

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Editorial Committee :
Prof. P. M. LIMAYE,
S. G. VAZE,

*Member and Joint
 Secretary respectively of
 the All-India Civil
 Liberties Council*

Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
 Office : Servants of India Society, Poona

Annual
 Subscription : Rs. 5
 Per issue : annas 8
including postage

No. 121

October 1959

Vol. 6 1959-60

PUBLIC SECURITY ACT OF MADHYA PRADESH A LAW OF PREVENTIVE JUSTICE

VI:5m2, N49 KO
 59208

The Madhya Pradesh legislature is about to pass a comprehensive Public Security Act after strenuous opposition to the measure on the part of all non-Congress groups. We in India are by no means strangers to such laws of preventive justice designed to prevent commission of crimes instead of punishing criminals after they are proved to have been guilty of committing them, as is the normal course of justice in all democratic countries. In war time posing an imminent threat to national security even democratic countries have sometimes to arm themselves with laws of, to use the phrase of the Chief Minister of the Madhya Pradesh, preventive jurisdiction, but they are strictly temporary, limited to the duration of the emergency. But in India they have almost come to be regarded as normal laws of the land. After the termination of World War II and after the attainment of independence, provincial Governments clamped such laws everywhere and continued them in operation after the need for them had demonstrably ceased. The All-India Civil Liberties Conference has been protesting against them year after year. The last session of the Conference held at Ambala in 1958 passed the following resolution in regard to them :

Most of the States in India still retain on their statute books Public Safety Acts conferring the widest power on the Executive to curtail the civil rights of citizens in various fields of activity. In Britain extraordinary power of this kind was assumed only in some of these fields during the last World War, but it was understood there that this power could be exercised only while the War lasted, and in fact it was surrendered, like the power to detain persons under Regulation 18-B, immediately after the termination of the War. In India, on the contrary, even more extensive power was taken under the Public Safety Acts in peace-time. There was no justification then to take this power, and there is much less justification now to hold on to it for more than ten years in succession. This Conference demands that all these special laws be repealed

forthwith so that the country would once again be governed under the ordinary law.

The excuse that the Madhya Pradesh Government trotted out for adopting such legislation was that the State was infested with gangsters and was face to face with an industrial upheaval with far-reaching consequences. But the truth is that it is wholly oblivious of the fact that legislation of this nature is subversive of the rule of law, to which every State with any pretension to democracy must sedulously adhere. A writer in the "Times of India" has well put the point :

The very concept of preventive laws is obnoxious to democracy. It is not as if other democratic countries are idyllic places of harmony ; they, too, have strikes, demonstrations and so on. There, too, meetings at times end with the breaking of heads. They, too, have their criminal gangs. But they never think of imposing restrictive orders which are preventive in nature and based not on offences actually committed but on the executive's suspicion that they may be committed.

History teaches us that democratic rights have to be won and that democracy presupposes certain material standards and moral values. We in this country may be said to have begun to win these rights when the Constitution ceased to be disfigured by the Article on preventive detention. Meanwhile the danger remains that a ruling party can impose a dictatorial regime by working strictly within the four corners of the Constitution as it exists.

The people too have now come to feel that they must put up with such special laws until the Government itself chooses to give them up. As the above writer says : " When they were first proposed, the public outcry against them was considerable, but the people have lost the battle and their democratic sensitivities have not advanced to a stage where they will keep up the fight."

—

There does not seem to be any particular reason why the Madhya Pradesh Government should have considered

it necessary to assume the drastic powers which the law confers on it. Dacoities have no doubt been rampant in the State for some time, but it is admitted that the gangs of dacoits have by now been largely broken up, and besides a great many of the provisions of the measure have not even a remote connection with this menace. The emergence in the near future of an industrialized society in the State, which is advanced as a reason for adopting the legislation, is too fantastic to lend any justification to the measure. The real reason seems to be that the region of the former Madhya Pradesh State, which has been added to the new State, was without any such law, the Madhya Pradesh Security Measures Act of 1950 having been given up, and the State Government apparently felt that while bringing this region under the jurisdiction of the Madhya Bharat Public Security Act 1953, the scope of the latter Act might as well be widened by inserting some additional provisions like those preventing access to what are called "protected places" and "protected areas." The new Act has consequently become more far-reaching than the corresponding law of any other State.

But in other respects it follows the usual pattern. It empowers the Government to impose restrictions on the movements of suspected persons; to control publication of newspapers and periodicals; to impose collective fines on the inhabitants in any area; to control meetings or processions; to requisition private property; to institute special courts for the trial of crimes in disturbed regions; etc. Each of these special powers to be brought into use at the sole discretion of the Executive should cause profound concern to all who have any feeling for civil liberties; and the cumulative effect of all these numerous powers together is to place the day-to-day life at the mercy of the officials. It is true that the measure is aimed only at the subversive elements of the population, but since misapplication of the Act cannot be checked by recourse to courts of law, no citizen can feel secure in the enjoyment of the civil rights to which he is entitled. As the "Statesmen" says, "There seems to be little the State Government or a district magistrate may not do under its provisions, and suspicion seems ground enough for unrestricted interference with individual liberty" — so extensive is the power taken. Except for this basic defect, however, the new Act is in no way worse than similar laws elsewhere. In fact, some procedural improvements have been introduced into it which tend somewhat to mitigate the harshness of the measure. For instance, the provision concerning restriction of movements enables the authorities to direct any person that he shall not be in any particular place or that he shall reside in such place or that he shall notify his movements to an official, and so forth. While these restrictive orders are of a sweeping nature, the Madhya Pradesh Act provides that the orders can be passed only by the State Government, and not by a district magistrate as in other States. A district magistrate can initially pass such an order, but he is required to send

