceedings in an American Court.

The Federal Court of Appeals, to whom the matter was referred in the first instance, ruled that Keefe's constitutional rights had not been infringed by his trial and conviction, and the Supreme Court affirmed the ruling and rejected the appeal.

Thus the Court did not pass on the constitutional question, because there was no occasion for it to do so. Similarly, three weeks ago, it refrained from pronouncing on the merits of the constitutional issue that arose out of an Executive agreement made by the President with Canada in 1948. The agreement imposed a restriction on the importation of potatoes; the restriction was that Canadian potatoes could be imported only for seed purposes, and not for table purposes.

An importing firm, Capps, Inc., imported potatoes and sold them to a customer, without restraining the consignment from table use, as was required by the terms of the import license granted to it, and Government therefore sued the firm for a breach of the import license and damages. The federal court, which heard the case, found against the Government as in its opinion the Government failed to prove that Capps had knowingly permitted the customer to violate the terms of its import license. The Court of Appeals on the contrary held that there was violation of the Executive agreement, but ruling that the agreement itself was unconstitutional and that therefore the contract was invalid, found that there was no breach of contract.

The case came before the Supreme Court on these two different lower court findings; and the high tribunal too rejected the Government's claim for damages, but on the ground adopted by the trial court, viz., that, as Professor Chafee has said, "there was not enough evidence to show that the American buyer of Canadian potatoes was a chiseler; very likely he sold the potatoes for planting as he had promised." Thus, in this case also, the Supreme Court did not find it necessary to give a ruling on the validity of the Executive agreement.

It will be remembered that the status of treaties as supreme law was very much debated at the time of the Bricker amendment to Art VI of the Constitution. That amendment was heavily defeated, but a much simpler amendment proposed by Senator George, viz., that no Executive agreement could take effect as internal law until and unless Congress gave it legislative approval

failed to pass because vote fell short by only one. On this point, Professor Chafee has expressed the opinion that "Congress already can, if it wishes, prevent an Executive agreement from operating as internal law; there is no need for a constitutional amendment"

COMMENTS

Detention without Trial

NON-OFFICIAL BILLS IN KASHMIR ASSEMBLY

In the current session of the Kashmir Legislative Assembly two non-official bills were sought to be introduced, one with a view to have the Preventive Detention Act repealed in toto and the other with a view to have some of its provisions liberalised; but the Assembly refused to give permission to either.

The bill for repeal was moved by Mirza Mahomed Afzal Beg, who was Revenue Minister under Sheikh Abdullah and is now leader of the Socialist Democratic Front. He pointed out several defects in the Act (such as non-obligation on the part of the Government to supply grounds of detention in the case of security detenus) which for all practical purposes made the safeguards contained in the Act inoperative.

The amending bill was moved by Mr. Abdul Goni, deputy leader of the Opposition, and the changes suggested therein were: the duration of the Act should be limited to three, instead of five, years; the maximum period of detention should be reduced from three years to one; and the detenus should be given family allowances.

The Deputy Home Minister, Mr. D. P. Dhar, who spoke for the Government, was unwilling to accept any of the changes (excepting that he said maintenance allowances were already being given to detenus, that for Shaikh Abdullah being Rs. 1,000 a month). He said the Government never wished to use the Act to "suppress any healthy political opposition," but meant it for use against persons "standing in the way of development of democracy."

Titles—and Decorations

Among the Fundamental Rights for which the Constitution makes provision (illustrating how among such rights are included many matters of little intrinsic importance) is a prohibition on the State in the matter of conferment of titles and on citizens in the matter of their acceptance from any foreign State. In spite of this so-called "abolition" of titles, however, the Nehru Government has started issuing annual lists of the award of titles; only they are termed "decorations" so as to get around the constitutional prohibition, and Indians have been allowed to accept titles from Marshal Tito, though the Constitution has imposed an absolute bar on such acceptance. No one really bothers about titles, and no one is likely to test the validity of the titles or

"decorations," conferred or received, for the Article in the Constitution itself (viz., no. 18) is really out of place. But the matter becomes ludicrous when some of the recipients of the titles happen to be persons, as Pandit Kunzru said, "whose work and conduct were adversely commented upon by the Public Accounts Committee."

