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COUNCIL OF EUROPE'S CHARTER

" A UNIQUE EXPERIMENT IN SUPRA-NATIONAL JURISDICTION "

This year's session of the Council of Europe in Strasbourg (the Council was established in 1949 for the purpose of achieving a greater unity among its fourteen member states, safeguarding their ideals and principles, and facilitating their economic and social progress) was marked by its Convention for the Protection of Human Rights and Fundamental Freedoms going into effect. The Convention was signed in Rome in 1950 and six of the member states have declared their acceptance of all the provisions of the Convention. The latest member states to adhere to the Convention are West Germany and Belgium. West Germany's acceptance is particularly to be welcomed because this country undertook the obligations of the Convention expressly as a commitment to prevent restoration of dictatorship in future.

Content of the Rights

The Convention is much more than a Declaration of Rights, which forms part of the post-war constitutions of several countries of Europe. It is not a mere collection of certain excellent maxims by which the member states are exhorted to abide, like the Declaration of Human Rights of the United Nations. It is law for all the acceding states, which they can transgress at their peril. In this respect it corresponds to the U. N. Covenant of Human Rights, which also is intended to be international law for all states that accept it. But it will be found on examination of the two instruments that the Council of Europe's Convention is in several respects superior to the United Nations' Covenant. As we showed in an article on this subject in the issue of September 1951 (p. 316), the provisions of the Convention lay more precise obligations and leave fewer loopholes for evasions than the Covenant. A notorious example of how the Covenant leaves the member states to do just what they like in respect of some of the rights which everywhere are regarded as sacrosanct is the Article relating to Personal Freedom. After stating that "every-one has the right to liberty and security of person," the Article goes on to say: "No one shall be deprived of his liberty except on such grounds and in accordance

with such procedure as are established by law." We in India are quite familiar with this phraseology, for the same has been adopted in Art. 21 relating to personal liberty in our own Constitution, and a number of Judges of the Supreme Court have pointed out authoritatively how the Article fails to guarantee personal liberty, which is the most fundamental of all fundamental rights, as on the enjoyment of such liberty depends exercise of all other rights like freedom of expression. Just as in our Constitution Freedom of Person is at the mercy of the legislature which is left free to adopt what laws it pleases permitting detention without trial, except for what Justice Das calls "a skeleton procedure of Art. 22" (see p. iii: 187 of the BULLETIN), so in the U. N. Covenant Freedom of Person is at the mercy of the national legislatures which are left free to pass any laws of preventive detention. On the other hand, the corresponding Article in the Convention of the Council of Europe, as we have shown before, does not contemplate detention without trial except in periods of grave national emergency. Similarly, in regard to Freedom of Expression, the Council of Europe's Convention does not permit restrictions being imposed in the interest of "public order" as does the United Nations' Covenant (or our own Constitution). So retrograde is the Covenant in respect of some of the basic rights that we for our part have ceased to take much interest in it as India cannot derive any benefit from her adhesion to the Covenant, though possibly other less advanced countries may stand to gain

Provisions for Implementation

But the most radical difference between the Covenant and the Convention is in regard to the provisions in these instruments concerning enforcement of the rights guaranteed therein. Not only is the content of the rights guaranteed by the Covenant smaller than that of the rights guaranteed by the Convention, but the former provides for an agency of implementation which is very much less effective than what the latter provides. In the first place, the Covenant expressly denies the private right of petition against breaches of the rights. It provides for

complaints being made only by State Governments, and although one State may complain of another State having violated the rights of its citizens, such complaints will hardly be lodged because every State will realise that if it lodges a complaint against another State, that State or some other State will be impelled to lodge a complaint against itself, with the result that all the States are expected to keep mum on such a matter. But the Convention provides for the inquiring body which it sets up receiving complaints "from any person, non-governmental organization or group of individuals claiming to be the victim of a violation" of the rights enumerated in the Convention at the hands of the national government. Moreover, the remedies the Covenant provides are mainly of a conciliatory character. It is otherwise with the Convention. It provides that if the Court of Human Rights which it sets up finds that any measure taken by a state member is in conflict with the obligations arising from the Convention, it shall decide what is required in order to "afford just satisfaction to the injured party," and "the judgment of the Court shall be final." The judgment is transmitted to the executive of the Council of Europe, viz., the Committee of Ministers, "which shall supervise its execution." It will be for this Committee then to decide upon any sanctions.

Supra-National Jurisdiction

There is no doubt some danger that if an unrestricted right of private petition be given, the inquiring body will be flooded with complaints, some of which may prove to be entirely frivolous. But such a danger can be guarded against to a large extent, and in any case that danger is nothing as compared to the danger resulting from denying this right altogether, viz., that such denial will effectually bar all complaints. The objection to the right of private petition was again considered at the Strasbourg meeting of the Council of Europe, and it was actually proposed that only one Government should be allowed to complain against another, as the U. N. Covenant provides. But the objection was overruled. As the "New York Times" says: "It was recognized in the debates that the Convention may open the door to complaints from cranks, communists or any disgruntled element, but it was decided that the Commission (of Human Rights which is to hear the complaints in the first instance) has adequate power to sift inadmissible and ill-founded complaints from genuine ones." The Council of Europe thus initiated what the "Times" calls "a unique experiment in supra-national jurisdiction," inasmuch as it "leaves a considerable area for the Commission (and the Court) to intervene in the domestic affairs of nations" and in this respect "it goes beyond the United Nations Charter." We must all hope that the experiment will succeed.

Parliamentary Privilege

Mr. Reid, member of the Australian House of Representatives, raised in the House on 3rd May last the question of privilege on an article appearing in the "Bankstown Observer" of 24th April. The action taken by Parliament on the report of the Committee of Privileges then appointed is thus editorially commented upon by the "Times of India" in its issue of 17th July.

A recent case in Australia has spotlighted the incongruity of the ancient law of parliamentary privilege in the context of the modern concept of democracy and justice. The question has been raised in the Commonwealth press, which is generally subject to similar laws, whether such jealous exercise of privilege by a Parliament does not constitute a threat not only to the liberty of the citizen but to freedom of speech and of the press as well. The fact that the full high court of Australia has upheld the Federal Parliament's stand has enhanced the importance of the case. It stemmed from the publication in the "Bankstown Observer" of an article alleged to be grossly defamatory of a member of Parliament who had been pressing Parliament to appoint a royal commission to investigate charges of corruption in the civic administration of Bankstown. The article was said to be an attempt to blackmail the M. P. into dropping his campaign. The member in question raised the matter on the issue of privilege in Parliament, even though it was open to him to seek redress in a prosecution for criminal libel or in a civil action for damages or defamation.

The proprietor and editor of the paper, called before the committee of privileges of the Federal Parliament, frankly admitted that their intention in publishing the article was to influence the member of Parliament concerned. The committee declared that the article constituted a breach of privilege, and the two men were summoned to the bar to answer the charge. The proprietor of the paper apologised, but the editor refused to do so and, on the other hand, complained that he had been convicted without being given the benefit of the due process of law such as the opportunity to cross-examine the accuser and the assistance of counsel. The editor turned round and declared that "the general public should be shown that you do not bring people here to deprive them of their rights and that the law-makers do not set themselves above the law."

The Federal Parliament sentenced both men to three months' imprisonment. Immediately the accused instituted habeas corpus proceedings in which their counsel contended that Parliament in committing them to prison had acted ultra vires of the Constitution, exercising a judicial power it did not possess. The court upheld the Federal Parliament's action on the ground that under the English law, which applied to Australia, the exclusive jurisdiction of Parliament when dealing with privilege was established beyond question.