a report about it to the State Government within four days, and the latter is required within fifteen days thereafter to examine the report, so that if the district magistrate's order is allowed to stand, the order really becomes the order of the State Government itself. Such a check on the district authorities is not provided in the laws of other States. Similarly, the Madhya Pradesh Act sets up an Advisory Committee under the chairmanship of a sitting or a retired judge of the High Court to examine the grounds on which an order restricting the movements is based, and it is provided that, as in the case of preventive detention, the State Government shall cancel the restrictive order if the Advisory Committee finds that there is no sufficient cause for making the order. It is true that no such Advisory Committee can take the place of a court of law, for in *V. G. Row's* case involving the Criminal Law Amendment Act the Supreme Court roundly declared :

The formula of subjective satisfaction of the Government or its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights.

But we have travelled far backwards in the matter of judicial decisions and the restrictions held some ten years to be constitutionally invalid will now be allowed to stand. Even so, however, the Advisory Committee provided for in the Madhya Pradesh Act is a sort of safeguard which is lacking in the Security Acts of other States.

The Opposition groups in the Madhya Pradesh legislature, attacking the measure on constitutional grounds confidently expected that the Supreme Court would declare it null and void, and they had in view particularly the provisions empowering the Government on the basis of its subjective satisfaction to prohibit publication of local newspapers or to ban the entry of outside newspapers into the Madhya Pradesh State. But such confidence is wholly misplaced, particularly after the judgment of the Supreme Court in the case of *Virendra v. the State of Punjab*. In this case the Court upheld the validity of the Punjab Press Act vesting similar powers on the Executive and in doing so laid down the far-reaching proposition that "the conferment of such wide powers to be exercised on the subjective satisfaction of the Government or its delegate as to the necessity for its existence... cannot be regarded as anything but the imposition of permissible reasonable restrictions." And the only qualification the Court made, in order to invest the measure with constitutional validity, was that the law should provide an opportunity to the newspaper concerned to approach the Government with a representation that it may in its goodness reconsider the prohibitory order

(it is to be a representation to, in the words of the 'Statesman,' "a party that is already 'satisfied'"), and that the prohibitory order itself should not be of unlimited duration. The Madhya Pradesh Government has taken care to provide these safeguards which the Supreme Court considered to be adequate. It has moreover inserted a provision enabling any person aggrieved by the prohibitory order to apply to the High Court to cancel the order. Why should the Government then feel any apprehension that any order of suppression of publication or prohibition of importation, extremely grave as these matters are, would be held to be beyond its constitutional competence?

It is hardly any use blaming the Madhya Pradesh Government for not giving up, as several States have latterly done, preventive measures for the control of subversive activities and being content with the normal processes of law. We would instead blame the Union Government for not checking the State Governments in the matter of legislation which lays an axe at the root of most of the fundamental rights of citizens and particularly for refusing to interpose its authority where Freedom of the Press is involved. We mention this fundamental right in particular, because, as we stated in detail in the December 1957 number of the BULLETIN (vide p. v: 31), at the time when Art. 19 (2) was amended in 1951 and the scope of restrictions on the liberty of the press was enormously widened, the Union Government gave the following definite assurances :

(1) that no State would be allowed to adopt a law affecting freedom of the press which would be of greater severity than what the Union Government contemplated at the time, viz., C. R.'s Press Act ;

(ii) the Central Legislature alone would have authority to pass any law restricting the freedom of the press ; or at any rate

(iii) any State legislation on the subject would be reserved for approval of the President ; the Prime Minister, agreeing to this, said : " I go beyond that and if the House wishes I am perfectly willing to add that clause about the President's assent to Art. 19. "

Each of these assurances has been disregarded in the case of both the Punjab's Special Press Act and the provisions concerning control of publications in the present Madhya Bharat Public Security Act. It was specifically mentioned by the Deputy Home Minister in moving the latter bill that it was being introduced with the permission of the Central Government. Apologists of Government like Mr. Durga Das Basu make much of the fact that Rajaji's Press Act has been repealed. But what consolation could it be to the people if States go on merrily adding to their statute books, with the consent of the Union Government and the support of the Supreme Court's ruling, legislation not only about forfeiture of deposits as in Rajaji's Act but about pre-censorship, outright prohibition of publication of local newspapers and banning of the entry of outside newspapers into their territory ?