At the time our Constitution was framed and for several years before that, there was a great deal of prejudice in the Dominions against the grant of honours by the British Government to Dominion citizens because the grant was an exercise of the prerogative of the Crown on the advice of the British Cabinet, and accordingly in the Constitution of the Irish Free State an Article was included prohibiting conferment of titles "in respect of any services rendered in or in relation to the Irish Free State on any citizen of the Irish Free State except with the approval or upon the advice of the Executive Council of the State." This shows that the inspiration of this restriction is, as Mr. Leon Kohn has said, "national rather than democratic." India having adopted a Republican Constitution, there was no need in our country for such restriction. The only inference that could be drawn from the absolute prohibition which our Constitution contains is that it was inspired by an equalitarian sentiment and the apprehension that grant of titles even by the national Government might lead to abuses. But the actual practice of the Government in instituting titles of various grades and equating them (so at least the public understands) to the British Government's awards of C. I. E., K. C. I. E., K. C. S. I., etc., shows, if anything, that the sentiment underlying our constitutional provision was national, if anything.

Nationalization of Transport in U. P.

BILL PROVIDES FOR COMPENSATION TO PRESENT OPERATORS

On 17th February a Bill was introduced in the Legislative Assembly of Uttar Pradesh to provide for nationalization of the roadways services. The Bill contains nearly the same provisions as were contained in the Road Transport Act of 1950, which however was declared ultra vires by the Supreme Court last year for the reason that no compensation was provided in the Act to those operators of buses whose permits would be cancelled and whose transport business would be taken over by the State. The present Bill therefore makes provision for payment of compensation for premature cancellation of permits (at the rate of Rs. 75 for every month of the unexpired period of the permit) or for curtailment of the routes for which a permit is given (according to a certain formula). The Bill also makes provision for the State purchasing a motor vehicle covered by the permit if it so chooses to do.

We have referred to this case (*Saghir Ahmad v. State of U. P.*) in the number before the last (see p. iii:175), but

in view of the deep interest that has been aroused by the Government's new Constitutional Amendment Bill, we would give here in full the opinion of the Supreme Court on the payment of compensation, which the Court said must be provided in order that the Act would not militate against Art. 31(2). The reader will note that in this case the lower Court had put on this Article and on the expression "acquisition" in that Article the interpretation which the Government of India says should be put thereon. The Allahabad High Court had held that there was no scope for operation of Art. 31 (2) because there was "acquisition" of the bus operators' right. It said :

The question is whether by depriving the private operators of their right to run buses on certain routes and by deciding to run buses itself the State acquired the right which was of the petitioners. To me it appears that it could not be said that there was by the State any acquisition of the right which was formerly of the petitioners, whether such right was property or an interest in a commercial or industrial undertaking. The vehicles which were being operated by the private operators have not been acquired by the State nor has other tangible property which was used by the petitioners for their business been acquired. What has been done is that the petitioners have been prohibited from operating their buses on certain routes. This right of the petitioners has in no way been vested in the State inasmuch as the State always had an equal right with the petitioners to run their buses on these routes.

This interpretation of the word "acquisition" the Supreme Court rejected. Referring to the decisions in *State of West Bengal v. Subodh Gopal Bose and Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.*, *Mukherjee J.* speaking for the Court, said :

It must be taken to be settled now that clauses (1) and (2) of Art. 31 are not mutually exclusive in scope but should be read together as dealing with the same subject, viz., the protection of the right to property by means of limitations on the State's powers, the "deprivation" contemplated in cl. (1) being no other than "acquisition or taking possession of the property" referred to in cl. (2). The fact that the buses belonging to the appellants have not been acquired by the Government is also not material. The property of a business may be both tangible and intangible. Under the statute the Government may not deprive the appellants of their buses or any other tangible property, but they are depriving them of the business of running the buses on hire on public roads. We think therefore that in these circumstances the legislation does conflict with the provision of Art. 31 (2) of the Constitution, and as the requirements of that clause have not been complied with, it should be held to be invalid on that ground.

The amending Bill was no doubt forced on the Government by the Supreme Court's judgment, but Mr. Lakshmi Raman Acharya, Deputy Minister, Public Works Department, supported it also on the ground of principle. He said that the payment of compensation as provided in the Bill was justified, because it was fair to pay compensation to a man whose means of livelihood was being taken away by the Government so that he might have something to fall back upon. The Praja Socialist Party, which had advocated abolition of the zamindari system without paying any compensation to zamindars, expressed itself on this occasion, however, in favour of compensation to bus operators. The leader of the Party in the Assembly, Mr. Raj Narain, said that his Party was against the principle of payment of compensation, but what was essential on the occasion of cancellation of the permits of private owners was their rehabilitation. The displaced motor operators (he said) must be provided with alternative means of livelihood. Deputy Minister Acharya, remarking on this somersault, charged that the Praja Socialist Party espoused the cause of the private motor owners with the ultimate purpose of securing votes in the parliamentary bye-elections and in the forthcoming general elections. Similarly, contrary to expectations, some members of the Party also opposed the element of socialization which was present in the Bill. Mr. Madan Mohan Upadhyaya, e. g., said that Government were trying by this Bill to eliminate the private sector altogether, which was against the desire of the Planning Commission. The Government, he said, should seek the co-operation of the private sector. The reply of the Minister in charge was that the Government did not intend to take over all routes or to eliminate all private vehicles as they did not regard private operators as exploiters. Socialist party members moved amendments calculated to liberalise the measure in the interest of private operators, but all the amendments were defeated.