Both public opinion and the press reacted sharply to the Federal Parliament's action. Few had realised that

this legislative body could and would actually send people to prison, that it had an unchallengeable power to punish any person for what in its own discretion it judged to be a breach of its privileges, that in effect Parliament became the prosecutor and judge in its own cause, and that the legality of the procedure could not be challenged even in the highest judicial tribunal in the land. A tribunal consisting of a large number of members of Parliament, untrained and inexperienced in judicial processes, could not obviously be a suitable body for hearing charges of such grave import to the accused. One has to go back to 1880 for a case in which the British Parliament itself committed a person to prison. It could never happen in Britain now. The Australian Parliament's action might prove a dangerous and tempting precedent to younger Parliaments of countries newly come into possession of sovereignty, ever jealous and over-zealous of their privileges and rights.

Exclusion of Obscene Matter from Mails

Postmaster General's Censorship Power Criticised

Referring to the criticisms levelled by civil liberties bodies, and notably by the American Civil Liberties Union, against the power of pre-censorship which the Post Office exercises in regard to publications thought to be obscene by excluding them from the mail, the Postmaster General complained that certain organizations "produce an almost inevitable cry of 'censorship' . . . and confuse licence with liberty." The A. C. L. U. has given an effective reply to this charge in a statement. It says that it is not concerned with defence of obscenity; on the contrary, it points out that "on numerous occasions we have asserted the right of the community to protect itself from such material by criminal prosecutions under obscenity laws." And it states its position in this respect to be that "where a clear and present danger exists from the publication of written or spoken material and there is no time for counter-argument or other means available to handle the danger, the Union does not oppose curbs on such expression." But the Post Office often uses its authority "to determine arbitrarily what reading material shall reach the American people" and thus imposes prior censorship, weakening the freedom of expression guaranteed by the First Amendment. The Union lastly brings to notice some of the cases in which the Supreme Court had occasion to void the action of the Post Office as constituting pre-censorship.

The Esquire Case

One of these cases is that of *Hannegan v. Esquire*, 327 U.S. 146 (1946), in which the Court condemned the Postmaster General's action in withholding from *Esquire Magazine* the lower postal rates to which periodicals are entitled. Obscene material is made non-mailable by a Congress statute, but periodicals not publishing such matter are allowed concession rates "for the dissemination of information of a public character," and the Postmaster

General construed this provision to mean that periodicals containing matter "which is not obscene in a technical sense" but which is "morally improper" can be denied the concession. His plea was: "A publication to enjoy these unique mail privileges and special preferences is bound to do more than refrain from disseminating material which is obscene or bordering on the obscene. It is under a positive duty to contribute to the public good and the public welfare." The Supreme Court rejected this plea. It said:

To uphold the power of revocation (of mail privileges) would . . . grant the Postmaster General a power of censorship. Such a power is so abhorrent to our traditions that a purpose to grant it should not be easily inferred.

What is good literature, what has educational value, what is refined public information, what is good art, varies with individuals as it does from one generation to another. There would doubtless be a contrariety of views concerning Cervantes' *Don Quixote*, Shakespeare's *Venus and Adonis*, or Zola's *Nana*. But a requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system. From the multitude of competing offerings the public will pick and choose. What seems to one to be trash may have for others fleeting or even enduring values. . . . But Congress has left the Postmaster General with no power to prescribe standards for the literature or art which a mailable periodical disseminates.

The "Lysistrata" Muddle

Another instance, adduced by the A. C. L. U., of abuse of the power which Congress has conferred on the Postmaster General by the so-called Comstock Act of 1873, was that of the muddle which took place recently over the Greek classic, "Lysistrata."

A copy of this 24-centuries-old comedy was mailed from London to one Mr. Harry Levinson, an American dealer in rare books. When the book arrived, the U. S. Post Office seized it, notifying to Levinson that it "contains numerous passages which are plainly lascivious in character, which are well calculated to deprave the morals . . . and almost equally certain to arouse libidinous thoughts in the mind of the average normal reader."

In order to test the constitutionality of the law which gives power of censorship to the Post Office Department, the A. C. L. U. brought a suit in a federal district court, but in this first round in the courts the department won. The district judge ruled that no substantial constitutional issue was involved and dismissed the suit.

The A. C. L. U., however, decided to take the matter to the higher courts. Fearing lest these courts might invalidate the Post Office's power of prior censorship, the department beat a hasty retreat. It handed over to Levinson the copy of "Lysistrata" it had seized from him, saying that the department had no objection to delivering

a copy to a rare book dealer and adding that it had been assured that the book was not for "general distribution."

In its brief urging injunction, the A. C. L. U. wrote :

What is obscene to the Postmaster General may be pure as mountain snow to another. What is obscene to the Postmaster General is, in fact, the laughter of genius to 24 centuries of Western civilization. . . .

"Lysistrata" was here seized by the Postmaster General because 2,400 years ago, the great lyric poet and comedian, Aristophanes, had the incomparable wit and power to pen a play about sex and war and morality which to this day "teaches and delights" as few modern dramas can.

What is this "Lysistrata" which the Post Office, thinking it to be obscene, barred from the mails? It was written during the 29 years of the Peloponnesian Wars between Athens and Sparta, wars that drained the lifeblood of the Grecian empire. Tired of war and its price, Aristophanes wrote the play in a vain effort to end the warfare. The farce-comedy tells how the women in Athens and Sparta banned together in a plot to refuse to have sexual relations with their men until a peace treaty was signed.

COMMENTS

"Fussy Control" over the Press THE PRESS REGISTRAR

In accordance with the recommendation of the Press Commission, the Government of India has brought down a Bill which provides for the setting up of the office of Press Registrar for the purpose of collecting and publishing information concerning the Press. While it is but proper that all factual information of public interest which can be legitimately asked for should be made available, it appears to us that some of the provisions of the Bill would only cause undue harassment to the Press without the information elicited by means of them being useful to the public. Particularly obnoxious is the provision which empowers the Press Registrar to have access to all records and documents of newspapers (copies of which are to be supplied to any person who asks for them); and in order to make such access effective it is provided in the Bill that the Press Registrar or anyone authorized by him for the purpose "may enter at any reasonable time any premises where he believes such records or documents are kept and may inspect or take copies of the relevant records or documents." The Bill betrays an attitude of mind on the part of the Government which we are afraid will result in the weakening of the freedom of the Press.

When the Press Act was passed, a British journal criticised it as instituting "fussy control" over the Indian Press. The same criticism applies to the impending measure. In its issue of 3rd August the "News Chronicle," an organ of Liberal opinion in London (we believe it was the same journal which condemned the

Government of India for the fussiness of the control it sought to maintain over the Press by its Press Act), expresses its "extreme concern" on the Press Registration Bill, saying :

The freedom of India's press is threatened by the Bill, now before the Indian Parliament, which provides for the establishment of a Press Registrar.

Although irresponsible publications in that country present a particular problem to its Government, the method of control now proposed could very easily be abused.

For the Bill contains a clause which, if passed, as it is expected to be, might give the Registrar quite sweeping powers over the press. It would enable him to enter the premises of any newspaper to question the staff and take copies of documents belonging to the publisher.

To discourage calculated irresponsibility is one matter, but to impose at the same time a governmental grip upon the Press of India as a whole is a step which can only be viewed with extreme concern.