OFFER OF SELF-DETERMINATION TO ALGERIA

It is devoutly to be wished that the French President's offer to let Algerians decide their future by referendum and his recognition of their right to choose independence, hedged as it is with reservations and conditions, will open the path to freedom in peace and, as in Cyprus, end the war that has racked Algeria for nearly five years. On 16th September General de Gaulle announced a courageous and statesmanlike plan in which he proposed that the Algerian people finally determine their own political destiny by choosing either of three possible alternatives: (1) secession and independence; (2) complete assimilation and integration; and (3) internal autonomy of the federal type with close ties to France. He did not state categorically what Algeria's choice should be; but it is clear that in his opinion out and out "Francisation," such as the French settlers desire, is out of the question. For his own part he seems to favour a federal and autonomous Algeria connected by organic links with France, association with France and a regime like the one offered to and accepted by all but one, Guinea, of France's former colonies south of the Sahara which have now become semi-autonomous republics in the French community. Such a choice would mean "the government of Algerians by the Algerians,

backed up by the help of France and in close union with her for economic affairs, (higher) education, defence and foreign relations." The economic advantages for Algeria, which is without great natural resources, of maintaining links with France were thus stressed by the French Foreign Minister in the U. N. Assembly :

By itself Algeria cannot insure the subsistence of a population that is already too large and is increasing at an accelerated rate [the population doubles every thirty-five years]. Its economy has for a very long time, and by necessity, been closely interwoven with the economy of France. It finds the resources it lacks only by selling, on the French market, products that would have no outlet anywhere else ; by sending a large part of its gainfully employed population to earn a living in France ; and — thanks to the huge investments long granted by the latter — [France is currently devoting 200,000 million francs this year in public investments and civil administration] by the gradual development of its territory.

But it is hardly to be expected that the Algerian nationalists, locked in physical combat with the French forces five long years for independence will be content with anything less. In that case they are free to opt fo

independence, and France will accept that decision, though, according to de Gaulle, that would mean 'appalling poverty,' besides "abysmal political chaos." But if such be the Algerians' choice, they will be permitted to "separate themselves" from France. Then "they would organize, without her, the territories where they live, the resources they might have at their disposal, the government they want." Such an offer of independence no French statesman of lesser calibre than de Gaulle's could have made. He alone could dare to flout the wishes of the powerful European minority in Algeria. It was this minority, plus a part of the French Army, that rose up to topple the Fourth French Republic in May last year, when Premier Pierre Pflimlin was merely suspected of the intention of seeking a negotiated peace. France has been carrying out a policy of decolonization in her African territories and offering independence to them, but the presence of a million Europeans, who have settled in Algeria often for as long as five or six generations, makes the solution of the Algerian problem far more difficult than elsewhere, and obviously the solution must be somewhat different, as Britain has to evolve a different solution for Central Africa from that for Ghana, for instance.

The promise of independence is subject to two qualifications. One is that the petroleum resources of the Sahara would remain in French hands, as this wealth 'is the result of French efforts and of interest to the western world as a whole.' Another is that if the vote was for independence, those Algerians, whether Muslim or French, who would wish to remain French would do so, and France would arrange for their regrouping and resettlement. Whether this means setting up of French enclaves in Algeria or repatriation of the French "colons," one cannot say. However, even the possibility of partition along the lines of a Palestine settlement the Algerian nationalists will bitterly resent. "But," as the "Times" says, "to mention partition is only to state the obvious. It would happen anyway. To provide for it to happen legally is the least that can be done to sugar the pill of possible secession for public opinion in metropolitan France, let alone for European opinion in Algeria. And it has to be remembered that modern North Africa is a French creation." The referendum on the basis of a common roll, which insures to the Moslem population the great majority of the votes and of the candidates elected," is to be held within a maximum period of four years after the restoration of peace. This interval would be devoted to the effacement of the present bitterness and to "restoring normal life, emptying the internment camps and prisons, letting exiles return, re-establishing individual and public liberties and permitting the population to have a full awareness of the stakes." And to insure exercise of a free choice de Gaulle said he would invite foreign observers to come and watch the referendum. The effective return of peace, which in

the plan is made a pre-condition of self-determination, is defined in too narrow a way. What obviously is meant is that there will be a virtual cessation of the war. But, on the other hand, it is to be remembered that de Gaulle does not call for a capitulation, which would have so hurt the pride of the rebel leaders as to lead them to reject the offer summarily. The difficulty with de Gaulle is that he cannot leave the deep-rooted sentiments of the die-hards in the French Army altogether out of account.

If de Gaulle has these fire-eaters to consider, so have the National Liberation Front (F. L. N.) leaders and members of the Provisional Government to consider their own fire-eaters. And it took the Provisional Government of Algeria more than a week to decide what its reply to the French plan shall be. "A majority of the Algerian ministers are more like officials than leaders. The real power over the insurgent units is held by their commanders in the field," and Mr. Ferhat Abbas does not command the support of extremists among them. As the "Statesman" says, "There are hot-heads in the F. L. N. too, and they have in the past made themselves heard—through bullets, which are now allegedly promised in larger quantities by China." Considering this factor, the response of the Provisional Government must be regarded as encouraging. It noted that General de Gaulle had "solemnly recognized" the right of Algerians to self-determination. "It constitutes," the Government's communique said, "a democratic and pacific means by which the Algerian people can achieve national independence." It of course rejected the suggestion of a possible partition of Algeria and declared that the operation of the Sahara oil wells could not confer on France a right to treat these resources as her "vested property," but said that the oil wells could be an object of "broad and fruitful co-operation." The communique said that the Provisional Government "is ready to enter into pour-parlers with the French Government (the word "negotiations" was carefully avoided because of its diplomatic implication of recognition which de Gaulle had excluded) to "discuss the political and military conditions of a cease-fire and the conditions and guarantees of the application of self-determination." In the opinion of neutral observers, the Algerian response was perhaps as great an advance from the previous intransigent nationalist position as was General de Gaulle's plan from the previous French governmental position. And the observers believe that although the two sides are still far apart, the door remains open for a possible understanding. It is hoped that, in spite of the fact that the de Gaulle offer is cast in a "take or leave it" form, means would still be found for private negotiations which would lead to a settlement.

