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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## COURT OF HUMAN RIGHTS GETS INTO ACTION A CASE OF DETENTION WITHOUT TRIAL BEFORE IT

The European Court of Human Rights, which became effective last year, will have before it — this will be the first case it will hear — a case of detention without trial. This will be regarded everywhere as an epoch-making event in the field of international law and the guarantee of human rights, first because the Court is a supra-national tribunal competent to pass judgment on the actions of States otherwise sovereign in their own territories, and secondly because it is on the application of a private individual that the Court will consider the legality of his detention. And this is of particular interest to us in India where detention without trial is being enforced ever since a National Government came into power about a dozen years ago and where a bill is about to be introduced in Parliament to prolong the life of what was originally declared to be a temporary Preventive Detention Act.

The Court of Human Rights at Strasburg, the headquarters of the Council of Europe, may be regarded as the highest appellate authority under the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in 1950 by all the fifteen nations which are members of the Council of Europe. While the International Covenant on Human Rights was being worked out by the Human Rights Commission of the United Nations (and the Covenant is still in draft form), members of the Council of Europe went ahead and concluded their own Convention for the collective enforcement of human rights on a regional basis. They did so because they thought that since, as the Preamble to the Convention states, they "are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law," they could assume more effective commitments for the guarantee of human rights than it would be possible for the United Nations, comprising necessarily heterogeneous groups of nations, to assume on a world-wide basis. They could, it was thought, both define the rights to be

secured more precisely than the U. N. was doing and also lay down a better procedure for the protection of the rights — that is to say, provide a more effective machinery for consideration of complaints about breaches of those rights — than the U. N. was capable of doing. And it will be found that in both these respects the European Convention is superior to the International Covenant. We have already pointed out in a previous issue how several of the rights (and Freedom of the Person is one of them) are more closely defined in the Convention than in the Covenant. And it would be relevant on the present occasion to say what the provision in the Convention is in the matter of implementation of the rights in general.

*Implementation.*—The Convention provides for a Commission of Human Rights to which complaints of violations of the rights set forth in the Convention are submitted. The Commission then appoints a sub-commission with a view to "effecting a friendly settlement" of the dispute. If such a settlement is reached, then the matter ends there. But if a solution is not reached, the Commission submits a report to the Committee of Ministers, stating its opinion "as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention." The Committee of Ministers then decides by a majority of two-thirds whether there has been a violation of the Convention, and if its decision is in the affirmative indicates what measures the State concerned must take within a prescribed period. If the State does not take satisfactory measures within this period the Committee of Ministers decides "what effect shall be given to its original decision." And although the Convention provides that the States shall "undertake to regard as binding on them any decision which the Committee of Ministers may take," still the Committee of Ministers, as the "Guardian" says, "can only apply sanctions after a number of conciliatory moves have failed to produce a solution," and therefore "the Court of Human Rights was designed to supplant the tortuous and unsatisfactory procedure" of the

*As in previous years, the Indian Civil Liberties Bulletin is being issued this month as a joint May-June number. There will therefore be no separate number for June next month; the readers will get the next issue in July.*

Committee of Ministers. The Court takes charge of a case if the Commission refers a dispute to it ; and a duty is cast upon the Court " to afford just satisfaction to the injured party. " And it is provided that " the judgment of the Court shall be final. " However, the jurisdiction of the Court is subject to prior recognition by the State involved. Last year the number of member States which have declared their acceptance of the compulsory jurisdiction of the Court reached the total of eight, the minimum prescribed by the Convention, and therefore the Court was properly constituted only last year.

*Right of Individual Petition.* — As the Convention provides a better machinery for the observance of human rights than the Covenant, so it has also one other great advantage over the Covenant, in that it does not deal, like the Covenant, merely with inter-state disputes but recognizes the right of any person, non-governmental organization or group of individuals claiming to be the victim of a violation of human rights by any of the member States to bring the matter before the Commission ( or before the Court through the Commission ). This is, however, subject to the condition that the member State against which the complaint is lodged must have declared that it recognizes the competence of the Commission to receive such petitions. It is provided that at least six member States must have made such declarations. This condition about six accessions was fulfilled in 1955, and therefore the right of individual petition entered into force in that year. This right is of the greatest importance ; for it is rightly held, to use the language of the Commission, that " a guarantee which was restricted to inter-state disputes could not ensure full protection of democratic regimes, which was the essential purpose of the Convention. " ( The Preamble to the Convention declares that fundamental freedoms " are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend. "

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## 2.— Facts of the Case

The first human rights case of which the European Court of Human Rights was seised on 11th April ( and it is thought the case might involve a prolonged hearing ) concerns Mr. Gerard Lawless, a young Irish labourer, who was interned from July to December 1957 on suspicion of being a member of an illegal organization, the so-called Irish Republican Army.

A number of terrorist attacks on objectives in Northern Ireland had been made by the I. R. A. in 1957 and these were followed by a particularly serious incident on 7th July, when a patrol of the Royal Ulster Constabulary was ambushed at Forkhill, about 200 yards from the Eire border, and one constable, C. Gregg, was killed and another seriously wounded. The British

Government entered a protest against the Irish Republican Government because, as the Prime Minister Mr. Macmillan said, it had been established that those concerned in the ambush had escaped into Republican territory. Because of the threat to the security of the State proceeding from groups which, as Prime Minister de Valera said, " could assume powers of life and death and arrogate to themselves the right to make war at will, " and because of the embroilment of the Republic " with another country, " the Government of the Republic issued on 8th July a proclamation reviving the special powers available to it under the Offices against the State ( Amendment ) Act of 1940 to intern members of illegal organizations without trial. Several members of Sinn Fein were among those detained, but the Minister of Justice stated in regard to these that " no one had been arrested because of membership of the Sinn Fein organization, " and that " in all cases the reason for the arrest was that the individuals concerned were believed to be engaged in the activities of organizations attempting to maintain armed forces in contravention of the Constitution. " On 16th July an Appeals Commission was appointed, in accordance with the provisions of the Offences against the State Act, to hear appeals from internees against their continued detention. The Appeals Commission consisted of two judges, one of the Circuit Court and another of the Dublin Metropolitan Court, and an army officer. It was stated that the Commission would have access to any relevant information or documents in the possession of the Government, and, on receiving a written application from a detainee, would conduct its inquiry and present a report to the Government. If the Commission reported that there were no reasonable grounds for the continued detention of the applicant, the applicant concerned would be released. It was also stated that any internee who was prepared to sign a statement to the effect that he had severed all connexion with illegal organizations would be released without further inquiry.