Women in Civil Services

Replying on 28th February to a question by Mr. V. K. Dhage in the Rajya Sabha, the Deputy Home Minister, Mr. B. N. Datar, said that although there were no restrictions on the recruitment of women as such to the civil services, a woman candidate for the Indian Foreign Service was eligible only if she was unmarried or was a widow without encumbrances. For the Indian Administrative Service and the Police Service also it had been provided that married women were not entitled as of right to be appointed to these services. Women appointed to these three services might also, on marriage, be called upon to resign.

Asked if this did not violate the constitutional provision on equality of sexes, Mr. Datar said that authoritative legal opinion was that the relevant article of the Constitution barred discrimination only on grounds of sex.

Mrs. Savitry Nigam asked what, in that case, were the special considerations that necessitated the provisions explained by the Deputy Minister.

Mr. Datar: There are certain incidents of married life which do affect capacity.

Mrs. Nigam: Are there no incidents in the life of men, for instance, illness?

Mr. Datar: There are no such incidents in a man's life.

Judiciary-Executive Separation

The "Times of India" in its issue of 28th February thus reports the progress so far made in carrying out this vital reform:

Replying to a Congress member of the State's Legislative Council, the Chief Minister of Bihar has stated that in only six districts of Bihar was the separation of the judiciary from the executive complete. If there are not enough officers, as the State's Chief Minister said, who could be employed as munsifs and magistrates, the obvious remedy would be to train and recruit the right kind of personnel. Instead the State Government has appointed a special officer to review the separation of powers in the six districts and to work out a plan for its extension "within the next few years." Despite the Directive Principle of the Constitution which calls for the separation of the judiciary from the executive, there was no sense of urgency in the replies of Mr. Sri Krishna Sinha. No wonder if the Centre's attention is drawn to this lazy unconcern on the part of State Governments to an overdue reform. There, no doubt, have been excellent exceptions which have led the way. In Bombay the separation became effective nearly two years ago; the phased programme for separation has, since the beginning of the year, covered all the districts in Madras. But Orissa has just announced the first steps. The halting measures in the Punjab drew the acid comment from a judge of the State High Court that they were "a pretence." State Governments seem to have forgotten that an independent judiciary is the bedrock of democratic government.

HABEAS CORPUS PETITIONS

Detention of a Foreigner for Deportation SUPREME COURT UPHOLDS THE ORDER

The constitutionality of sec. 3(1)(b) of the Preventive Detention Act, was challenged before the Supreme Court by Mr. Hans Muller, a West German national, in a habeas corpus petition. The section provides that "the Central Government or the State Government may, if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act 1946, that with

a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained."

Mr. Muller, who stated that he was a member of the West German Communist Party, was arrested by the Calcutta police on September 16, 1954, for alleged cheating, but the case against him was withdrawn by the prosecution for want of evidence, and he was discharged. He was, however, rearrested on September 18 and detained under sec. 3 (1) (b) of the Preventive Detention Act.

After his arrest, the petitioner wrote to the Consul-General of West Germany of Calcutta asking for an interview. Later the petitioner wrote to the West Bengal Government asking for immediate repatriation from India. On October 9, the Calcutta police handed the petitioner's passport to the West German Consul at the latter's request. The West German Consul got the passport altered and made it valid only for the return voyage to the Federal Republic of Germany before January 8, 1955. On October 9, the West German Government wrote to the West Bengal Government saying that a warrant of arrest had been issued against the petitioner in West Germany in connexion with a number of frauds and legal proceedings in connexion with those warrants were pending. The Consulate had therefore, arranged for the petitioner's repatriation by a German boat due to call at Calcutta. As the West Bengal Government had no power to deport the petitioner, they were waiting for orders to be passed by the Central Government. Meanwhile on October 20, the petitioner filed a writ petition in the Calcutta High Court. The High Court dismissed the petition on December 10 and thereupon the petitioner went to the Supreme Court.

The detention order issued by the West Bengal Government stated that it was necessary to detain him with a view to making arrangements for his expulsion from India. One of the grounds of detention was that the petitioner had "no ostensible means of livelihood" and that he had been indulging in criminal activities.