Negroes' Right to Vote

Civil Rights Commission's Recommendations

The Civil Rights Commission created under the Civil Rights Act of 1957 has, as required by the Act, submitted a report, before its term expired at the end of October (its life has since been extended by two more years), on its investigations into complaints that racial discrimination had kept Negroes from voting and has made recommendations for Congress action to end such discrimination. So far as constitutional and statutory provisions are concerned, they are such as should afford complete protection to the black population. The Fifteenth Amendment, adopted in 1870, provides against abridgment of the right to vote either by the Union or the States because of race or colour. A law was thereafter adopted for punishment of persons interfering with the exercise of the right by intimidation and other means, and the law was upheld by the Supreme Court in the *Ku-Klux* cases, 110 U. S. 657 (1884), in which a Negro citizen was intimidated in the matter of his right to vote. In *United States v. Mosley*, 238 U. S. 383 (1915), the Court held the statute applicable to fraud as well as to violence in elections.

In spite of all this legal apparatus, however, the commission says, "Many Negro American citizens find it difficult, and often impossible, to vote. There exists here a striking gap between our principles and our every-day practices. This is a moral gap," which requires to be closed. The commission found that only 25 per cent. of the Negroes of voting age in the South, who number almost five million, are registered and actually eligible to vote, compared with more than 60 per cent. of the voting-age whites. But even these figures do not give an adequate picture of the actual disfranchisement of the Southern Negroes. In backward regions with a high percentage of Negroes in the population, the disparity is much greater. Thus, out of the 158 counties in the South where Negroes are a majority of the population—almost all rural counties—sixteen have not a single Negro voter, and in forty-nine others fewer than 5 per cent. of the voting-age Negroes are registered. Access to the franchise is denied to Negroes, according to the Commission, through the use of violence, economic coercion, intimidation, subterfuge and dilatory tactics, and on technical grounds. As for economic coercion, the report tells of wholesalers refusing deliveries to Negro merchants who tried to vote, of loans refused, mortgages foreclosed. One Negro in the hauling business told the commission's investigators that he lost all his customers after he registered to vote. The report concluded:

Against the prejudice of registrars of voters, the United States Government appears under present laws to be helpless to make good the guarantees of the Constitution.

The most important single conclusion voters, by the commission from its investigations is that law suits case-

by-case are a feeble, perhaps hopeless, weapon against the whites' resistance to Negro voting, and the most important recommendation it has made to overcome this resistance is that the President should appoint temporary federal registrars whenever state officials are found to have prevented Negroes from voting. The federal registrar would register anyone eligible under state law to take part in federal elections, and he would remain on the job until the President found that the state officials would act fairly. Another cause which robs the Negro of his right to vote is failure of boards of registrars to function for long periods or to function for such limited periods of time that it becomes impossible for most citizens to register. To meet this evil of evasion, the commission calls for power being conferred on it to bring injunction suits in the federal courts to compel action by registrars.

The chairman of the commission, Mr. Hannah, and another member have recommended the adoption of a constitutional amendment for the purpose of removing the literacy qualification which is in force in some states. Alabama, for instance, in 1946 adopted a law under which voters would be required to "understand and explain" the state constitution. Such tests make it possible for states to bar Negroes from voting by administrative action. As the President's Committee on Civil Rights of 1947 said: "Exclusion by this kind of device is a familiar Southern phenomenon. The tradition is to ignore such tests with respect to white voters but to apply them to Negroes—literally, where there is any possibility of eliminating them under the tests; fraudulently, where they meet the tests." The present commission's members responsible for the recommendation say: "It appears to be impossible to enforce an impartial administration of the literacy tests now in force in some states, for where there is a will to discriminate these tests provide the way."

COMMENTS

Suppression of the Tibetan People

"NEW COLONIALISM" REPROBATED BY MALAYA

While India is anxious to bury the most urgent international problem of Tibet in a mass of legal technicalities, Malaya, another Asiatic country, boldly referred to this matter in the general debate in the U. N. Assembly. On 7th October the Foreign Minister of Malaya, Dr. Ismail, drew the attention of the Assembly to the colonialism that was "still rampant in our area of the world." He said:

While considerable progress had been made in freeing nations, we have become increasingly aware of a new and more devilish and sinister form of colonialism.

The Dalai Lama's journey to seek refuge in India, because of his devotion to the cause of freedom and liberty for his people in Tibet, has aroused the sympathy of all freedom-loving peoples the world over.

We are all aware of his desperate appeal to the United Nations.

Why has there been disturbance in the peaceful life of a country like Tibet, a country where men do not ask for much but merely the liberty to live in peace and the serenity which they have long had, preserving their right to worship as they please? Yet to-day those men of religion who practise and believe in peace are fighting for that peace and freedom they hold so dear.

While most of the countries in Asia which had been under the domination of Western colonial rule have achieved their independence, we are witnessing a ruthless suppression of the heroic Tibetan people. But what is happening in Tibet is not new. We have seen the same pattern of suppression in Hungary, and elsewhere.

Tibet in the U. N.