Mr. Lawless was arrested and interned under the emergency regulations brought into force under the 1940 Act. He has been fighting a legal battle against the Republic of Ireland Government, claiming that his detention without charge or trial under an order of the Minister of Justice was illegal, but his claim was rejected by the Irish courts. Then last year he filed a petition with the European Commission of Human Rights ( Ireland having acceded to the Commission's jurisdiction ), complaining against his wrongful detention in violation of the Convention of Human Rights and seeking damages. The Commission ruled his petition admissible after an examination conducted by a sub-commission into the merits of the case. Mr. Lawless' case is that though he was detained under the so-called emergency regulations there was in fact no emergency

within the meaning of Art. 15 of the Convention justifying the detention. This Article provides :

In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from the obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

On Mr. Lawless' petition the Commission gave a majority opinion that there had been no violation of the Convention on the part of the Irish Government. But it has itself referred the case to the Court of Human Rights and has asked the Irish Government three questions " which will lie at the heart of the case to be considered by the Court " :

1. Why it was considered that a state of emergency was necessary in July 1957, although not a shot had been fired on the territory of the Republic.
2. Why it was decided that the ordinary courts of law were inadequate to deal with the situation considering that a couple of hundred prosecutions took place and there were only thirteen acquittals.
3. Why the emergency regulations were brought into force at that particular time.

These questions are highly relevant to the exception to the rule of Art. 5 of the Convention that " everyone has the right to liberty and security of person. "

The principal counsel for Mr. Lawless in the hearings before the Commission was Mr. Seam MacBride who, as Minister for External Affairs, signed the Convention in 1950 on behalf of the Irish Government, and very likely he will be the counsel in the hearings before the Court. Considerable interest is being taken by international lawyers in the case. The Court consists of fifteen judges, and a chamber of seven judges selected from these will consider the case. Lord McNair, a former President of the International Court of Justice at the Hague, has been elected President of the Court of Human Rights.

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### 3. — Eire's Detention Law — and Ours

That the Irish Republican Army's terrorist campaign offered a serious threat to Eire cannot be doubted. The question before the Court is whether the exigency created by the campaign was such as to warrant recourse to extraordinary legislation sanctioning detention without trial. Whatever the decision of the Court may be, the very fact that the Irish Republican Government is being called upon to adduce its justification is a matter of the greatest significance. This liability to be haled before a super-national court is one which the Government has voluntarily assumed. Eire's own Constitution of 1937 really places no check on the

Government's power of detention, for the Article in the Constitution relating to Personal Freedom — Art. 40 (2) — merely lays down that " no citizen shall be deprived of his personal liberty save in accordance with law, " and once a law permitting detention without trial is passed, the Article will be powerless to restrain the Government, just as Art. 21 of our Constitution, which uses almost the same phraseology as Art. 40 (2) of Eire's Constitution, affords no constitutional protection against preventive detention, however unjust or unnecessary such detention may actually be. Nor will Eire's accession to the U. N. Covenant when it becomes effective avail to protect the fundamental right of personal liberty against legislative infringement of the right, for the Article in the Covenant is modelled on and in fact borrowed from Art. 21 of the Indian Constitution.

It is Eire's voluntary accession to the compulsory jurisdiction of the European Court of Human Rights giving effect to the narrowly worded provision of the Convention about detention without trial which has at all given rise to the present litigation. And whatever the result of the litigation may be, there can be no doubt that the Irish Republican Government has shown a commendable regard for the citizens' personal liberty. The legislation which it has passed permitting detention without trial is no doubt permanent, but it is intended to be put into force only when there is a national emergency threatening the security of the State, unlike our Preventive Detention Act which, though every time said to be of a temporary duration, is kept alive all the time and is put into force and intended to be put into force in non-emergency situations. Eire's Act empowers the Government to detain members of illegal organizations, while the Indian Act is enforced against persons who may just be suspected of making the maintenance of public order difficult without endangering the safety of the State or even against ordinary bad characters like black-marketers. The scope of our Act is of the widest possible amplitude. Eire's law, like our law, provides that if the Appeals Commission set up to hear appeals from detainees comes to the conclusion that the detention seems unjustifiable the Government is required to set the detainee at liberty, but it gives to the Commission full information about the activities of the person detained, which is not the case in India. Whereas our law — and in fact our Constitution — authorizes the withholding of information considered by the detaining authority " to be against the public interest to disclose, " Eire's law casts upon the Government an explicit obligation to make available to the Commission all information which is in its possession without exception. The provision in this regard is as follows :

The Minister of Justice shall furnish to the Commission such information and documents ( relevant to the subject-matter of such inquiry ) in the possession or procurement of the Government or any Minister of State as shall be called for by the Commission.

The Governments in India make liberal use, too, of this power of withholding information, so much so that on one occasion the High Court of Bombay complained that "we are compelled to say that in almost every case we have felt that the grounds could have been ampler and fuller without any detriment to public interest." This restriction makes it impossible for the Advisory Boards in India to institute a searching inquiry into the causes of detention.

We have pointed out earlier how in several other respects the procedure laid down for the Advisory Boards is defective, and it is unnecessary to repeat it now. Eire's Act of 1940 does not suffer from any of these defects. The Irish case now before the Commission of Human Rights will attract worldwide attention, and in no country more keenly than in India.