The Law Commission

The Government of India has announced the appointment of a Law Commission with the two-fold object of suggesting ways of improving the present system of judicial administration, primarily with a view to making justice cheap and speedy, and revising statute laws, with the object chiefly of making them simple and uniform. In order to carry out its inquiry in these two fields, the Commission will function in two distinct sections, though they would necessarily work in close co-operation with each other. The Commission will for the present remain in being till the end of next year.

Its terms of reference are fairly wide, and we are particularly gratified to see that one of the tasks allotted to it is "to ascertain if any provisions are inconsistent with the Constitution and suggest the necessary alterations or omissions." This is a matter in which we are principally interested, and we are glad that the demand made by the All-India Civil Liberties Conference, that an inquiry by constitutional experts be instituted into all existing legislation with a view to finding out if any part of it contravenes Part III of the Constitution relating to Fundamental Rights, is being met. But we must point out that the demand is only being partially met inasmuch as the Commission is empowered to examine only "the Central Acts of general application and importance," whereas the laws of the State Governments also need to be subjected to expert scrutiny as to their constitutionality. There seems to be no reason why local laws should be placed beyond the purview of the Commission. As the Commission is empowered to co-opt as members one or two practising lawyers from States to assist in inquiries in those States, there can be no excuse for limiting the review of statute law by the

Commission to central legislation. This is a drawback to the comprehensiveness of the Commission's scope of inquiry which ought to be remedied.

The Commission, composed as it is of noted jurists, can be trusted to perform its work thoroughly and well. It is a source of keen satisfaction to us that Dr. Nares Chandra Sen Gupta, whose legal eminence is universally recognized, is a member of the Commission and is a member of that section thereof which will examine the vires of statute law. He presided over the Bombay session of the All-India Civil Liberties Conference, at which a resolution was adopted asking for the setting up of a body of persons versed in constitutional law in order to ascertain whether any of the existing laws, central and local, were violative of the fundamental rights guaranteed by the Constitution. We are not quite sure however that the choice of the Attorney-General as Chairman of the Commission is strictly proper. His legal competence cannot be questioned, but it must not be forgotten that he does not enjoy the position of independence that is necessary to inspire public confidence. In England the Attorney-General is a member of the Cabinet, and being a party man remains in office only as long as the party he belongs to remains in power. In heaps of cases before the Supreme Court, our Attorney-General has advocated views on behalf of the Government of India which the Supreme Court has rejected as wholly untenable. We cannot help wishing that one in such a position had been kept out of the Commission.

Civil Liberties in Kashmir

In an article written for the "New York Times" and reproduced by the "Times of India" in its issue of 4th August, Mr. A. M. Rosenthal described the wonderful progress the Kashmir State has made in the economic and social fields, mainly because of the 100 million dollars which India has contributed for the development of the State. "Because of Indian subsidies," he says, "a housewife shopping in Srinagar's bazaars pays the equivalent of four cents for two pounds of Indian rice. A housewife in New Delhi pays about fifteen cents." On account of the benefits that flow from Kashmir's association with India, he says the longer a plebiscite is delayed, the more slender will become the chances of the plebiscite going in favour of Pakistan, as would very probably be the case if the plebiscite be held at the present time. But the writer believes that a plebiscite is exceedingly unlikely, both parties to the dispute (i. e., both India and Pakistan) having reconciled themselves to a continuance of the *de facto* partition that now exists. Although the economic progress of Kashmir is remarkable, according to this writer, the state of civil liberties there is very deplorable. He says:

Civil liberties are fewer than in any place in India. A man may be put in jail for five years without charges or trial. Strong-arm squads—the Kashmiri Government blandly calls them "peace brigades"—break up the meetings of the harassed Opposition.

Restrictions on Ghaffar Khan's Movements Lifted

POLITICAL INTRIGUE AT WORK

If detention without trial may be due to political machinations, so can be release from detention also; and if after release other restrictions on movements are lifted, the motivating force for such lifting may also be political. Khan Abdul Ghaffar Khan, the Red Shirt leader, was released from detention recently along with his brother Dr. Khan Sahib, but the ban on the former's entry into his home province still remained. Now the ban has been raised. But it does not at all appear that the removal of the ban was due to a desire to restore civil liberties to one who had been unjustly deprived of them, but due to some sort of political intrigue.

The Chief Minister of the North-West Frontier Province, Sardar Abdul Rashid Khan, who succeeded Khan Abdul Qayum Khan, the bitterest enemy of the Red Shirt leader, was himself dismissed on 18th July, and his downfall was the cause or occasion of Khan Abdul Ghaffar Khan, being permitted to go back to his province. Sardar Rashid was at first known to have welcomed the Central Government's plan to merge all provinces of West Pakistan into one unit. But during the preliminary session of the Constituent Assembly at Murree it became clear that he was now opposed to the plan. He not only expressed his opposition to the scheme, but sprung a surprise on the Assembly by declaring that his Government had no objection to the entry of Khan Abdul Ghaffar Khan into the Frontier Province and that it was the Central Government which had placed restrictions on the Red Shirt leader.

This declaration forced the hands of the Interior Minister of the Pakistan Government, Gen. Mirza. Sardar Rashid of course wanted Khan Abdul Ghaffar Khan to come to the Frontier Province to consolidate opposition to the one-unit plan, and though Gen. Mirza knew that this would be the result, he could not very well refuse to lift the ban, for otherwise it would have meant that the Red Shirt leader was being kept out of the Province, against the wishes of the Local Government, in order to carry the plan through. Gen. Mirza might have also entertained the hope that Dr. Khan Sahib's influence would perhaps tell on the Red Shirt leader and make him support the scheme of one unit for West Pakistan. Eventually it has turned out that Sardar Rashid was more correct than Gen. Mirza, and Khan Abdul Ghaffar Khan and the Pir of Manki Shariff, the Awammi League Chief, have organized a joint front to carry on a crusade against the scheme. Whatever it be, it is clear that the restoration of free movement to the Red Shirt leader is the result of political intrigue and not of any regard for civil liberties.

Right to Travel Abroad

Applauding the decision of the American Federal Court of Appeals in the Shachtman case (reported in the BULLETIN at p. iii: 245), the "Statesman" notes how since World War I general restrictions are placed almost

in every European country on the citizen's right to travel abroad. It says: "Before that date (1914), in all democratic countries, a passport was a mere means of establishing identity or help in obtaining diplomatic and consular assistance; for a traveller to carry one at all was entirely optional. Inevitable security restrictions during two wars have since, however, persisted to form a whole octopus of regulations in peace." Then it proceeds:

India's liberal Constitution guarantees to citizens the right of free movement within Indian territory; nothing whatever is said about any fundamental right, even for citizens, to enter or leave Indian territory, and the omission was almost certainly deliberate. A quite blameless and upright person may incur difficulty and delay in getting a passport or other travel documents; in exceptional times the result may be chaos, as when such documents were suddenly required for travel between the two Bengals, but even in normal times it may be irritation and expense. A person only theoretically blameworthy may be denied one by pure administrative decision; and few countries emulate the U. S. A. in giving him any means of appeal or redress.

The State Department of the United States appears to have liberalised its outlook in the matter of issuing passports after the Shachtman judgment, since it has been granting passports to persons to whom it had refused to grant them before. For instance, after first denying, it later issued a passport to the foreign editor of the "Daily Worker," a Communist paper of New York, to go to Geneva to cover the Big Four meeting. Similarly, after eight years of refusal, it decided to issue a passport to Dr. Martin D. Kamen, the atomic bomb scientist, whom the department had once linked to communism. Dr. Kamen had indeed brought a suit in a Federal district court with a view to getting the department's past refusals declared void as arbitrary. But the passport now being issued, the case was withdrawn. Dr. Kamen is a professor at the Washington University. In 1947, his passport for travel to France and Israel was seized by agents of the State Department while it was in the hands of a travel agency.