The Steering Committee of the U. N. General Assembly has voted to inscribe the Tibetan problem on its agenda, and the General Assembly itself has voted to keep it there. A debate will therefore be raised on a resolution of which Ireland and Malaya have given notice. In order not to offend India which holds that Tibet is part of China and that the Assembly should not take up the question of Chinese aggression in Tibet, the sponsoring countries have dropped all mention of the suppression of Tibet's political independence by China and are contenting themselves with condemning the crimes against humanity which the Peking Government has perpetrated in Tibet; that is to say, they will bring a charge of breach of the genocide convention against China. It is of course clear that even if the U. N. were to vote China an aggressor, it could take no concrete action such as sending an expeditionary force to compel the Chinese to vacate their aggression; it could only censure Peking as it censured Moscow for aggression against Hungary three years ago. But India sees no use in publicly reprobating Chinese actions in Tibet; in fact, she considers such condemnation undesirable. It is clear that her attitude is dominated by Chinese incursions into the Indian territory. Seeing that the mere giving of asylum to the spiritual and temporal ruler of Tibet has caused these incursions, Delhi is doing all it can to placate China. It no doubt says that it cannot put up with Chinese aggression against India, but is going to make no attempt to recover the Indian outposts which the Chinese have already captured; all it says is that it will resist any further aggression. It also perseveres in its attempt to seat Communist China in the U. N. in complete oblivion of the numerous

aggressions that it has committed since coming into power. Ireland too is for admitting Red China into the U. N. but only on condition that she demonstrates that she will give up her expansionist policies. The Irish Foreign Minister made it clear that Ireland had no wish to add to India's difficulties with China and said that a debate on Tibet was being raised because Ireland did not believe that the U. N. Assembly's reaffirmation of the basic principle of human rights in Tibet would increase the difficulties of India or of any other member State. Yet India persists in doing all it can to keep the Tibetan issue out of the world organization.

India's "Negative" Policy on Tibet

CONDEMNED BY THE PRAJA-SOCIALIST PARTY

The National Executive of the Praja-Socialist Party on 13th October condemned India's non-participation in the United Nations on the question of including the Tibetan issue on the agenda of the world body in the following resolution:

The National Executive of the Praja-Socialist Party deplores the non-participation of India on the question of inscribing the Tibetan issue on the agenda of the United Nations. The resolution sponsored by Ireland and Malaya raises the question of violation of Human Rights in Tibet on which surely no civilized nation would abstain. The Executive regrets to point out non-participation by the Indian delegation does not represent the opinion of the Indian nation. The Executive is surprised at the argument advanced by the leader of the Indian delegation that discussion of Tibet would mean involvement in the cold war. The Executive would like to point out that the Tibetan people are victims of a shooting war, and our own country faces aggression from China.

Though the Executive has always supported admission of People's China in U. N. O., in its opinion its absence cannot be pleaded as an excuse for dropping the Tibetan issue. The negative stand taken by the Indian delegation runs counter to the policy adopted by the Government of India on the issue of violation of human rights in South Africa and elsewhere. If the safeguarding of human rights anywhere, particularly affecting the personality of a small nation, is subordinated to claims of diplomacy and power politics, civilization will be a casualty.

The deplorable attitude of the Government has brought wavering in the ranks of Asian nations and weakened the cause of the Tibetan people who have received massive sympathy from the peoples of Asia.

The Executive hopes that the Indian delegation will be instructed to support the resolution when it comes up before the U. N. General Assembly.

Kashmir's Public Security Act**STRONG OPPOSITION IN THE ASSEMBLY**

The legislature of Kashmir last month passed into law the ordinance promulgated earlier extending the life of the Public Security Act and the Preventive Detention Act by another five years. To the bill proposing such extension, however, the Opposition parties — the Democratic National Conference and Praja Parishad — offered strong resistance. Members of the ruling party — the National Conference — pleaded that as enemies of the State were still active, there was need for continuance of these measures, and the Prime Minister of the State, Bakshi Ghulam Mohammed, stated that the Central Government had concurred in the extension. But the Opposition attacked the bill chiefly on the ground that even if extraordinary legislation was required, it need not be more repressive than similar legislation in force in the rest of India. The critics pointed out, for instance, that in the Kashmir law of preventive detention no grounds were required to be given to a detenu and the maximum period of detention could extend to five years whereas in the rest of India a limit of one year was put on the duration of detentions. Similarly, it was pointed out, that, unlike the practice obtaining in other parts of the country, the power to decide about the reasonableness of restrictions imposed on freedom of speech and assembly in the State of Kashmir was vested in the State legislature and excluded from the jurisdiction of the courts. This showed, the Opposition urged, that civil liberties occupied a lower status in the Kashmir State than in India in general. To these criticisms the Government did not vouchsafe any reply.

Pakistan Press Commission's Report**CONDEMNED BY NEWSPAPER EDITORS' COUNCIL**

The recommendation of the Press Commission of Pakistan (to which we referred last month) for the retention of restrictive press laws has been strongly condemned by the Standing Committee of the Council of Pakistan Newspaper Editors. The "dangerous" powers sought to be given to the Central and Provincial Governments to reject declarations by intending publishers of newspapers for want of adequate resources have met with much criticism at the hands of the committee. It says: "Financial restrictions on intending publishers would make it virtually impossible for any except the very rich to start newspapers and the power of the Press with its essential functions of expressing and moulding public opinion would tend to be concentrated in the hands of the monied classes. Real talent with a sense of mission, particularly in a country where the national press has grown from humble beginnings, would be denied opportunity." Similar is the spirit of the committee's criticism with regard to the fixation of emoluments for working journalists. Recognizing that better working conditions are needed for journalists, the committee expresses apprehension that not many news-

papers might be able to stand the burden which the Commission's recommendation in this regard would throw on the managements.