## PREVENTIVE DETENTION IN MALAYA TO BE IN FORCE WITHOUT AN EMERGENCY

It is well known that ever since June 1948, when war on Communist terrorism began in Malaya, a state of emergency has existed in that country, driving the British Government then in control to use powers of preventive detention against the insurgents. The country won independence two and a half years ago, and the national Government now feels it is in a position to declare the emergency ended on 31st July, but it contends that subversive forces are still at large and to fight this continuing danger of subversion it is necessary that preventive detention should be made permanently legal and not dependent on there being an emergency. This requires a constitutional amendment to that effect to be passed by a two-thirds majority of both Houses of Parliament, and Tunku Abdul Rahman's Government proposed the necessary amendment and carried it in the House of Representatives on 25th April in spite of the persistent opposition of all the Opposition parties.

It was indeed an extremely tough job for the British Government to defeat the attack of the alien Chinese Communists who sought to overthrow constituted authority and disrupt rubber and tin production — Malaya produces almost half of the world's natural rubber and more than one-third of its tin. The number of insurgents was not particularly large — only about five to six thousand. But it was extremely difficult to put a stop to their depredations because they emerged suddenly from their mountain fastnesses for attack and disappeared again into the jungle, preying upon the many thousands of Chinese squatters living in isolated areas. They were well provided with arms, and if they suffered casualties at the hands of the security forces, the insurgents could always get enough recruits to replace their losses, and till 1952 the losses suffered by insurgents were fewer than those inflicted by them. All in all, the British had to enter on a long bitter struggle to smash the Communist attempt to seize power.

During the struggle the executive had to assume drastic extraordinary powers by means of emergency regulations. The most important of these was Regulation 17 D authorizing mass detentions and deportations. As the number of terrorist incidents became less, there was less need to have recourse to detentions. In August

1952 the regulation was used to detain some sixty inhabitants in a village and in the preceding three years it was used only three times. In 1953 the improvement in the situation was such that General Templer as High Commissioner could tell the Legislative Council that a stage had been reached when Regulation 17 D could be abolished.

The whole question of emergency regulations was examined by a commission which was appointed by the British Government when it decided to make Malaya independent — and the British Government thought it expedient to give independence when Communist terrorism had been largely brought under control but before it was completely eradicated. The commission headed by Lord Reid recommended in February 1957 that the existing emergency regulations should remain in force for a year longer, unless then renewed by the Malayan Parliament. But the commission further recommended that even after emergency had come to an end, the Federal Government should have special emergency powers, which could be assumed after the Head of State had issued a proclamation of emergency declaring that the security or economic life of the Federation was "threatened by war, external aggression or internal disturbances." In the event of threats of organized violence against persons or property, the Government would be empowered to take action regardless of constitutional limitations. No preventive detention should last longer than three months (this recommendation was modelled evidently upon a provision in India's Preventive Detention Act) unless an advisory body appointed by the Chief Justice found that there was sufficient justification for a longer period of detention.

We have not the text of the Malayan Constitution before us, but we assume that it embodied the recommendations of the Reid Commission on the subject of extraordinary powers, and the purport of the amending bill now introduced by the Malayan Government seems to be that a declaration of emergency would not be a pre-requisite of the assumption by the Government of powers of detention, and that these powers could be exercised to put down sedition, which is now given a wider definition than before. On Parliament passing the necessary legislation, the Executive would be able, under

the bill, to order the detention of any person for two years provided the Head of State is satisfied that this is necessary for the security of Malaya. Sedition is defined as any attempt by "any substantial body of persons" "to excite disaffection against the Head of State or any Government in the Federation, or to promote feelings of ill-will and hostility between different races or classes of the population, likely to cause violence."

The Government adduced the usual argument in justification for the amendment. The Head of State in the "Speech from the Throne" said: "No loyal law-abiding citizen has cause to feel alarmed at this amendment," for it is aimed only against the subversive elements. The Prime Minister, Tunku Abdul Rahman, said:

I want to warn this House and the decent law-abiding people in this country that unless this amendment goes through, I don't know what is going to happen. Terrorism, murder, arson, kidnapping — every form of crime — will hold sway. It is in the interest of this country to protect the innocent people of this country.

The argument that such legislation was undemocratic was refuted by supporters of the Government mainly by pointing to the fact that such legislation had already been adopted by new democracies (they had chiefly India in mind, though they refrained from making a specific mention of our country). The Head of State said:

My Government is but following the example of many other countries whose governments have shouldered squarely their responsibilities for securing internal peace and order in the interests of the people whom they represent.

The Deputy Prime Minister said:

The principle of preventive detention is not new.

In many countries it has become a permanent feature. But the Opposition parties were not impressed by the precedent of India being trotted out. The People's Progressive Party, the Pan-Malayan Islamic Party, and the Socialist Front — all united in offering strenuous opposition. One Opposition member asked whether any representative of Malaya could stand before the United Nations and accuse another country of being undemocratic when the Government was "declaring a permanent state of subversion" — a sarcastic reference to Malaya's espousal of the cause of Tibet against China.

The amendment, if it is carried in the Senate, will undoubtedly give the Malayan Government sweeping powers of detaining suspected persons without trial, but we in India should remember that the Malayan law will anyhow be less obnoxious than the Indian law. Even if it can be set in motion when no emergency has been declared, the powers it confers can be exercised only against those who, at any rate in the belief of the Government, threaten national security, and, not, as in India, against those who, in the belief of the executive

officials, are likely to disturb the public peace or to engage in anti-social activities like black-marketing. Tunku's Malaya will have yet to go far before it catches up with Jawaharlal's India.

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## COMMENTS

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### Publication of Legislative Proceedings

A Central law was passed in 1956, on the initiative of a private member, Mr. Feroz Gandhi, conferring on the Press immunity from civil and criminal proceedings in respect of faithful reports of Parliamentary proceedings. The law excluded from its scope publication of the States' legislative proceedings. It was left to the States to adopt similar legislation for their territories if they so chose, and the official expectation then was that the State legislatures would follow suit "at no distant time." Indeed, the Minister for Legal Affairs gave the assurance that if the States did not take up the matter "we will ourselves write to the State Governments." But it appears that the States' opposition has not appreciably diminished, nor does any pressure seem to have been exerted on them by the Centre. For the only State that has moved in the matter so far is Orissa, whose legislature passed last month a law on the lines of the 1956 Act. There was also a similar bill before the West Bengal legislature, which however rejected it on a voice vote. This strengthens the general belief that State legislatures tend to be less progressive in the matter of civil liberties than the Central Parliament.