Former Judge Clark Gets a Passport

It will be recalled (vide p. iii : 244 of the BULLETIN) that Mr. William Clark, who was fighting in court the denial to him of a passport to travel to Germany, has also been granted an unrestricted passport, mainly because of the Appeals Court's decision in Shachtman's case that Americans have a "natural right" to travel abroad and that courts might review refusal of passports.

Mr. Clark was dismissed in January 1954 as chief judge of the United States Appeals Court in West Germany. His ouster was the climax of a long feud with Dr. Conant, then High Commissioner in West Germany. While in post in Germany, Mr. Clark accused Dr. Conant of having interfered with the independence of the United States Appeals Court there. Dr. Conant on the other

hand called Judge Clark guilty of "irresponsible conduct," and said he did not want him in Berlin. Mr. Clark, in the action brought by him against the Secretary of State, had contended that the State Department refused him a passport for European travel because he would not agree to remain silent about his ouster while in Germany. In view of the decision in the Shachtman case he was given an unrestricted passport.

An Exchange of Persons and Ideas

AT THE SUMMIT CONFERENCE OF THE BIG FOUR

In the search for world peace on which the Big Four powers were engaged in Geneva, President Eisenhower's proposal to the Soviet Union to lift the iron curtain was not half so sensational or dramatic as his plan for a mutual inspection of defences but has probably a better chance of success. Mr. Eisenhower would like, in order "to help achieve the goal of peace based on justice and right and mutual understanding," to tear down many of the barriers, real and psychological, that obstruct the free flow of ideas, people and trade between East and West. He acknowledged that in the last decade even the United States, in spite of the fact that "fervent belief in freedom of thought, of expression, and of movement is a vital part of our heritage," had "felt compelled, in the protection of our national interests, to place some restrictions upon the movement of persons and communications across our national frontiers." But he claimed that the restrictions imposed by the Western democracies were mild and not severe as in some other countries, and the important thing was that, without any recrimination for past sins of either one bloc or the other, he pleaded for initiation of steps in all countries "to permit the breaking down of both mild and severe barriers to mutual understanding and trust."

The British Prime Minister, Sir Anthony Eden, spoke in the same sense. He said:

We should be glad if clear relationship should be established between professional, scientific and artistic groups of all kinds. We should welcome exchanges of visits, by students as well as teachers. We think that more could be done to encourage the exchange of books, learned journals and documentary films.

But, in addition, we should like to promote a more normal tourist traffic between East and West. We are very willing that ordinary Soviet citizens should travel freely through the countries of the West. We should like to see facilities given to enable ordinary Western tourists to visit the Soviet Union individually, not merely in organized and sponsored tours. The Soviet Government could do much to encourage this, in particular by adopting a less restrictive policy in granting visas.

If a real understanding is to develop between the peoples of East and West, further efforts will have to be made to facilitate the free circulation, not only of individuals, but also of ideas and opinions. It would

assist in this if greater freedom were given for journalists to travel in the Soviet Union and to send their views and impressions back to the newspapers which they represent. Soviet journalists are already free to do this in the Western countries. Greater facilities will also be needed for the free circulation of newspapers and books. Press and radio censorship will need to be released. . . . I am sure that we could thereby do much to build that mutual confidence between the peoples of East and West which will help so much to relax international tension.

C. P. AND BERAR GOONDA ACT

Held Ultra Vires by Nagpur High Court
IN CONFLICT WITH ART. 19 (5)

A division bench of the Nagpur High Court consisting of Chief Justice Mr. M. Hidayatullah and Mr. Justice K T. Mangalmurty on 2nd August allowed mandamus petitions filed under Art. 226 of the Constitution by Mr. Baldeo Prasad Sharma, Vice-President of the Rashtriya Koila Khadan (coal-mines) Mazdur Sangh against the order of the district magistrate of Chhindwada externing him from Chhindwada district and by Mr. Mahabir Singh against the order of the district magistrate of Amraoti controlling his movements under secs. 4 and 4-A of the C. P. and Berar Goonda Act passed by the State in 1946 for the purpose of curbing unsocial activities in the State. Their Lordships quashed the orders, holding that the sections of the Act were ultra vires as contravening provisions of Art. 19 (5) of the Constitution. These sections give power to the State Government to "control" the movements of the goondas or to remove them in certain circumstances from one place to another. The main judgment was delivered in the case of Mr. Baldeo Prasad.

Their Lordships in their judgment observed that the definition of "goonda" as laid down in the Act was vague. They said:

There is no standard to decide who is a goonda in this Act. This matter cannot be left to the discretion of an executive officer, however well intentioned he may be. The order is not subject to judicial scrutiny and no procedure is prescribed to name any person a goonda under this Act.

The legislature, Their Lordships remarked, did not make it compulsory for the State Government to determine whether a person could be dubbed as a goonda or not and no provision had been incorporated in the Act which would require the District Magistrate or the State Government to decide the fundamental question whether a person was a goonda or not. Their Lordships said:

The Act, in its short and long titles and preamble, mentions a goonda and in our opinion there must be at some stage in the proceeding under the Act, the determination of the question whether the person

against whom action is proposed can, for sufficient reasons, be regarded as a goonda at all.

The Act, as it stands gives unlimited power to the District Magistrate to dub any citizen as a goonda and extern him. The definition is vague and nobody is required to satisfy himself as to its application. Even a well-meaning officer may think that the report, say of a police officer or of an informant that "X" is a goonda, is enough, and he may base his action starting from that premise.

The fact that some officers may satisfy themselves is not enough. Every officer administering the Act must be compelled by the Act to do so. Such a piece of legislation, in our opinion, cannot be regarded a reasonable restriction within cl. 5 of Art. 19 of the Constitution."

Because the operative portions of the Act were void, Their Lordships observed, only the shell of the Act remained, which had no meaning. They added: "We regret the result because, in our opinion, the control of such activities is an important duty of the State, but the defect can be easily removed."

The Act was applied in many districts from time to time, and at present it is in force in some ten districts of the State. It is expected that about 1,000 persons will get freedom of movement as a result of the judgment.

HABEAS CORPUS PETITION

Detention Illegal: Reason for Arrest not Given
ALLAHABAD HIGH COURT'S DECISION

Mr. Vimal Kishore Mehrotra, one of the general secretaries of the Suti Mill Mazdoor Sabha, which sponsored the general strike in the textile mills at Kanpur, was arrested and was placed in custody. On being arrested he was merely informed that he had been arrested under sec. 7 of the Criminal Law Amendment Act, 1932, but he was not told what exactly he had done to which he owed his arrest. This information was later given to him, namely, that he had intimidated Mr. Janardan Pande and some others so as to cause them to abstain from going to the mills for work.

Desai and Oak J. J. of the Allahabad High Court on 3rd July, in separate judgments, allowed Mr. Mehrotra's habeas corpus petition, holding that his detention contravened cl. (1) of Art. 22 of the Constitution. Mr. Justice Desai, while holding that the arrest of the applicant was legal, said it was the fundamental right of every person that on being arrested he must be informed, "as soon as may be," of the grounds of such arrest; he could not be detained in custody without being so informed. It was the common case of the parties before them that the applicant on being arrested was informed merely that he had been arrested under sec. 7 of the Act; there was no allegation that any other information was given to him. Sec. 7 was a wide section containing several provisions and he was not informed under which particular provision he was arrested. Nothing was said to him about the allegation

made against him or the act alleged to have been done by him and amounting to an offence punishable under sec. 7.