We had missed in our comments a recommendation of the Commission concerning the changes proposed in the law of defamation. The "Statesman" gives the following account of the way in which the standing committee of the Newspaper Editors' Council dealt with this matter:

The proposed amendments to the law of defamation by shifting the onus of proof from the complainant to the accused and particularly the denial of the right of cross-examination of the person allegedly defamed has also been criticized in the resolution. The committee, while not endorsing attacks on character, feels that the proposed amendments would make it highly risky even for honest newspapers to expose corrupt people or to ensure legitimate ventilation of grievances through their correspondence columns. The rights allowed to the accused in general should not be denied to newspapers or journalists.

Revival of the "Save Hindi" Agitation

The Punjab Hindi Raksha Samiti has decided to resume from 27th December the "Save Hindi" agitation which had been suspended on that day two years ago. The Samiti's contention is that the movement was suspended on assurances forthcoming from the Government that a satisfactory solution would be found for the linguistic controversy, but the Government had done nothing to carry out the assurance. On the other hand, the Government had declared that there was no language problem at all in the State and that nothing required to be done. In the view of the Samiti the Government's hostility to Hindi and intention to use compulsion in favour of Gurumukhi were fully demonstrated by the fact that it had not published voters' lists in Hindi along with Gurmukhi, though the leaders of the movement had received an assurance to that effect.

The "Save Hindi" movement was one of the most vigorous movements conducted recently in any part of the country. There were over 12,000 men and women in jail when it was suspended on 27th December 1957, and "thousands of others were ready to court arrest." The Samiti has declared that unless the injustice was removed in the meanwhile, it would undergo a similar ordeal of sufferings and sacrifices "in order to obtain a rightful place for Hindi" in the Punjab. If the movement comes to be resumed, we may look for banning of outside newspapers supporting the movement from entering the State and prohibition of publication of any comments in the State itself if such comments favour the movement. The State has on its statute book a law permitting the Executive to do so, and the Supreme Court has upheld the validity of the law, taking up the position, in the words of a "Times of India" writer, that "the determination of an emergency and the imposition of restrictions must be left to the subjective satisfaction of the Government."

Confession by the Accused
COMMENTS ON THE ALLAHABAD HIGH COURT'S
RULING

Mr. C. Rajagopalachari recently characterized the Allahabad High Court's full bench judgment invalidating sec. 27 of the Indian Evidence Act as contrary to Art. 14 (reported last month at p. v: 278) as "a strange ruling." Supporting this description, the "Statesman" writes editorially as follows:

It had been argued before a Full Bench that sec. 27 of the Indian Evidence Act was ultra vires of (Art. 14 of) the Constitution, and this was upheld. The former makes confessions by an accused in police custody inadmissible as evidence; and the latter guarantees equality before the law. The connexion, let alone contradiction, between the two is not immediately obvious; and a clearer pronouncement on the question seems indicated for, going by the reported summary of the judgment, the very necessary protection sec. 27 provides to persons held by the police has been thrown into doubt. It is not at all clear that to recognize the valid distinction between "persons in custody" and "persons out of custody" is to discriminate, offending Art. 14. Sec. 27 affords the same kind of protection as the Fifth Amendment in the U. S. Constitution, and a very necessary protection it is. The Law Commission thought "the reasons which have led to the laying down of the rules are equally valid today." M. Alleg's "The Question" angered Paris because it related to Algeria, but every democracy views police methods of inquiry (which, of course, vary) with misgivings and so has safeguards.

KASHMIR ENEMY AGENTS ORDINANCE

Supreme Court Upholds Validity

The Supreme Court by a judgment delivered on 10th September by Mr. Justice Wanchoo upheld the constitutional validity of the Enemy Agents Ordinance, 1949, promulgated by the ruler of Jammu and Kashmir with the object of providing for the trial and punishment of enemy agents.

The State of Jammu and Kashmir was attacked by raiders in 1947 and in order to deal with persons found to be assisting the enemy, the Enemy Agents Ordinance was promulgated. The preamble to the Ordinance says that an emergency had arisen as a result of wanton attacks by raiders which made it necessary to provide for the trial and punishment of enemy agents. The Ordinance defines "enemy agents" and provides for the trial and punishment of offenders falling within that definition. The procedure under the Ordinance for the trial of offences is materially different from the ordinary procedure of criminal courts.

The appellants had challenged the validity of the Ordinance before the High Court of Jammu and Kashmir and asked the Court to quash their prosecution which was pending before the Special Judge for various offences under the Ordinance. This petition was dismissed by the High Court but at the same time the High Court granted the appellants a certificate for leave to appeal to the Supreme Court. Before the Supreme Court the appellants challenged the validity of the Ordinance on the ground that it violated Art. 14 as it was discriminatory and further urged that the ruler of Jammu and Kashmir had no legislative power to enact it.

Considering the argument regarding the constitutional validity of the Ordinance, the Supreme Court observed that in order to pass the test of valid classification the law in question must be founded "on an intelligible differentia which distinguishes the persons that are grouped together and this differentia must have a rational relation to the object sought to be achieved by the statute in question." The Court held that the present Ordinance passed these tests and hence the contention based on Art. 14 of the Constitution must be rejected.