However, it must be said that the utility of the Central legislation itself is more than doubtful. This enactment called the Parliamentary Proceedings (Protection of Publication) Act lays down that:

No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament.

Then follow a reservation;

Unless the publication is proved to have been made with malice.

The reservation is really unnecessary, for, as Chief Justice Cockburn said in *Watson v. Walter* (on which decision the legislation is based): "The presumption of malice is negatived in the one case as in the other (i. e. publication of the proceedings of courts of justice and that of Parliamentary proceedings) by the fact that the publication has in view the instruction and advantage of the public, and has no particular reference to the party concerned." But as in any case the burden of proving malice lies on the prosecution, this reservation does not much matter. But the other reservation entails a serious curtailment of the immunity intended to be conferred. It is:

Nothing in sub-sec. (1) shall be construed as protecting the publication of any matter the publication of which is not for the public good.

Many members attacked this when it was enacted; for instance, Mr. More said: "We must make it a presumption of law, an irrefutable presumption of law, that the publication of whatever happens in this House should be automatically supposed to be in the public interest." Or, as the "Hindu" has written:

This proviso cuts the ground from under the feet as it were of the principal section because the whole rationale of conferring immunity on Press reports of legislative proceedings is that such publication is *per se* in the interests of the public.

Even such restricted immunity, however, the States appear to be very reluctant to confer.

### Separation of Judiciary from Executive

#### A LIMITED SCHEME EXPERIMENTALLY INTRODUCED IN ORISSA

In Orissa, a large part of which consisted of former princely States, the three coastal districts of Cuttack, Puri and Balasore have been selected for the introduction, by way of experiment, of the separation of the judiciary from the executive.

Under the scheme, 34 magistrates possessing law degrees have been transferred to the High Court for appointment as judicial magistrates in the three districts. They will have exclusive jurisdiction to try people accused of all offences under the Penal Code or under other special or local Acts. Their jurisdiction will begin from the stage of taking cognisance and last till the termination of the trial. Powers under the "preventive" sections of the Criminal Procedure Code will remain with executive magistrates, who will enjoy concurrent powers to take cognisance of complaints but the latter powers will be exercised only in times of urgency. It has been made clear that powers under Chapter XIV of the Cr. P. C will be exercised mainly by executive magistrates. A special committee will be appointed in January next to examine the working of the scheme and to suggest suitable modifications.

The Chief Justice of the State, Mr. R. L. Narasimham, who was present on the occasion of inaugurating the scheme on 2nd May, in his speech said that separation of the judiciary, though embodied only in the Directive Principles of the Constitution, must not be treated as the expression of a pious wish, and that this reform was no less necessary now after independence than before, for a merely elected government was not necessarily a democratic government. And he expressed the opinion that there was absolutely no justification for the postponement of the reform on the ground of administrative or financial difficulties.

The Chief Justice felt that the conferment of concurrent powers might cause confusion and friction and

that the allocation of functions between the judicial and executive magistrates might have to be revised in the near future. But the "most unsatisfactory feature of the scheme," according to him, was the temporary character of the deputation of magistrates to the judiciary. He said they were being tried on an experimental basis for a period of one year, and some of them might have to face reversion to the executive. "So long as that possibility is there," he said, "their ability and zeal to discharge their duties fearlessly and independently may, to some extent, be impaired."

### Pakistan's Press Act.

It is amusing to see how Indian newspapers, which raised no protest even against the most drastic press law in India itself (like the Punjab Press Act giving unlimited power to the executive to impose censorship on newspapers or even to suppress publication of certain matter in them) are criticising the ordinance which the Pakistani President issued on 21st April to control the press. The "Times of India," for instance, characterizes the ordinance as a gag clamped on a press which is already subservient to the regime, and it regards this as a warning to the Pakistani press that no criticism of the Government, however mild, will hereafter be tolerated.

The ordinance, however, is but a version of the Indian Press (Objectionable Matter) Act of 1951 which gave sweeping powers to the Administration to take security deposits from printing presses and newspapers and to forfeit such deposits. This Act in its turn was only a version of the earlier emergency Act of the pre-independence period, the only substantial change that Rajaji's Act introduced into it being that the demand and forfeiture of security deposits became effective on the order of a sessions judge. Pakistan's ordinance also provides that such orders could be issued "only with the approval of a sessions judge of the area concerned." The definition of "objectionable matter," the printing of which would bring these obnoxious provisions into effect, is in substance the same in both the Indian and Pakistani laws.

One is therefore somewhat at a loss to understand why Indian newspapers which were not excessively disturbed by Rajaji's Act are so violent in condemning the Pakistani ordinance. One reason probably is that the Pakistani ordinance has been promulgated by a military dictator. But in this case the dictator has done no more than to give effect to the recommendations of a committee which was set up when Pakistan was under parliamentary government. Any law which provides for the system of security deposits is certainly highly objectionable, and Pakistan's law deserves all the censure that Indian newspapers have heaped on it. Our only complaint is that they did not show anything like equal concern for the freedom of the press when Rajaji's Act was introduced (and it is immaterial that the Act

has since been repealed) or when the Punjab Press Act was subsequently passed and this still remains in force. Nor, it should be said in fairness, is it true that the Pakistani press has not raised its voice of protest against President Ayub Khan's ordinance. In any case Indian newspapers which have been so grossly negligent of their own duties have no moral right to indulge in virulent criticism either of the Pakistani regime or of the Pakistani Press.