His Lordship said the rule in Art. 22 (1) that a person on being arrested must be informed of the grounds for the arrest was similar to, though not exactly identical with, the rules prevailing in England and in the United States of America. It would have been quite useless to tell the applicant that he was arrested for committing an offence under sec. 7. The section contained several provisions, some of which might be valid and others not, and unless he was told under which particular provision he was arrested, he would not know whether his arrest was legal or not and could not take immediate action to regain freedom. The act alleged to have been done by him for which he was said to be liable was that he had intimidated Janardan Pandey, etc., on May 18, 1955, with a view to cause them to abstain from going to the mills for work; that was the ground or reason for his arrest which should have been communicated to him under the Constitution.

His Lordship said it was a fundamental right of a person that on being arrested he must be informed of the reason of his arrest; the very nature of the right indicated that if he was not informed, his detention after the arrest was illegal. The Constitution prohibited his being detained without being informed of the grounds for his arrest; if he was detained (without being informed of the grounds for his arrest), the detention was illegal being a prohibited act, and he must be released on a habeas corpus application. Every person whose fundamental right was infringed was entitled to the remedy of a writ.

On behalf of the State it was contended that in a habeas corpus proceeding a High Court was concerned with the question of the legality of detention on the date of return and not earlier. The applicant had been told of the grounds for his arrest in the return. Now he knew why he was arrested and was being detained; it was, therefore, argued that he could not be released on habeas corpus now.

His Lordship was afraid the argument was fallacious. The law was not that detention following arrest was illegal so long as the grounds for the arrest were not communicated to the person; it was that he must be informed of the grounds for arrest "as soon as may be" after the arrest and once there had been a failure to do so, his detention became illegal once for all. Informing him of the grounds at a later stage was no satisfaction of his fundamental right and was as good as not informing him at all. Since the law was that detention was unlawful so long as the grounds for arrest were not communicated, once the detention became unlawful, it could not later become lawful on the grounds being communicated but would remain unlawful notwithstanding the communication.

His Lordship agreed with Mr. Justice Oak that the applicant's detention was illegal, because he was not informed of the reasons for his arrest as soon as it was possible to do so and that he should be forthwith released from

custody. There was no question of their quashing the proceedings pending against him, because whether he had done the act alleged to have been done by him and whether it amounted to an offence punishable under sec. 7 of the Criminal Law Amendment Act were questions which would be decided during the trial and could not be decided in advance of it. It might be that the applicant's freedom would be short-lived, because he could be arrested again and detained after full compliance with the provisions of Art. 22 (1), but that would be no ground for their not releasing him from the present unlawful detention.

BOMBAY PUBLIC TRUSTS ACT

Exclusive Jurisdiction of Charity Commissioner BOMBAY HIGH COURT'S RULING

Mrs. Taraben Baldevdas Parikh filed a suit in the Kapadwanj court for a declaration that she was the owner of Rs. 24,000, which was stated to be created as a trust under the Bombay Public Trusts Act by her aunt, Bai Parson, claiming that she (Mrs. Parikh) was the sole owner of the joint family properties inherited by her from her husband and that the sum of Rs. 24,000 was part of her husband's estate. After the suit was filed, the trustees of the Bai Parson trust applied to the Deputy Charity Commissioner for registration of the Trust. The registration was opposed by Mrs. Parikh who questioned the title of Bai Parson to the Rs. 24,000. The Deputy Charity Commissioner held that he had exclusive jurisdiction to decide the question whether a trust existed and whether any property was the property of the trust. He declined the stay of the proceedings before him pending the decision of the suit in the Kapadwanj court.

Thereafter Mrs. Parikh petitioned the Bombay High Court to restrain the Deputy Charity Commissioner and the Charity Commissioner from proceeding with the application for registration of the Bai Parson trust. On the petition it was urged on behalf of the petitioner that the question in dispute involved a question of title to property and the jurisdiction of the civil courts had not been ousted by the Bombay Public Trusts Act to decide questions of title to property.

Mr. Justice Bavdekar and Mr. Justice Shah on 27th July dismissed the petition. Referring to secs. 19 and 79 of the Act, Their Lordships said that under the Act the Deputy Charity Commissioner had exclusive jurisdiction to decide whether a trust existed, whether a trust was a public trust and whether any property was the property of a public trust. They pointed out that the rules framed under the Act provided that the petitioner could raise all her contentions on the merits before the Deputy Charity Commissioner, and that there was also provision for appeal and revision.

Applicability of Act to All-India Bodies

In an application to the district court of Poona, the Servants of India Society put forward the claim that it should not be required to register itself as a public trust

under the Bombay Public Trusts Act and in consequence be laid under contribution to the tune of 2 per cent. of its gross income. Being registered under the Societies Registration Act, 1860, it contended that it was an incorporated body, and that working as it did in States outside Bombay as well as in the Bombay State, it could be governed only by central legislation, power in regard to which is conferred on Parliament by entry 44 in the Union List of the Seventh Schedule: "incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State;" and that the Bombay Act could not be made applicable to it as entry 32 in the State List of the Schedule confines the power of the legislature of Bombay in this respect to matters not included in the Union List.

The district judge in his decision observed that he was not concerned with this main contention of the Society, viz., that the Act could not validly be made applicable to it. He said: "This court derives jurisdiction under sec. 72 of the Bombay Public Trusts Act, and the validity of the Act is the basic assumption on which its jurisdiction is founded." Nevertheless he discussed the merits of the contention and said: "By vesting a society with the character of a legal entity, the society was not constituted into a legal person, an incorporated body. . . . The character of a legal person must be expressly conferred before a body can claim to be an incorporated body or a legal person." The application was dismissed.

PRE-MERGER CONCESSIONS

Rights Cannot be Terminated

Mr. S. C. Bhatt, district and sessions judge of Ahmedabad, on 10th August set aside a decree passed by a lower court and held illegal an order of the Government of Bombay terminating two lease agreements entered into between a ginning, pressing and manufacturing company and the Thakor Saheb of Vaktapur—a former princely State in Sabarkantha district of North Gujerat—before the merger of the State with Bombay in respect of a piece of land. The court held that the Government of Bombay could not terminate the rights of the company granted under the lease agreements.

The plaintiffs, the ginning and pressing company, argued that in spite of the merger of Vaktapur in the State, the Bombay Government was under an obligation to respect the agreements. The Government also received rent from the plaintiffs prior to and after the Government order cancelling the industrial concessions granted by the Thakor Saheb.

The judge held that a permanent lease agreement was not a contractual obligation, but a transfer of property.

Nowhere was it stipulated at the time of the merger that the State of Bombay or the Government of India would not be bound by the agreements entered into by the princely State with its subjects.

According to the principles of justice, equity and good conscience, the rights granted or the liabilities created by the former princely State should be accepted by the Union Government.

Mr. Bhatt said in his judgment:

In the new republic that was born all derived their rights of citizenship and rights of property from the same source and the State could not have the right to deny those rights which before the merger were already endowed to the subject by the former State.

It would be unfair to terminate those rights by a stroke of the pen. There is no act of mala fides on the part of the Thakor Saheb. These agreements were entered in 1920 and 1931. Acting on those agreements the appellants have put up on the land a large manufacturing concern and they have all along abided by the conditions and terms of the leases.