The Supreme Court also rejected the argument that the Ordinance was beyond the legislative competence of His Highness and stated that "in pith and substance, the Ordinance deals with public order and criminal law and procedure," and His Highness had competence to legislate on these subjects. The Court did not accept the argument that the Ordinance must be deemed to have lapsed as the conditions in the State had altered and there was no longer any emergency.

The appeal by Rehman Shagoo and others from the judgment of the High Court was accordingly dismissed.

FOREIGNERS ACT

Interpretation of "Foreigner"

At the Allahabad High Court Mr. Justice Desai on 15th September allowed a revision petition of Mohammed Hanif against the U. P. Government and acquitted him of a charge under sec. 14 of the Foreigners Act for contravention of Rule 7 of the Foreigners Order 1948.

The petitioner was sentenced to six months' rigorous imprisonment by the Judicial Officer of Muzaffarnagar. His appeal to the Additional Sessions Judge of Muzaffarnagar was dismissed.

His Lordship held that when the petitioner entered India in 1954 he did not enter as a foreigner according to the definition of "foreigner" in sec. 2 of the Foreigners Act, because he was a natural born British subject. Rule 7 of the Foreigners Order applied to any person who was a foreigner at the time of one's entry into India and not to a person who was not a foreigner at the time of entry but became one by a subsequent change of the law.

Under the amended definition of "foreigner" in the Foreigners Amendment Act 1957, a person who was not a citizen of India was a foreigner. Therefore, up to 1957 the petitioner was not a foreigner and was not governed by the Foreigners Order 1948.

His Lordship said Rule 7 required a foreigner to depart from India on the expiry of the period mentioned in the permit and not on the expiry of the period mentioned, if at all, in the visa. The period mentioned in the visa was irrelevant and no infringement of Rule 7 was committed by his not departing from India before the expiry of the period mentioned in the visa. It appeared the petitioner was born in British India and was employed in the Indian Army. After partition he went to Karachi with his platoon and came back to India with a passport obtained as a Pakistani national in 1954. He did not depart from India after the expiry of the period of the visa and was prosecuted.

INDUSTRIAL DISPUTES ACT

Compensation for Workmen Laid Off

INTERPRETATION OF SEC. 25C OF THE ACT

The appeal by the Associated Cement Company Ltd., Jhinkpani, against its workmen from the award of the Industrial Tribunal, Bihar, awarding the payment of compensation for the lay-off to the workmen was allowed by a judgment of the Supreme Court delivered by Mr. Justice S. K. Das on 13th September.

The principal issue raised before the Supreme Court involved the construction of the provisions governing the payment of compensation under sec. 25C of the Industrial Disputes Act to workmen who are laid off. Under this section read with sec. 25E of the Act all workmen who are laid off by the employer are entitled to compensation for the period they are kept out of work, unless the lay-off is a result or a strike or a slow down in any other part of the same establishment.

In the present case the Associated Cement Company owned a factory at Chaibasa in Bihar and a lime quarry which supplied raw material to the factory at Rajanka. There was a strike by the workmen of the quarry and as a result of the stoppage of the supply of the raw materials required for the manufacture of cement the factory laid off several workmen from March 1, 1955, to July 4, 1955. The workmen who had been laid off demanded compensation for the period of lay-off in terms of the Act and this demand was referred for adjudication to the Industrial Tribunal by the Bihar Government.

The Tribunal gave its award in favour of the workmen, whereupon the Company obtained special leave to appeal to the Supreme Court. The Company urged in support of its appeal that the Industrial Tribunal had misconstrued the provisions of sec. 25C read with sec. 25E and had come to the erroneous decision that the quarry and the factory formed two separate establishments. The Company urged that both these units formed one establishment and since workmen who were laid off

in any unit of an establishment as a result of a strike in an other section or unit of the same establishment were not entitled to compensation under the Act, the Tribunal was wrong in awarding compensation.

The central point of controversy between the parties was "whether the lay-off in certain sections of the Chaibasa Cement Works was due to a strike on the part of workmen in another part of the same establishment;" in other words, "was the limestone quarry at Rajanka a part of the establishment known as the Chaibasa Cement Works"? It was contended by the Company that they formed one establishment whereas the Industrial Tribunal and the workmen took the view that they formed separate establishments.

The Supreme Court, examining these contentions and the true import of the term "establishment" in the Industrial Disputes Act, observed that no hard and fast rule or test could be devised to determine whether any two or more units comprised one or separate establishments. In the view of the Court it would be necessary to examine in each case the relationship between the units, taking into consideration: "(1) ownership; (2) control and supervision; (3) finance; (4) management and employment; (5) geographical proximity; and (6) general unity of purpose and functional integrality." A consideration of these factors would be the basis of deciding whether the different units could be considered as parts of a single establishment.

The Supreme Court held on an examination of the evidence that in the present appeal the two units when considered in their true relationship constituted one integrated whole and consequently they formed one establishment for the purpose of sec. 25C. Consequently the award of the Tribunal was set aside and the workmen's claim to lay-off compensation under the Industrial Disputes Act was disallowed.

Stay-in-Strikes and Right to Reinstatement SUPREME COURT'S RULING

The Supreme Court had occasion recently to consider the important proposition whether a stay-in-strike is a strike within the meaning of the term "strike" as defined in the Industrial Disputes Act and whether mere participation in an illegal stay-in-strike would disentitle workmen from claiming the relief of reinstatement.