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## MARUMAKKATHAYAM LAW OF MALABAR

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**Madras Act, 1955**

HELD VOID BY SUPREME COURT

A Constitutional Bench of the Supreme Court on 4th May declared, by a majority judgment, the Madras Marumakkathayam (Removal of Doubts) Act, 1955, relating to the "sthanam" and "tarawad" institutions of the Malabar area void and ultra vires of the Constitution and issued a writ restraining the State of Kerala from enforcing the provisions of the Act.

The petitioner, Mr. K. K. Kochunni Moopil Nair, was the holder of the Kavalappara sthanam to which is attached the Kavalappara estate situate in Walluvanad taluk in the district of South Malabar. In 1925 the petitioner became the sthanee of the properties attached to the various sthanams held by him. Respondents were the junior members of the Kavalappara tarawad, and, according to the sthanee, they had no interest in the said properties.

A tarawad is an undivided family governed by the Marumakkathayam law, the customary law of Malabar. Before the Madras Marumakkathayam Act, 1932, was passed a member of a tarawad could not insist on a partition and a partition took place only when all the adult members agreed. By the Act the junior members were given power to inspect the accounts and a right to ask for partition, subject to certain limitations.

After prolonged litigation under this Act the Privy Council held that all the properties in the possession of the sthanee were sthanam properties and the members of the tarawad had no interest in them. After the title of the sthanee was thus established, the Madras Legislature passed the impugned Act in 1955. Under the impugned Act certain sthanam properties were to be deemed as belonging to the tarawad and these provisions applied to the sthanam of the petitioner.

Sec. 2 of the impugned Act laid down that under certain conditions any sthanam shall be deemed to be, and shall be deemed always to have been, a Marumakkathayam tarawad and the properties appertaining to such sthanam should be deemed to be, and should be deemed always to have been, properties

belonging to the tarawad to which the provisions of the Madras Marumakkathayam Act, 1932, applied.

The petitioner filed a petition under Art. 32 of the Constitution and contended that the 1955 Act was ultra vires and could not affect his estate to any extent. It was urged before the Supreme Court that the Act was invalid because it offended the equal protection clause of the Constitution. It also deprived the petitioner of his fundamental right to dispose of and hold property in that it affected the undisputed title of a sthanee in sthanam properties and statutorily conferred title retrospectively on the members of the tarawad who had none before.

Delivering the majority judgment of the Court, Mr. Justice Subba Rao, said that the impugned Act was only a legislative device to take the property of one and vest it in another without compensation and, therefore, on its face stamped with unreasonableness. In short, the impugned Act was expropriatory in character and was directly hit by Art. 19 (1) (f) and was not saved by cl. (5) of Art. 19.

Referring to the argument that this legislation was enacted in the public interest, Mr. Justice Subba Rao said that they could not say on the materials placed before them that any public interest would be served by depriving a sthanee of his properties and conferring title in his properties so deprived on others.

An argument advanced on behalf of the respondents was that the legislation in question affected the rights of the sthanee in the "janman" properties, and these came within the definition of "estate" in Art. 31A of the Constitution. It was contended that by virtue of the provisions of this Article, the legislation in question could not be challenged on the ground that it violated Arts. 14, 19 and 31 of the Constitution.

Mr. Justice Subba Rao said that the impugned Act did not purport to modify or extinguish any right in an estate. The avowed object of it was only to declare particular sthanams to be Marumakkathayam tarawads and the property pertaining to such sthanams as the property of the said tarawads. The result was that the sole title of the sthanee was not recognized and the members of the tarawad were given rights therein.

The impugned Act did not, His Lordship said, effectuate any agrarian reform and regulate the rights inter se between landlords and tenants. They, therefore, held that the respondents could not rely upon Art. 31(A) to deprive the petitioner of his fundamental rights.

Mr. Justice Subba Rao also rejected a contention advanced on behalf of the respondents that if the petitioners were deprived of property under Art. 31 of the Constitution the question of unreasonable restriction on their right to hold and dispose of property under Art. 19(1) (f) of the Constitution did not arise. His Lordship said that before the amendment of the Constitution in 1955, this Court had held that Art. 31 was a self-contained

Article providing for a subject different from that dealt with in Art. 19 on the analogy of Arts. 21 and 22.

But there is no scope, Mr. Justice Subba Rao said, for drawing such an analogy after the Constitution (Fourth Amendment) Act, 1955, as thereafter they dealt with two different subjects: Art. 31(2) and (2) (A) with acquisition and requisition and Art. 31 (1) with deprivation of property by authority of law. The decision of this Court in Bhanhi Munji's case, His Lordship said, no longer held the field after the Constitution (Fourth Amendment) Act, 1955.

On the question of whether the provisions of the impugned Act infringed Art. 19(1) (f) of the Constitution, the Court said that the Act laid down certain tests and if any one of these were satisfied, the sathanam by statutory fiction was treated as the tarawad properties. In the view of the Court the Act converts certain sathanams into tarawads and thereby abolishes a class of sathanams and deprives them of their properties.

The provisions of the impugned Act were examined by the Court and it was observed that "the three tests laid down by the impugned Act to enable the drawing of the statutory fiction are not only not germane but extraneous to the object sought to be achieved."

On the above considerations the Supreme Court by a majority of three to two declared the Madras Marumakkathayam (Removal of Doubts) Act as void and issued a writ of mandamus restraining the State of Kerala from enforcing the provisions of the said Act against the petitioner and his sathanams.

In their dissenting judgment, Their Lordships Syed Jaffer Imam and A. K. Sarkar held that the legislation in question was in respect of "estates" as defined in Art. 31 A of the Constitution and, as such, could not be challenged on the ground that its provisions violated the fundamental rights guaranteed to the petitioners by Arts. 14, 19 and 31 of the Constitution.

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## EVIDENCE ACT

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### Sec. 27 Held Valid

#### DEATH SENTENCE IN MURDER CASE RESTORED

A Constitution Bench of the Supreme Court on 6th May declared valid, by a majority of four to one, sec. 27 of the Indian Evidence Act and sec. 162(2) Cr. P. C. which provide that information given by a person in custody shall be admissible in evidence to the extent that it relates to some fact discovered because of such information.