Apart from challenging the validity of the Preventive Detention Act and the Foreigners Act of 1946 the petitioner also challenged the good faith of the State of West Bengal in making the order of detention. It was alleged that whatever the original intention of the West Bengal Government after the receipt of a letter from the West German Consul, the object of the detention was to keep him in custody till the Government was in a position to commence extradition proceedings. This object it was stated was an abuse of the Preventive Detention Act. The petitioner, denying any previous offence having been committed in Germany, said that the real object of the West German Government was to subject him to political prosecution.

Mr. Muller arrived in Calcutta on August 23 last year with a valid passport and stayed in a hotel with his mother and grandmother.

Mr. Sadhan Gupta, counsel for the petitioner, stated that his client was prepared to be under detention in India or be expelled to a country like Czechoslovakia rather than be repatriated to West Germany under the "guise of expulsion."

Counsel said the action of the West Bengal Government in substance amounted to extradition of the petitioner to West Germany without complying with the provisions of the Extradition Act.

Challenging the legality of detention under the Preventive Detention Act counsel said that under the Foreigners Act, 1946, the expelling authority was the Central Government, and that it was not open to the West Bengal Government to detain him preventively under the Preventive Detention Act pending arrangements for his expulsion. Moreover, sec. 3 (1) (b) of the Act was ultra vires of the Constitution as it provided for detention of a foreigner without trial for purposes which were not preventive. The provision was also discriminatory as the word "foreigner" defined by the Act excluded those foreigners who were British subjects.

The Attorney-General, Mr. M. C. Setalvad, appearing for the State, said that once a decision was taken to expel a foreigner it was necessary to keep that man in safe custody pending arrangements for his expulsion. What was done in the case of the petitioner, he said, was a preventive action taken under the provisions of sec. 3 (1) (b) of the Preventive Detention Act. The word "detain" found in sec. 3 (1) (b) meant detention under the Preventive Detention Act.

Under International Law, if the order of expulsion was to be made, it must be always for expulsion to one's own country—namely, the country of origin. Quoting a number of cases, the Attorney-General said it was the duty of the home State to receive its national.

Replying to a question put from the Bench, Mr. Setalvad said he was not prepared to give any undertaking on behalf of the State that the petitioner would not be sent to West Germany. The order of detention was bona fide and there was no question of extradition, he added.

The Supreme Court on 23rd February dismissed the habeas corpus petition. The unanimous judgment of the court, delivered by Mr. Justice Vivian Bose, rejected all objections to the validity of the Preventive Detention Act and the Foreigners Act of 1946 and said that the right to detain a person to arrange for his deportation was expressly conferred upon both the State and the Central Governments. As a State Government could not deport a person, the conferment of the right could only mean that the State Government is given the power to decide and to

satisfy itself whether expulsion is desirable or necessary, and if it thinks it is, then to detain up till proper arrangements for the expulsion are made, one of them and an essential one being reference to the Central Government for final orders. It is evident that the authorities must be vested with wide discretion in a field where international complication might easily follow in a given case. Unless a State Government has authority to act in anticipation of orders from the Centre, it might be too late to act at all.

The judgment said that the Foreigners Act conferred upon the Government power to expel foreigners from India. The Foreigners Act was not governed by the provisions of the Extradition Act. The two were distinct and neither impinged on the other. Even if there was good cause for extradition the Government was not bound to accede to the request.

The fact that a request had been made for the extradition of the petitioner, the judgment said, "did not fetter the discretion of the Government to choose the less cumbersome procedure of the Foreigners Act, provided always that in that event the person concerned leaves India a free man. If no choice had been left to the Government, the position would have been different, but as the Government is given the right to choose, no question of want of good faith can arise merely because it exercises the right of choice which the law confers."

Detained for Blackmailing

Sardar Anant Singh, editor of "Bull's Eye," an English weekly published from Delhi, was detained on 24th November 1954, one of the allegations against him being that he attempted to extort money from some members of the diplomatic corps by threatening to write scurrilous articles against them.

The detenu made a declaration before the district magistrate of Delhi on 2nd December 1954 that he had ceased to be the editor, printer and publisher of "Bull's Eye" and the main argument on his behalf before the Supreme Court in a hearing of his habeas corpus petition was that since he could no more publish any articles in "Bull's Eye," there was no justification for his continued detention.

In dismissing the habeas corpus application on 1st March the Chief Justice observed that the mere fact that the petitioner had ceased to be the editor did not necessarily remove the grounds on which the order was based. They had before them an affidavit of the Home Secretary that he apprehended that the petitioner would make attempts to extort money from persons belonging to foreign missions in Delhi. This matter rested on the subjective satisfaction of the Government and therefore they did not think that they should interfere in this case.