CRIMINAL JUSTICE

District Judge and Supdt. of Police Conspire TO ENGINEER A FALSE CHARGE OF THEFT

Allowing two applications in revision by Ibrar Husain, chauffeur of the district judge of Etah, Mr. Kishori Lal Arora, against his convictions under sec. 19(f) of the Arms Act and sec. 381, I. P. C., for unlawful possession of unlicensed arms and theft of a pistol and cartridges belonging to the judge from his bungalow in Etah, Mr. Justice James of the Allahabad High Court on 15th July set aside the convictions and sentences of the applicant in both cases.

The applicant was the motor driver of Mr. Arora when he was posted at Fatehpur. On his transfer in September 1951 from Fatehpur to Etah, Mr. Arora was very anxious to take the applicant with him, but the applicant was most reluctant to go to Etah. He was, however, persuaded to remain in Mr. Arora's service on promise of increased pay at Etah, though at the same time it was agreed that if he felt dissatisfied he would be permitted to resign and go home.

Shortly after reaching Etah the applicant started pressing his claim for enhanced salary but for some time was not given any increase, Mr. Arora promising that he would take him as a court peon, in which case he would receive his full salary from the Government together with some additional allowances which Mr. Arora would pay him. The applicant remained dissatisfied and expressed a desire to leave service, but Mr. Arora succeeded in persuading him to remain with him for some time more. On Dec. 5 or 6 he took an application from the applicant for appointment as a court peon. On Dec. 7 the applicant received a letter from home informing him of his mother's serious illness. On receipt of this letter he insisted on proceeding home and for this purpose was actually given an advance of Rs. 20 by his master. The same evening he went to the motor bus stand at Etah preparatory to taking

a bus for Shikohabad for taking a train there to his home town. But Mr. Arora's orderlies brought him back. Mr. Arora and he had then some hot words after which Mr. Arora took him to the house of the superintendent of police, Mr. Harpal Singh, who too had some kind of exchange of hot words with the applicant. On Dec. 8 Mr. Arora allowed him to go home. Outside Shikohabad railway station he was arrested on the allegation that his person had been searched by sub-inspector Nain Singh of the Etah Kotwali and Mr. Arora's pistol and cartridges (which Mr. Arora used to keep in his dressing room in a box) were recovered from his person.

His Lordship said it should be carefully noted that till then no formal report had been made by Mr. Arora of any loss of his arms and indeed he did not lodge any report for a fortnight after their alleged recovery. On Dec. 21 Mr. Harpal Singh sent him a D. O. letter reminding him of what had transpired previously and asking him to lodge a formal report. On Dec. 23 Mr. Arora sent Mr. Harpal Singh a letter expressing his thanks for what he had done and requesting that his letter be treated as a formal report. Just below Mr. Arora's letter Mr. Harpal Singh the same day wrote an order asking the Kotwali police to register a case in the light of Mr. Arora's letter and investigate it.

The applicant in totally denying both charges had strongly contended that he was the innocent victim of the ire of Mr. Arora, who failed to redeem his promise of giving him a higher salary at Etah and he asserted that a false case had been engineered against him by his erstwhile employer in conspiracy with Mr. Harpal Singh and that a purely fictitious recovery of arms from him had been made out as a result of the conspiracy. In view of the unusual and peculiar features of the case His Lordship examined the material prosecution evidence for himself and as a result he said he was driven to the conclusion that there was considerable force in the contention that the prosecution evidence was not worthy of credence.

First of all there was their scheme for concealing the fact of the theft allegedly detected on Nov. 28, for apart from all other considerations both must have been aware that under sec. 28 of the Arms Act and condition no. 7 of Mr. Arora's license the latter was bound to report the loss to the nearest magistrate or police and further that under sec. 154, Cr. P. C., it was the clear duty of Mr. Harpal Singh to get a written report of the matter recorded in the police station. Indeed, his own conduct amounted to a deliberate concealment of a serious crime. It was idle for him to contend that he decided to keep the matter confidential for fear of the culprit getting wind of it. If he could trust the district intelligence staff well enough, there could be no reason to trust the regular police to any lesser extent. Indeed, it would appear that Mr. Arora had never any intention of lodging a report of the occurrence, for it was not until he received Mr. Harpal Singh's letter of the 21st that he gave a letter dated 23rd in writing and even that document was found to be more in the nature of thanks than a formal report of a crime. Mr. Arora had none but

himself to blame if in these circumstances the very foundation of the alleged theft was held non-existent.

Referring to Mr. Arora's conduct with regard to the applicant, His Lordship said, despite the suspicion entertained against him by Mr. Arora, far from ensuring that legal action was taken against him, what Mr. Arora did was to dissuade him from leaving service, to repeat his promise of increased pay and to take the application from him for appointment as a court peon. It must be observed here, His Lordship said, that it was unpardonable for Mr. Arora to promise the applicant a post of a court peon and at the same time to plan to retain him as his private car driver. Even when the applicant insisted on leaving, Mr. Arora allowed him an advance of Rs. 20. Not content with that he got him brought back from the motor stand and actually took him to Mr. Harpal Singh's house where further pressure was put on him to stay on.

Yet not once did Mr. Arora or Mr. Harpal Singh get the applicant's person or residential room searched, still less had him interrogated or shadowed. At the trial Mr. Harpal Singh was very rightly pressed by the defence counsel to explain his omission to follow the usual police procedure in cases of theft. His reply was worth quoting: "I would take up investigation only when I had full belief that such man had committed theft." This was indeed a most extraordinary confession by a highly placed police officer and showed more than anything else Mr. Harpal Singh's malafides in his conduct of the present case.

Referring to the allegation that the son and daughter of Mr. Arora had seen the applicant digging in the grounds of his bungalow, the suggestion being that the applicant after stealing the arms had buried them in the grounds and was taking them out preparatory to taking them home via Shikohabad, His Lordship said they would have been material witnesses of the fact, but neither of them was produced as a witness. Besides, on Mr. Arora's own showing, the acts allegedly seen by his offspring were in broad day-light and in full view of the inmates of his bungalow. Such a thing was incredible and Mr. Arora's allegation might be safely discarded.

His Lordship referred to the letter dated Dec. 21 of Mr. Harpal Singh and the reply dated Dec. 23 of Mr. Arora together with Mr. Harpal Singh's order on it and said if there was any single piece of evidence that substantiated the applicant's claim of a conspiracy between these two officers, it was these two documents. Perhaps their most extraordinary feature was that they had been written on one and the same typewriter. Besides Mr. Harpal Singh's letter, instead of being a mere request from Mr. Harpal Singh to Mr. Arora to send a written report contained a complete recital of what the former wanted the writer to put down. His Lordship said this was the first time in his long experience where he found the police telling the complainant in writing as to what he should state in his report and he must express his strong disapproval of Mr. Harpal Singh's conduct.

The dates of the two documents were also of material importance inasmuch as the supposed recovery of the pistol and cartridges from the applicant had been made as early as Dec. 8. No explanation for this inordinate delay had been furnished. Indeed, the two documents were written evidence of the close collaboration between Mr. Arora and Mr. Harpal Singh in the whole matter. As a result of all these considerations His Lordship was filled with the most profound doubt about the commission of any theft at all. His Lordship said that the search witnesses did not inspire any confidence in the mind of the court and it would be most unsafe to base any conviction on their words. Since both the sub-inspector and the search witnesses had been shown to be unworthy of credit, the court had no option but to disbelieve the allegation of the recovery of the arms concerned from the personal possession of the applicant. This conclusion completely knocked the bottom out of the prosecution case irrespective of what view one took on the question whether or not any theft had taken place at Mr. Arora's house.