The issue regarding the validity of sec. 27 of the Evidence Act arose out of an appeal against the acquittal of Deoman Upadhyaya who had been charged with the murder of Sukdei on June 19 1958. He was convicted and sentenced to death by the Sessions Judge, but in appeal he was acquitted by the High Court on the ground that his statements to the police had been taken into

account by virtue of the provisions of sec. 27, which was void and unconstitutional. (Deoman had offered to point out a "gandasa" thrown in a tank, and other evidence was insufficient to prove his guilt.)

The High Court granted a certificate of fitness to appeal to the Supreme Court. The main question for determination in the appeal was whether the High Court was correct in holding that sec. 27 of the Act and sec. 162(2) Cr. P. C., in so far as it relates to sec. 27, violate the "equal protection" clause of the Constitution.

Sec. 27 of the Evidence Act is one of a group relating to the relevancy of certain forms of admission made by persons accused of offences. It provides that when any fact is deposed to as discovered in consequence of information received from a person in the custody of a police officer, so much of such information as relates to the fact discovered may be proved.

Sec. 162 Cr. P. C. prohibits, but not to affect the admissibility of information under sec. 27 of the Evidence Act, use of statements by any person to a police officer in the course of an investigation. It was argued that sec. 27 read with sec. 162 deprives a person in custody the equal protection of law guaranteed by Art. 14 of the Constitution.

Mr. Justice Shah, delivering the majority judgment said:

The classification between persons in custody and persons not in custody, in the context of admissibility of statements made by them concerning the offence charged, cannot be called arbitrary, artificial or evasive: the piece of legislation has made a real distinction between these two classes and has enacted distinct rules about admissibility of statements, confessional or otherwise, made by them.

According to the Court, the Criminal Procedure Code contained provisions to guard against the danger of receiving in evidence testimony from tainted sources. Sec. 27 had made certain types of information admissible on the ground that the discovery of a fact pursuant to the statement was a guarantee of its truth.

The Court held that the principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which might be used in evidence against him as embodied in sec. 27 of the Evidence Act and sec. 162(2) Cr. P. C. was manifestly reasonable and did not offend Art. 14. On this view of sec. 27 the Supreme Court examined the judgments of the Sessions Judge and the High Court and held that the Sessions Judge was right in his view that the respondent had caused the death of Sukdei.

The judgment of the High Court was accordingly set aside and that of the Session Judge restored. In allowing the appeal by the State of Uttar Pradesh, the Supreme Court also confirmed the sentence of death passed by the Sessions Judge.



Mr. Justice Hidayatullah in a concurring judgment said, the old and time-worn rule "is for the advancement of justice with protection both to a suspect not yet arrested and to an accused in custody. There is ample protection to an accused, because only that portion of the statement is made admissible against him which has resulted in the discovery of a material fact otherwise unknown to the police. I do not therefore regard this as evidence of unequal treatment." Mr. Justice Subba Rao wrote a dissenting judgment.

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## INDUSTRIAL DISPUTES

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### Compensation for Closure of Undertakings

#### PROVISION IN THE ACT DECLARED VALID

A Constitution Bench of the Supreme Court on 14th April declared that sec. 25 F (1) of the Industrial Disputes Act requiring employers to pay compensation to workmen on closure of their undertakings (even if the closure was bona fide) was constitutional.

Giving this ruling, the Court dismissed three petitions filed by Messrs. Hathisingh Manufacturing Co. Ltd., Ahmedabad, Mr. D. P. R. Cassad, Nagpur, and the Digvijaysingh Spinning and Weaving Mills Ltd., Jamnagar, challenging the validity of the section including the proviso and the explanation thereto. The petitioners had submitted that they had to close down their undertakings owing to persistent losses.

The provision for awarding compensation was challenged on three grounds: (1) that it imposes unreasonable restrictions on the freedom guaranteed to every citizen by Art. 19 (1) (g) to carry on business, which freedom includes the right to close his business; (2) that it discriminates between different employers belonging to the same group placed in similar circumstances and thereby contravenes Art. 14; and (3) that, contrary to Art. 20 of the Constitution, it penalises acts which when committed were not offences.

The section was impugned as imposing unreasonable restrictions on the fundamental freedom to close an undertaking because liability to pay compensation was made a condition precedent to the closure of an undertaking even if it was effected bona fide by an employer who was unable on account of unavoidable circumstances to carry on the undertaking and also because it operated retrospectively from a date arbitrarily fixed by the Act. It was also impugned on the ground that compensation was not related to the loss suffered by the employees by the termination of employment on closure but awarded at standardised rates without taking into account the capacity of the employer to pay.

Mr. Justice Shah, who delivered the judgment, said that the closure of an industrial undertaking involved the termination of employment of many employees and threw them into the ranks of the unemployed. It was in the

interest of the general public that misery resulting from unemployment should be redressed. If the true basis of the impugned provision was the achievement of social justice, Mr. Justice Shah said, it was immaterial to consider the motives of the employer or to decide whether the closure was bona fide or otherwise. The provision for payment of such compensation in addition to wages in lieu of notice could not be characterized as unreasonable.

Loss of service owing to the closure of an undertaking, His Lordship said, stood on the same footing as loss of service due to retrenchment, for in both cases the employee was thrown out of employment suddenly and for no fault of his and the hardships which he had to face were the same whether unemployment was the result of retrenchment or closure of business.

His Lordship said that the capacity to pay was not a relevant factor in the case of closure. It was to be taken into account in the case of a running concern in assessing liability to fix wages or gratuity or dearness allowance. The recovery of the compensation would depend upon the assets of the employer which might be available to meet the obligation. The workmen would recover compensation only if the employer had the assets. Otherwise they would have to rank pro rata with other ordinary creditors of the employer.

On a review of the relevant circumstances, Mr. Justice Shah held that the restrictions imposed by the impugned provision, including the proviso, were not unreasonable restrictions on the exercise of the fundamental rights of the employers to conduct and close their undertakings.