IRON AND STEEL ORDER, 1941

Controller's Power to Fix Prices

NEW CLAUSE HELD UNCONSTITUTIONAL

Mr. Justice Kapoor of the Circuit Bench of the Punjab High Court on 16th February announced judgment on the criminal writ application filed by Messrs. Bhana Mal Gulzari Lal Mal Ltd., Iron and Steel Merchants of Chowri Bazar, and others and quashed the criminal proceedings in the cases against them in the lower court and directed that the papers and documents seized by the police in May, 1953, be returned to the petitioners.

The petition was filed by Messrs. Bhana Mal Gulzari Mal against the Union of India and Delhi State under Article 226 of the Constitution.

The petitioners had contended that Clause II (B) of the Iron and Steel (Control of Production and Distribution) Order, 1941, was invalid and unconstitutional as it took away, and put unreasonable restrictions on, the fundamental rights of freedom of trade guaranteed under Article 14 of the Constitution of India.

His Lordship accepted Mr. N. C. Chatterjee's arguments and held that Clause II (B) was unconstitutional as it gave unrestricted and arbitrary powers to the Controller to fix prices.

Mr. C. K. Daphtary, Solicitor-General, who appeared on behalf of the Government of India, requested leave to appeal to the Supreme Court which was granted by the court.

The petitioners said they had been registered since 1948 as stockholders by the Iron and Steel Controller under the Iron and Steel Control Order, 1941.

They said that under Clauses 4 and 5 of the Iron and Steel (Control of Production and Distribution) Order 1941 no person could acquire from a stockholder or producer and no producer or stockholder could dispose of any iron and steel except in accordance with the conditions contained or incorporated in a written order of the Controller.

The petitioners contended that by a notification the Central Government inserted a new Clause II (B) which gave the Controller the power to fix prices. The Controller on December 10, 1949, issued a notification under Clause II (B) arbitrarily decreasing by Rs. 30 per ton the prices of all categories of steel.

The petitioners said that they had been prosecuted for alleged contravention of the said Clause II (B) read with Section 7 of the Essential Supplies (Temporary Powers) Act, 1946, for their alleged failure to sell old stock at new prices. They contended that Clause II (B) and the notification dated December 10, 1949, were invalid and unconstitutional.

They further stated that the petitioners had been prosecuted without authority of law and were being unnecessarily harassed. The police had seized all records of the petitioners without proper procedure.

The petitioners prayed for a writ of certiorari or any other appropriate writ asking the respondents not to enforce or give effect to Clause II (B) or the said notification. They further prayed for quashing the criminal proceedings or cases pending before the lower court.

SALES TAX ACT OF M. P.

Rule 20-A Declared Ultra Vires

A division bench of the Nagpur High Court consisting of the Chief Justice and Mr Justice Kausalendra Rao on 11th February declared Rule 20-A of the C. P. and Berar Sales Tax Rules to be ultra vires the powers of the Government of Madhya Pradesh.

Their Lordships were delivering judgment in a mandamus petition filed by Mr. Babulal Khairau Prasad, a yarn merchant of Nagpur, who challenged the rule arguing that it ran beyond the rule-making powers conferred on the Government by the Act.

Rule 20-A provides for the collection of the tax when the goods obtained on declaration are not used for purposes disclosed in the declaration. A registered dealer purchases goods from another dealer. He is required to give a declaration to obtain goods free of tax for himself.

Their Lordships observed that the tax could only be demanded from a seller under the scheme of the C. P. and Berar Sales Tax Act and not from a purchaser and no rule could be made to render the purchaser, instead of the seller, liable whatever the declaration of the purchaser.

Rules, Their Lordships said, could only be framed in consonance with the Act, there being no legislative competence except that derived from the Act under which the rules were made. To alter the incidence of the tax from the seller to the purchaser was "certainly not within the competence of the State Government under its rule-making powers."

Their Lordships said that Rule 20-A ran counter to the scheme of the Act. In the Act, the tax was levied on the turnover, which had been defined as the aggregate of the amounts of sale prices received or receivable by a dealer in respect of the sale or supply of goods. The definitions of the sale and sale price in the Act clearly indicated that the incidence of the tax in the charging section (Section 4) was upon the goods sold and the tax was collected from the seller on his turnover in the assessment period.

The argument was that the tax, if it could be recovered, ought to be recovered from the dealer who sold the goods in the first instance. To levy the tax on the second dealer amounted to levying a purchase tax which was not warranted because of the definitions of the Act read with the charging section.