His Lordship said that Mr. Arora's real grievance against the applicant was something else, but that for reasons best known to himself the matter had been twisted into the offence of theft and unlawful possession of arms. There was no credible evidence to sustain these charges, while the defects with which the prosecution bristled were so many that no reasonable person could entertain any suspicion against the applicant. The convictions and sentences of the applicant in both the cases were set aside.

NOTES

Deportation of Harry Bridges

Court Rejects Government's Plea

Ever since Mr. Harry Bridges, the famous Pacific Coast labour leader, organized a general strike in 1936, the U. S. Government is making attempts to deport him to his country of birth, Australia (vide p. ii : 187 of the BULLETIN), and the fourth attempt of the Government to have him deported ended in failure in a federal district court on 29th July.

After the Supreme Court in *Bridges v. Wixon*, 326 U. S. 135 (1945) declared his detention under deportation warrant illegal on the ground that Mr. Bridges' association with Communist groups consisted only in co-operation with these groups "to attain objectives which were wholly legitimate," he was prosecuted in 1950 on the charge that when Mr. Bridges acquired citizenship in 1945 he swore allegiance to the United States with mental reservations which made his oath fraudulent. The object of the Government was to cancel his certificate of naturalization and then to deport him as an alien. The Government succeeded too in the lower court, which convicted him of swearing falsely in his naturalization hearing that he was not a Communist, sentenced him to five years' imprisonment and stripped him of his citizenship. But again the Supreme Court intervened; it reversed the verdict of

the lower court on the ground that the three-year limit in the statute of limitations had expired before he was indicted.

Because the statute of limitations does not apply to deportation hearings, the Government made a fresh attempt to deport him on the same charge, but here too it was unsuccessful. The Federal Judge, Mr. Louis E. Goodman, ruled that the prosecution had not proved its charge that Mr. Bridges had been a member of the Communist Party before he naturalized and refused to deprive him of his United States citizenship.

The question of Mr. Bridges' affiliation with the Communist Party did not arise in this trial as in *Bridges v. Wixon*; the only issue of the trial was whether Mr. Bridges was a member of the Party "at the time of naturalization and prior thereto and whether at the same time he fraudulently concealed such membership from the Naturalization Court."

Judge Goodman remarked that because Mr. Bridges as an alien freely admitted association with members of the Communist party, it might have been better had citizenship been denied him because he lacked "the good moral character" required for naturalization. "But denaturalization is not a procedure for correcting errors of judgment in the naturalization process," the judge commented.

Cancellation of citizenship granted to Mr. Bridges, "after ten years of presumptively good and proper citizenship," would require the Government to produce evidence meeting "an exacting standard." It [the Government] did not meet this standard by the kind of witnesses it produced." The Judge said:

Only a weak yielding to extra-judicial clamour could excuse acceptance of the testimony of the witnesses in this case as proof of the allegations of the complaint. My conclusion is that the Government has failed, to prove the allegations of its complaint as to respondent's alleged membership in the Communist Party by clear and convincing evidence.

Eviction of Tenants from Public Housing

BECAUSE OF MEMBERSHIP OF SUBVERSIVE ORGANIZATIONS

Appeals Court Bars Such Eviction

Mr. John Rudder and his wife Doris were tenants in Lincoln Heights Dwellings, a low-cost housing project in Washington, constructed under the United States Housing Act of 1937, the object of which is to provide housing for persons of low income. They were threatened with eviction from the Dwellings because they refused to sign a so-called "certification of non-membership in a subversive organization," as required under the Gwinn amendment to the 1937 Act. This amendment, passed by Congress in July 1952, provides that no unit of federally aided low-cost housing "shall be occupied by a person who is a member of an organization designated as subversive by the

Attorney General." Since then, all old and new tenants of such housing have been required to sign "loyalty oaths" attesting to their non-membership in the listed organizations. The vast majority have signed and a few have not. The Rudders brought suit to restrain the Washington Housing Authority from evicting them on the ground that the Gwinn amendment was unconstitutional. The lower court ruled in favour of the Government. The Appeals Court on 21st July reversed this ruling.

In regard to the contention that, under the District of Columbia Code, a month-to-month tenancy, such as held by the Rudders, could be terminated on thirty days' notice and that the Code did not require that the reason for termination be given, the court said:

But these propositions do not decide the case. The Government as landlord is still the Government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law (of the Fourteenth Amendment which forbids that any person be deprived of life, liberty or property without due process of law). Arbitrary action is not due process.

The court noted that the Attorney General's list consisted of four types of proscribed organizations, "totalitarian, fascist, communist or subversive," of which subversive organizations were only one type and the consolidated list did not indicate that the Attorney General had designated any of the organizations named in the list as "subversive." Further, the list was intended for use in screening employees, "not tenants." Noting that the Rudders were not granted a hearing, the court said:

In our opinion the United States acted arbitrarily in undertaking to evict the Rudders. Their refusal to deny that they were members of any organization on the consolidated list was not proof that they were members. Even proof that they were members of e. g. a 'totalitarian' organization, knowing nothing of its character, would be an arbitrary ground for an administrative decision to evict them from public housing.

The court held that refusal to deny membership in a subversive organization was not ground for eviction from a Government housing project. The court did not rule on the constitutionality of the 1952 amendment. It held that the amendment "does not touch the case" because there was no showing that the Rudders were members in any of the organizations on the Attorney General's list.

Another Similar Judgment

The supreme court of Illinois handed down a similar decision some time ago in a case concerning two families in Chicago which were evicted from public housing because of their failure to submit to the loyalty oath required by the Chicago Housing Authority. Reversing the Municipal Court of Chicago, the supreme court held

that such failure "does not constitute justification for their eviction." The court said:

The purpose of public housing is to eradicate slums and provide housing for persons of low income, and the exclusion of otherwise qualified persons solely because of membership in groups designated as subversive has no tendency whatever to further such purpose.

The state housing act does not confer upon the local housing authority arbitrary discretion in the choice of tenants or the authority to prescribe conditions of eligibility.

Neither does the housing authority enjoy authority, under the Gwinn amendment, to require a certificate of non-membership in subversive organizations, because such a provision has no relation to the statutory purpose of the housing act.

The court based its finding largely on the U. S. Supreme Court decision in the Wieman case which held that an Oklahoma state oath offended due process because membership alone was in that case thought to be sufficient to disqualify a state employee from employment. In the instant case the court said:

It is clear that under the authority of the Wieman case, the present requirement violates due process of law and is void.

Full Judicial Review Available

IN ADMINISTRATIVE ORDERS OF DEPORTATION

In *Shaughnessy v. Pedreiro*, the Supreme Court held (31st March) that an alien against whom a deportation order was issued under the Immigration and Nationality Act of 1952 was entitled to a full judicial review of the order, though the Act provides that the deportation orders of the Attorney General should be "final," instead of a limited review on habeas corpus, because of the provisions of the Administrative Procedure Act of 1950 which authorizes review of deportation orders by "any appropriate method." The Court pointed out in its judgment that the history of the latter Act during its passage in Congress proved that it was the intention of the latter Act to provide for a liberal review of deportation orders. For when an amendment specifically making such a provision was moved in the House of Representatives, Mr. Walter, who was one of the two sponsors of both the Immigration and Administrative Procedure Acts, assured the House that the proposed amendment was not needed. He said:

Now we come to this question of the finality of the decision of the Attorney General. That language means that it is a final decision as far as the Administrative branch of the government is concerned, but it is not final in that it is not the last remedy the alien has. Sec. 10 of the Administrative Procedure Act is applicable.