The provision requiring the employers to pay compensation to their employees, though restrictive of the fundamental freedom guaranteed by Art. 19 (1) (g), was evidently in the interest of the general public and was, therefore, saved by Art. 19 (6) of the Constitution from the challenge that it infringed the fundamental rights of employers. Art. 19 (6) provides that nothing in Art. 19 (1) (g) "shall prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right" mentioned therein.

The proviso and the explanation to the impugned section were also reasonable and valid, His Lordship added.

The proviso restricts the compensation to be paid to workmen to three months' average pay where the undertaking was closed down on account of circumstances beyond the control of the employer.

The explanation to the section says that where the closure is on account of financial difficulties or accumulation of stocks, it should not be deemed to be due to circumstances beyond the control of the employer.

His Lordship said that in certain cases financial difficulties or accumulation of undisposed of stocks coupled with other circumstances might justify the view

that the closure was due to unavoidable circumstances beyond the control of the employer and thus attract the application of the proviso notwithstanding the explanation.

#### Wage Claim Dismissed

Mr. Justice V. Bhargava of the Allahabad High Court on 12th April quashed the order of the Sub-Divisional Officer, Meerut, directing the Delhi Cloth and General Mills Ltd., Delhi, to pay wages for casual leave, overtime and for festival holidays and bonus to two of its workmen employed in the Mowana Sugar Mills in Meerut district.

His Lordship said that since the employers were not guilty of either making any deduction or of withholding any payment, the workmen were not entitled to compensation.

According to the petitioner, the two workmen had been given charge-sheets. When the matter was referred to the Regional Conciliation Officer, the management was refused permission for action against them under the standing orders of the mill, but both of them remained suspended for a period of about one year.

Then, when they were to be paid their dues they went to court under the Payments of Wages Act for wages for unavailed casual leave, festival holidays, over-time and bonus. Their application was allowed.

His Lordship said that so far as wages in lieu of holidays were concerned, it was only when the management asked a workman to work that he could get over-time wages. The presumption made by the Sub-Divisional Officer that workmen would have earned the wages on festival occasions also was not justified. He did not think that any presumption could be made that if the workmen had worked they would have availed of casual leave.

#### Production and Incentive Bonus

##### CLAIM UPHELD BY SUPREME COURT

The order of the Labour Appellate Tribunal holding that the workmen of the Muir Mills Ltd., Kanpur, were entitled to production and incentive bonus in addition to their basic wages was upheld by the Supreme Court on 7th April.

The appellant company, a textile mill, was paying piece rates in certain of its departments. In addition the workmen were also paid production and incentive bonus if the production surpassed certain standards. From December 1, 1948, the company raised the basic rates in pursuance of the order of the Government of U. P. laying down the standards of basic wages and dearness allowance, but at the same time discontinued the payment of the incentive and production bonus.

On the workmen's demand for a continuation of the payments, the management took the stand that the higher rates ordered by the Government took into account all the emoluments of the workmen and so the stoppage of

these bonus payments did not amount to any reduction of wages. The Labour Appellate Tribunal held that the Government order did not justify the employer in withdrawing these payments and ordered their restoration from February 1, 1954.

The management preferred an appeal. The Supreme Court examined the scheme of the Government order in regard to basic wages, and observed that the term "basic" means an amount which is allowable irrespective of special claims and, thus understood, "basic wage" never includes the additional emoluments which some workmen may earn on the basis of a system of bonuses related to production. The Court held that production bonuses were not contemplated in the order of the Government.

It also held accordingly that the Appellate Tribunal was right in saying that the Government order did not absolve the company of the duty of continuing to pay the production and incentive bonus to workmen as before. The appeal was accordingly dismissed.

## DISPLACED PERSONS ACT

### "Verified Claim" Not Property

#### PUNJAB HIGH COURT RULING

A division bench of the Punjab High Court, while deciding a reference made by the Controller of Estate Duty, held (7th April) that the claim of a displaced person in respect of the property left by him in West Pakistan and verified under the provisions of the Displaced Persons (Claims) Act, 1950, cannot possibly fall within any of the categories of "property."

Mr. Harcharn Singh owned extensive immovable properties in Pakistan. The claim with regard to his properties was verified at Rs. 34,85,030. He died on February 20, 1954, in Rajasthan. His son, Mr. Murat Singh, filed a return before the estate duty authorities. The Controller of Estate Duty determined the principal value of the entire estate of the deceased at Rs. 43,66,249, which included the aforesaid amount of claim.

Mr. Murat Singh filed an appeal to the Central Board of Revenue against the order of the Controller. The Board came to the conclusion that the "verified claim" under the Displaced Persons (Claims) Act, 1950, constituted "property passing on death" for purposes of estate duty. The Board, however, held that the amount to be included in the estate duty assessment was not the full amount of the "verified claim," but the amount of compensation payable according to the Displaced Persons (Compensation and Rehabilitation) Rules 1955. At the instance of Mr. Murat Singh the Board referred the question of whether the "verified claim" is a property or not to the High Court for a decision.

The respondent contended that the object of the Displaced Persons (Claims) Act was either to allot evacuee property or to compensate the displaced person for the properties left by him in Pakistan. Their Lordships, rejecting the argument, said :

In the first place, it is not possible to take into consideration the objects clause for the purposes of determining whether a verified claim falls within the definition and meaning of the word "property."

Second, even in the objects clause it is merely stated that in regard to owners of urban property from Western Pakistan it was necessary to obtain accurate information of immovable property which they had left behind.

The Court examined the objects clause of the Act and said :

It is not possible to see from the above and the preamble contained in the Act of 1950 and the substantive provisions thereof that the verification of the claim itself would clothe the claimant with any interest or right to any property in the form of compensation. By no stretch of reasoning could the verified claim be considered to be "property" within the meaning of sec. 2 (15) of the Estate Duty Act.

The Court further held that on the death of the claimant his heir inherited only verified claim, which was not property within the meaning of the Act.

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## RIGHTS OF GOVERNMENT SERVANTS

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### Appeal by State Dismissed

The Chief Justice, Mr. Mootham, and Mr. Justice Dwivedi of the Allahabad High Court on 18th April dismissed the special appeal of the Uttar Pradesh Government against the judgment of Mr. Justice Tandon allowing the writ petition of Mr. Surendra Nath Sagar, a Deputy Collector.