The petition under Article 226 of the Constitution was directed against an assessment order and demand notice issued by the Sales Tax Officer assessing the

petitioner to tax on an amount of Rs. 35,000 and for writ quashing the order and the notice.

In the course of assessment proceedings, the petitioner was called upon by the Sales Tax Officer to furnish figures of total purchase prices of dyes and chemicals which he was using in his factory to dye yarn for his customers. When the petitioner furnished the list of purchases amounting to Rs. 35,000, the Sales Tax Officer by an assessment order added that amount to the petitioner's turnover, purporting to act under Rule 20-A of the Sales Tax Rules and levied sales tax on that amount.

The petitioner had contended that the tax was tantamount to a tax on purchase when the intention of the Act was to levy a tax on sales.

It was, however, submitted on behalf of the State Government that it was open to the Legislature to make the tax recoverable from the purchaser as a penalty for evasion and breach of declaration made by him.

But Their Lordships observed that even if that could be done, it was necessary to enact the law in the Act and not in the rules.

Their Lordships were of the opinion that Rule 20-A was ultra vires the powers of the State Government and accordingly issued a writ of mandamus prohibiting the State Government Sales Tax Officer and the State Government from utilizing the rule to the detriment of the petitioner.

NOTES

Fight against Racial Prejudice

CALL BY THE CHURCHES

The National Council of the Churches of Christ in the U. S. A., a powerful religious body, arranged to have read at all its congregations a message which was entitled: "Brethren, Dwell Together in Peace," on 13th February, a Sunday nearest to Abraham Lincoln's birthday. The message contains a strong denunciation of all types of racial prejudice, which it says is not "merely bad or unfortunate," but "is contrary to the will and the design of God and is sin." Concrete steps were outlined in the message for combating racial discrimination and segregation. The message says of the Supreme Court's decision that declared racial segregation in public schools to be unconstitutional that it "marks the promise of a fuller life for all people in the nation."

Colour Bar is "a Sin"

A similar pronouncement, with particular reference to conditions prevailing in South Africa, was made by the Bishop of Bloemfontein who presided over an inter-racial conference of Churches held in Pretoria. He said:

A colour bar is the cruellest of human ills. The victims are quite defenceless and have no escape. The cruelty is that a man knows that even if he

breaks down all other bars, however much he may qualify himself for human fellowship and friendship, his colour is ineradicable. When that position is extended to the relationship of Christian men, cruelty has become, in my judgment, sin. . . . Wherever landless, property-less, right-less, dispossessed people have existed, people who do not feel they belong to the community, people who have not enough stake in life or society to make any thing matter very much—there agitators flourish, there are the seedbeds of social disquiet, as the missionaries of Communism know.

"Double Standard" in South Africa

A number of prominent liberals of South Africa like Dr. Edgar Brookes, Mr. Alan Paton and Senator Leslie Rubin recently issued a statement reaffirming their opposition to apartheid and their belief in racial equality. The statement says:

We feel it is urgently necessary at the present time in South Africa to restate our belief in the fundamental rights of man, and to call on the Government and South Africans generally to respect these rights. They include the right to life, dignity, sustenance, worship, education, work, sojourn, movement, marriage and association with one's fellowmen. They flow from the very nature of man in society.

Our South African society has always denied some of these rights, or given them only in limited measure, to non-White South Africans. We have always maintained a double standard; for White South Africans the ideals of democracy and a most sensitive recognition of fundamental rights; for non-White South Africans a rejection of a common humanity, and of the dignity of the human personality. We wish to reaffirm our conviction that this double standard is immoral and that this denial of human rights is resulting in the corruption of our civilisation. In recent years there has been a steady diminution of democratic rights to dignity, education, sojourn, movement, and more particularly, association with one's fellowmen.

Referring particularly to the national Government's drastic banning orders issued even against religious, recreational and social gatherings under the Riotous Assemblies Act, the statement said:

We wish to affirm emphatically our belief that the non-White people of South Africa are entitled to associate and to organise freely for the realisation of their fundamental rights. They are entitled to be outspoken and courageous. Each time we deny these rights, each time we restrict liberty and deny the happiness to which all self-respecting men and women aspire, we undermine the morality on which our civilisation is based, and expose ourselves to dangers far more terrible than those we fear.

Compulsory Testimony Act of U. S. A.

The U. S. Congress in its last session passed the Compulsory Testimony Act (vide p. iii: 148 of the BULLETIN) as a legal remedy against witnesses before grand juries and Congressional committees who, invoking the Fifth Amendment's privileges against self-incrimination, refuse to answer questions put to them on their association with Communists. The Act provides that on the application of the Attorney General or a Congressional committee, in cases affecting national security, district courts may grant a witness, who claims "the privilege of silence," immunity from prosecution for any matter covered by his answers and order him to testify.