The circumstances of the case before the Court were as follows. During 1950-51 there were several differences between the Punjab National Bank and its workmen regarding their conditions of service. While relations were thus strained, the Secretary of the Delhi Branch of the Union of the employees of the Bank was suspended for absence without obtaining leave. This led to a strike by the workmen at Delhi and there were strikes in other Branches of the Bank also. The Labour Department of the Government of India intervened in the ensuing dispute and ultimately the Bank agreed to take back into their service all but 150 of the striking employees. The case of these 150 employees was referred for adjudication to the Industrial Tribunal. The Tribunal rejected the claim of the dismissed workmen for reinstatement, which was put forward on the ground that their dismissal amounted to victimization, but it granted compensation in certain cases. Appeals were made by both parties to the Labour Appellate Tribunal, which considered it necessary to record evidence on the part played by a workman in the strike in order to determine whether he

merited dismissal. Evidence was accordingly recorded and the Appellate Tribunal held that 136 workmen were entitled to reinstatement and that the remaining 14 were rightly dismissed by the Bank.

From these orders appeals were filed in the Supreme Court by both parties, and the Court delivered its judgment on 24th September. It examined the history of trade union legislation in the U. K. and in India and felt that in the present case the statutory provisions governing strikes provided a safer answer to the question whether a pen-down strike was within the definition of "strike" in the Industrial Disputes Act. And it said:

Thus considered, the conclusion is inevitable that a pen-down strike is a strike within sec. 2 (Q) of the Industrial Disputes Act and so per se it cannot be treated as illegal . . . and, as has been held by the Court in Messrs. Burn & Co. Ltd., mere participation in such an illegal strike cannot necessarily involve the rejection of the strikers' claim for reinstatement.

The Court rejected appeals by both parties, except that the claim of one of the 14 dismissed employees for reinstatement was accepted on the ground that he was erroneously included in the list of dismissed workmen.

CRIMINAL LAW

Statement of Accused HELD TO BE NOT A CONFESSION

The conviction of Om Prakash by the Allahabad High Court was set aside by the Supreme Court by a judgment delivered on 15th September on the ground that the High Court had wrongly used the statement of the appellant as a confession of his guilt while in fact it could at most be described as suggesting the inference that he committed the crime.

The appellant was prosecuted before the Special Judge of Bulandshahr for allegedly bribing a public servant to obtain the issue of fictitious permits for bricks. The Special Judge convicted the accused under sec. 165-A, I. P. C., for abetting the offence of bribery and sentenced him to four years' imprisonment. The accused filed an appeal before the High Court and contended that he could not be convicted under sec. 165-A, which had been enacted in 1952 for an offence alleged to have been committed by him in December 1948.

The High Court upheld this contention but nonetheless held that the crime of abetment of bribing a public servant had been established and his conviction could be sustained under sec. 161 I. P. C., read with sec. 109. The High Court supported the conviction on the basis of two documents which, according to it, amounted to a confession of guilt by the accused. The appellant challenged the judgment of the High Court before the Supreme Court and submitted that the High Court had taken an erroneous view of the documents in question.

The Supreme Court examined the documents and stated that the tests for determining whether a statement amounted to a confession of guilt had been laid down by the Privy Council. In the view of the Court a conviction could be based on a confession if the offence was

admitted in terms or if "at any rate, substantially all the facts which constitute the offence" are admitted. In the present case the Court felt that the documents did not amount to a confession of guilt and hence the conviction of the appellant could not be sustained.

RIGHTS OF GOVERNMENT SERVANTS

Dismissal of a State Employee Voided

UNION GOVERNMENT'S APPEAL DISMISSED

An appeal filed by the Union of India against the judgment of the Subordinate Judge, Dehli, declaring the dismissal of Mr. Ram Rakha Sharma from service as bad was rejected by a division bench of the Punjab High Court on 3rd October.

The respondent was serving as a clerk in the Estate Office, Delhi. On a complaint of Mr. Prabhu Dayal of Royal Stores that the respondent had illegally demanded a commission on the purchases made from them by the department the respondent was suspended from service in January, 1949. Subsequently he was reinstated and transferred to Simla. The respondent asked the department to give him permission to prosecute Mr. Prabhu Dayal but it was refused. The respondent thereupon made several representations to the higher authorities.

In May 1950 the respondent filed a suit against the Union of India and the Estate Officer for the recovery of damages on account of his wrongful suspension. The suit was fixed for hearing on August 30, 1950, and the respondent applied for leave to attend court, which was refused by the Estate Officer. In September, 1950, the respondent was charged with submitting representations direct to the higher authorities, for using abusive and offensive language and for leaving Simla without permission.

The respondent denied the charges. The Estate Officer found him guilty of the charges levelled against him without holding an inquiry and in October 1950 the respondent was dismissed from service. Through a suit the respondent challenged the validity of the dismissal order. The trial court found that as no inquiry was held the provisions of Art. 311 of the Constitution of India had been violated. The dismissal order was held to be bad in law and the suit was consequently decreed with costs.

Dissatisfied with the judgment of the trial court, Government filed an appeal in the Circuit Bench of the Punjab High Court at Delhi. The appellant contended that as the respondent did not deny the facts on which the charges were based, no inquiry was needed.

Their Lordships, dismissing the appeal, held that the respondent had denied the charges and under the provisions of the Constitution of India, the respondent was entitled to be heard in person and to adduce the evidence in his favour.

As the appellant had failed to comply with the provisions of the Constitution of India, the order dismissing the respondent from service was bad in law.