The other sponsor of the two Acts, Senator McCarran, had said almost the same thing in the Senate. The Court therefore rejected the contention of the Government that

the finality provision of the Immigration Act "deprives deportees of all right of judicial review except by habeas corpus." It said:

Our holding is that there is a right of judicial review of deportation orders other than by habeas corpus and that the remedy sought here is an appropriate one.

U. S. A. Ratifies Geneva P. O. W. Code

After four years of executive delay the Senate of the United States on 6th July gave its unanimous approval to the four international conventions drafted at Geneva in 1949, which establish new standards of treatment for prisoners of war and civilian captives. The conventions represent an overhauling of The Hague convention of 1907 and the Geneva conventions of 1929 in the light of prisoner experiences during the Italian campaign against Ethiopia, the Spanish Civil War and World War II. The United States is the forty-eighth country to ratify the conventions. The Soviet Union did so last year. It is said that the Union is still holding thousands of German and Japanese prisoners of the last World War as slave labourers, though the conventions provide quick repatriation of prisoners after hostilities have ended.

No civilized nation can refuse to comply with the conventions which set an international standard of humane treatment both in respect of prisoners in uniform and civilian captives. As Senator Mansfield said at the Senate meeting, they were designed to "relieve mankind from the suffering and the physical and moral degradation which in the past have so often been experienced by the victims of war." The conventions were first submitted to the Senate in 1951 and the then Secretary of State urged "early and favourable consideration," pointing out that the United States had played an active role at Geneva in revising and extending the conventions. Action was delayed, however, by the outbreak of the Korean War, and an impetus was now given to ratification by the release by the Chinese Government on 31st May of four imprisoned United States airmen.

New York's Inform-or-Else Policy for Teachers

EDUCATION DEPARTMENT OPPOSES THE POLICY

On 17th March the Board of Education of New York City adopted by a 7 to 1 vote a resolution requiring teachers, when questioned about their former affiliation with the Communist Party, to divulge the names of party associates if directed to do so by the Superintendent of Education. They must inform on their colleagues if they wished to hold their jobs. Those who failed to disclose the identity of any teachers who "may be or may have been" members of the Communist Party or any allegedly subversive group, would be liable to dismissal on charges of unbecoming conduct and insubordination.

At hearings on this informing resolution, Dr. Clark Foreman, Director of the Emergency Civil Liberties Committee, said in his evidence:

How can the integrity of the schools be maintained by the destruction of the integrity of the teachers? . . . Throughout history, informers have been the most despised of human beings. . . . If the Board of Education insists upon the ruthless subordination of the individual to bureaucratic control, the Board itself will be doing more to promote authoritarianism and to destroy democratic freedom than the Communist Party could accomplish in a decade.

"Informers Wanted—Must Be Able to Teach" was the satirical headline of Mr. Alistair Cooke's front-page story in the "Manchester Guardian" on this resolution of America's largest school system. The New York Board of Education is the only public body in the United States which has established "the naming of names" as a condition of employment.

Immediately affected by the Board's new policy are 40 teachers who have refused to answer questions under oath and 18 others who have answered questions about themselves but refused to be informers. Action is being taken under the resolution, and some of the victims have appealed to the Education Department. One encouraging feature of this episode is that in one such appeal the State Education Commissioner expressed his opinion that boards of education did not have the power to force teachers to testify about Communist Party membership of their fellows. This statement places in serious question the legality of the policy adopted by the New York City board. It would thus appear that the State's egregious inquiries on Reds will be curbed by the department.

Implementation of Integrated Schooling

The Supreme Court on 31st May last sent back to the lower courts the five school segregation cases with instructions that the Negro plaintiffs be admitted "to public schools on a racially undiscriminatory basis with all deliberate speed," empowering the courts of original jurisdiction to review desegregation programmes in the light of local conditions and evidences of good faith.

Accordingly, the first case came up before a Federal circuit court in the Clarendon County in South Carolina and the court on 15th July enjoined the trustees of the Summerton schools in the County from refusing because of race to admit any child in any school in their jurisdiction. The injunction is not to become operative, however, until "necessary arrangements" have been made for the establishment of a school system free from racial discrimination. The court did not set a time limit for carrying out the order or prescribe the method in which it should be done. Nor did it approve a request for a specific order permitting segregation in schools for the 1955-56 school year. But it kept the case on its docket, so that appropriate orders might be issued hereafter if evidence is presented that the trustees are not proceeding in good faith to execute the order. The court said:

It (the Supreme Court) has not decided that the Federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend.

What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly. But if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches.

Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination.

It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation.

The Supreme Court has pointed out that the solution of the problem in accord with its decision is the primary responsibility of the school authorities and that the function of the courts is to determine whether action of the school authorities constitutes "good faith implementation of the governing constitutional principles."

A similar case arose in the Prince Edward County in Virginia with a similar ruling. In both counties there is a heavy Negro population, and the whites have declared their rigid opposition to any form of school desegregation.

Freedom Charter for South Africa

Black and white together would strive, sparing nothing of our strength and courage, until the democratic rights are won.

This was the pledge that was taken by nearly 3,000 delegates (mostly African) of the Congress of the People that meet in Johannesburg on 10th July. The Congress was sponsored by the African National Congress, the South African Indian Congress, the South African Coloured People's Organization and the Congress of Democrats. The Congress of the People adopted a Freedom Charter, which declared:

South Africa belongs to all who live in it, black and white, and no Government can justly claim authority unless it is based on the will of all the people.

Our people have been robbed of their birth-right to land, liberty and peace by a form of government founded on injustice and inequality. Our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities and therefore we the people of South

Africa, black and white together, pledge ourselves to strive together, sparing nothing of our strength and courage, until the democratic changes here set out have been won.

South Africa shall strive to maintain, world peace and the settlement of all international disputes by negotiation, not war; the right of the people of Africa to independence and self-government shall be recognized and shall be the basis of close co-operation.

Let all who love their people and their country say now, as we say here: These freedoms we will fight for, side by side, throughout our lives, until we have won our liberty.

Banning of Contraceptive Information

Two New England States—Connecticut and Massachusetts—have laws which make it illegal for a physician to prescribe contraceptives or to give contraceptive information to his patients. These are the only States in the U. S. which have enacted such restrictive laws.

At the annual meeting of the Planned Parenthood Federation of America in New York City, Mr. Malin, director of the American Civil Liberties Union, condemned these laws as violative of the civil liberties guarantees of the Federal Constitution. He said:

No one contends that Massachusetts and Connecticut must make Planned Parenthood services or information available to their citizens. But there is a civil liberty principle, embodied in the First and Fifth amendments in the Federal Constitution, that these states should not interfere with the right to disseminate information by adopting laws barring the use of contraceptives and the supplying of information about them.

Civil liberties, as such, are not for or against planned parenthood, but require equal defence of the free speech of those who crusade for and those who crusade against planned parenthood.

But, as the experience of the American Civil Liberties Union abundantly shows, the practical fact is that those who crusade for Planned Parenthood do not attempt to suppress the argument of those who crusade against it, while those who crusade against Planned Parenthood regularly attempt to suppress the argument of those who crusade for it.

There is no area of human existence about which freedom of inquiry and communication is more needed than the area of family life. America is uniquely fortunate in the heritage of freedoms affecting family life.

Japan's Supreme Court

Japan is undertaking what would appear to be a large-scale revision of her Constitution. One of the alterations it is proposed to make is that the Supreme Court of the nation be authorized, as is our own Supreme Court, to rule directly on the constitutionality of laws without requiring test cases to come up through lower courts.