The first case under the provisions of this Act was brought up in February when William Ullman, a former Air Force major, against whom it was alleged by a former Communist courier that he was a member of a Soviet spy ring in Washington and who had declined to answer questions on this point before Congressional committees, was produced by the Justice Department before a district court. The Department presented an immunity application, which the court granted. Ullman will now be brought before a grand jury. If he answers the questions, he cannot be prosecuted. If he refuses to answer, he can be found guilty of contempt of court and sent to prison.

However, the constitutionality of the Act will eventually be challenged in the Supreme Court.

Loyalty Probe of Employees

ACCUSED EMPLOYEES TO BE GIVEN THE RIGHT TO FACE ACCUSERS

President Eisenhower has taken up the position, in regard to dismissal or suspension of Government servants on account of their disloyalty, that no person should hold a Government office whose employment was "not clearly consistent with the national interest," and, abolishing President Truman's Loyalty Review Board, has left it to the heads of departments finally to decide whether disciplinary action should be taken against employees suspected of being disloyal, after making a preliminary investigation.

The procedures adopted in this loyalty programme were much criticized, and in order to meet the criticisms President Eisenhower appointed an inquiring body in the Justice Department to report to him in what respects the procedures might be changed. This body has now made several recommendations, all of which have been approved by the President. Among these one important recommendation is:

In all cases where national security would not be jeopardised, witnesses who have given derogatory information should be produced at hearings and the accused employee permitted to confront and cross-examine them.

The right of confrontation is a basic issue in the controversy over the loyalty programme.

The right will not be conceded in cases where it is feared production of witnesses will endanger national security. The Government's position in this respect has been set forth in the brief the Government has filed in the Supreme Court in the case of Dr. John P. Peters, Professor of Medicine at Yale, who was dismissed two years ago. Dr. Peters' lawyers have challenged the constitutionality of his removal on the ground that since Dr. Peters was not permitted to confront his accusers, the hearing that led to his dismissal did not meet the test of "due process" set down in the Fifth Amendment—that no one shall be deprived of liberty or property without due process of law.

The Government's case is that the Executive Branch has an unqualified discretionary right to fire employees; that no Government employee has a "right" to a job and consequently a loyalty hearing does not have to meet the requirements of due process—including confrontation of witnesses; that vital sources of information "might well dry up to the detriment of the basic security of the country" if the veil of secrecy were stripped from information in security cases; that the Government depends to a great extent on "under-cover agents, paid informers and casual informers" who must be "guaranteed anonymity;" and that therefore it might imperil national security to give accused Government employees the right to face their accusers.

Professional Informers

A revulsion of public feeling was caused when a Communist Party-member, since turned informer, Harvey Matusow by name, appeared at a press conference in New York on 3rd February to say blandly that he had given false evidence as a paid professional witness against many people. Indeed his achievements in this direction are going to be published in a book which bears the significant title of "False Witness." Barely 21 years old, he joined the Communist Party in 1947, but in 1950 he began acting as an under-cover agent of the Federal Bureau of Investigation which brought on his expulsion from the Communist Party. Since then, and particularly in 1952, he was very largely used by the Government as a professional witness against Communists. In all he is said to have testified against 180 persons by name. He was a Government witness at the 1952 conspiracy trial of thirteen second-string Communist officials in New York City. He gave testimony against Mr. Owen Lattimore, a Far Eastern expert, in the Senate Hearings, and his activities of this nature were immense.

Now he says his evidence was false. His affidavit was filed in the Federal District Court in support of a motion for a new trial of the very thirteen Communists whom

previously he had helped to convict: he asserts he deliberately lied at that trial and at some others. His only explanation of the perjury he committed is that he needed then the fees which he earned as a witness. Now he is not so much in need of money, and therefore is telling the truth in his book because, as he said, "I hurt many people and I want to put matters right." The chairman of the House Un-American Activities Committee charges that this turn-about witness had always been a Communist and was planted by the Communist Party as a Government informer in order to discredit the Red hunts carried on by the Congress.

Feeling is very much aroused by the confession of this informer, even if it be partly untrue. But anyhow, as the "New York Times" says, it "does require the Justice Department to re-examine all the cases in which this man's testimony did play a significant part. It is essential in the interests of elementary fairness that the effect of Matusow's worthless testimony be erased from every case in which he was seriously involved." The paper also gives another caution:

Matusow's recantation, or whatever it is . . . , affords warning against the unquestioning acceptance by political and judicial authorities alike of the accusatory statements of the professional informer. It re-emphasizes the necessity of scrupulous and conscientious examination of such testimony. The informer is often a necessary if distasteful adjunct of law-enforcement agencies, and his use is well recognized in normal police activity. But in the semi-political area, where the informer has been increasingly used in recent years, special caution is required,

Wire-Tapping by Private Agencies

We intend in an early issue to deal with wire-tapping (and electronic eavesdropping by means of devices which do not have to be connected with the wires that are to be tapped) by governmental agencies. In regard to this branch of the subject there is some controversy as to how rigid the safeguards should be made so as not to make the work of detecting crime unduly difficult. But there is increasing evidence which goes to show that private agencies employ such illegal means for personal profit on a large scale. The most unsavoury incidents that disclosed themselves recently in New York City have led the legislature of the State to appoint a committee charged with the task of making a thorough preliminary investigation of the extent of the invasions of the individual right of privacy, the methods which are or can be employed in making such interceptions, and the measures which can be taken to overcome these unlawful practices.

The resolution providing for the inquiry said that freedom from unreasonable interceptions of telephone and telegraph communications was among "the most funda-

mental and cherished possessions" guaranteed by the State constitution. The sponsors of the resolution said in a statement:

The increasing use of wire-tapping and other technically fantastic electronic listening apparently has become a standard modus operandi for some business pirates, social scavengers and unscrupulous political opportunists.

There has been evidence of improper and unethical abuses, in some instances, by those legally permitted to use wire-tapping. This is authorized by law in order to utilise most effectively the processes of justice for the protection of society. In the wrong hands — or its irresponsible use in legal hands — wire-tapping obviously can have the dangerous and damaging opposite effect.

Wire-tapping is the most reprehensible invasion of a person's privacy. The Constitution not only guarantees our people freedom of speech but also the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

GLEANINGS

Constitution Amendment Bill

Relating to Property Rights.

The following resolution was passed at a meeting of the Council of the Deccan Sabha, Poona, a Liberal organization, on the proposed constitutional amendment.

The Constitution (Fourth Amendment) Bill proposes to enlarge the scope of Art. 31-A, enacted in 1951 by the Constitution (First Amendment) Act (under which the Government assumed power to abolish the zamindari system) by adding to it several other categories of social legislation so as to confer validity on all such laws, in whatever way they may interfere with private property rights. Moreover, the Bill proposes to amend Art. 31 (2) relating to payment of compensation in cases of compulsory acquisition of private property by providing that, unless the ownership of the property or the right to its possession is transferred to and vested in the State, there will lie on the State no liability to pay compensation, however complete may be the loss to which the owner of the property may be subjected by the State. The withdrawal of constitutional protection from owners of private property which the proposed amendment, if passed, will sanction is, in the opinion of the Council of the Deccan Sabha, unjustifiable.

The Government pleads in its statement of objects and reasons that this drastic change in the Constitution has become necessary on account of some recent decisions of the Supreme Court in which, the Government says, the Court has expressed the view that "any curtailment of a right to property, . . . even where it is caused by a purely regulatory provision of law," entails payment of compensation. Mr. Patanjali Sastri, who was Chief Justice of India when the Supreme Court announced these decisions, has since shown how wholly wrong the Government is in attributing this view to the Court, which on the contrary has laid down the principle in its rulings that it is only when regulatory provisions result in substantial deprivation of property that the owner of the property can be held to be entitled to compensation.

It is clear that under Art. 31 (2) as it stands at present no kind of State control or regulation of private property in the interest of public welfare is barred; all that is barred under the current judicial interpretation of that Article is expropriation of private property without compensation to the expropriated owner. There can be no doubt that the Constitution-makers intended to provide this safeguard in our Constitution, as it is provided in the constitution of every other democracy. To abolish this safeguard, as the Amendment Bill seeks to do, over a large field of State activity, is to abandon the democratic way of life and take to the totalitarian way.

The Council is in hearty sympathy with all endeavours to narrow down the appallingly wide gap that exists in this country at present between the rich and the poor and to rectify the prevailing social inequalities and will support all well-considered measures to achieve this end; but it cannot lend its support to the adoption of expropriation as a means of reaching this goal. For expropriation means throwing the burden of the implementation of social welfare plans, excellent in themselves, on a few private shoulders instead of all the inhabitants sharing it in common on an equitable basis. This is to be condemned not only because it is wholly unjust, but also because it is highly inexpedient inasmuch as it will create a sense of insecurity among the people, which cannot but react injuriously on the very social welfare plans that the Government may formulate. The Council would therefore appeal to the Government to drop the present Bill and prosecute its schemes of social welfare to the largest possible extent to which it can finance them by graded taxation and by every other legitimate means, without however resorting to expropriatory measures.