Mr. Justice Tandon had quashed the U. P. Government's order dated July 24, 1957, terminating Mr. Sagar's services under Rule 23 (1) of the U. P. Civil Service (Executive Branch) Rules, 1941, read with Rule 55 (3) of the Civil Service (Classification and Appeal) Rules.

The State Government contended in the appeal that Mr. Sagar had not been confirmed in his appointment and was still a probationer when the order of termination of his services was passed by the Governor. The Government was, therefore, acting within its legal rights in terminating his appointment.

Dismissing the appeal Their Lordships said that their attention had been drawn to the case of the State of Bihar v. Gopi Krishna decided on November 25, 1959, by the Supreme Court. The facts of that case were similar to those of the present appeal. The Supreme Court had held that the Sub-Deputy Magistrate was entitled to the protection of Art. 311(2) of the Constitution which requires a civil servant to be given a reasonable opportunity of showing cause against his proposed dismissal.

Their Lordships said that even if the respondent was a probationer the provisions of Art. 311 (2) were attracted and the order terminating his services could not be sustained. In Mr. Gopi Krishna's case the Government of Bihar had received a complaint when he was on probation. It had held an inquiry and called for his explanation. The Government thereupon discharged him from service without following the provisions of Art. 311 (2) of the Constitution.

The facts of the present appeal were that on November 3, 1948, the respondent was appointed to the Provincial Civil Service on two years' probation. His work was not regarded as satisfactory and no order of

confirmation was passed at the expiry of the period of probation. In April, 1954, he was given a charge-sheet about a number of irregularities in his conduct and work and calling upon him to show cause why his probation should not be terminated. He submitted an explanation to the Government. He was asked to be correct and more careful in his conduct in future and was told that his case would be reviewed after six months. On September 8, 1955, he was served with another charge-sheet to show cause why his probation should not be terminated. He submitted an explanation which was found unsatisfactory, after which the Government terminated his services without following the provisions of Art. 311 (2) of the Constitution. Mr. Justice Tandon had held that Mr. Sagar was not a probationer when his services were terminated.

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## ACQUISITION OF LAND

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### Allahabad High Court Ruling

At the Allahabad High Court the Chief Justice, Mr. Mootham, and Mr. Justice Dhavan, on 8th April dismissed the special appeal filed on behalf of Bhagwat Thakurji, deity, by Mr. Rudranath Misra, its "Sarbakar" in the village Sonwani in Ballia district, against the U. P. State and Collector of Ballia. Mr. Justice Mathur had earlier dismissed the writ petition of the applicant.

The Collector of Ballia had acquired some plots of land belonging to the petitioner under sec. 3 of the U. P. Acquisition of Property (Flood Relief) Act, 1948, for the rehabilitation of victims of floods in the Ganga. The petitioner challenged the acquisition of land and contended that the U. P. legislature could not enact such a law for the purpose of rehabilitating flood victims. Further, the Collector had not given an opportunity to the petitioner to explain his case.

Dismissing the appeal, Their Lordships said that the legislature had power to enact such a law in accordance with a notification of the Governor-General dated October 24, 1947, under sec. 104 of the Government of India Act. No limitation could be placed on the power of the legislature to acquire land under this notification.

Once the authorities had formed the opinion that it was necessary or expedient in the public interest to requisition land, it could serve a notice on the owner of land that it was to be acquired. After that notice was served the acquisition was "complete." There was no provision for filing of objections by the persons on whom the notice was served. His only right was to receive compensation. Therefore, the requisitioning authority did not act illegally in not taking into consideration the objections which were filed by the petitioner, Their Lordships said.

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## NOTES

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### Detainee's Right to Legal Advice

#### A FUNDAMENTAL RIGHT NEVER QUESTIONED

As a gesture of mourning for those shot dead at Sharpeville in South Africa, the Pan-Africanist Congress and the African National Congress called on Africans to stay away from their jobs on 28th March, and the call was responded to by 90 per cent. workers, causing many factories to be closed. The Union Government retaliated

with a proclamation of a state of emergency in the major cities. The proclamation, under South African laws, gives the Government almost dictatorial powers in those places. The Congresses fought back by continuing work stoppages.

Numbers of people were seized in midnight swoops by the South African security police and at least a fortnight passed before they were allowed to receive visits in person from their relations and friends. How many have been detained cannot be accurately known, for no list of detainees was officially published, and it was made specifically an offence under the emergency regulations to publish any detainees' names in newspapers or for the wife of a man who has been detained to state that fact to a neighbour or even to her own children. Newspapers too were naturally reluctant to publish figures because they feared they would come into trouble. In fact the president of the South African Society of Journalists has publicly complained that journalists in South Africa were being prevented from performing their professional duties by intimidation comparable to that in "iron curtain" countries.

On 22nd April the Minister of Justice stated that so far 1,569 persons had been detained under the emergency regulations, including 94 whites. On behalf of five of persons arrested at an early stage — four Europeans including two Anglican missionaries and an African youth — applications for writs of habeas corpus were made. Mr. Justice Galgut of the Pretoria Supreme Court refused these applications, but on 7th April allowed the detainees' application that they should have access to their legal advisers. He said it did not seem to him that the proclamation of the state of emergency was intended to convey that the safety of the State was in any way injured, and therefore the right of every South African citizen to obtain legal assistance on his apprehension or arrest must be considered in these circumstances as so fundamental that it should be taken away only if the regulations specifically said so or carried the necessary implication. The Commissioner of Police in Pretoria was ordered to inform the detainees that they have a right to consult their legal advisers.

#### Miss Hannah Stanton

Of the detainees referred to above, one is Miss Hannah Stanton, warden of the Tumelong Anglican Mission in Lady Selborne African township near Pretoria. It was reported that she was being detained "in a room on her own," which meant, it was suspected, that she was kept in solitary confinement. This caused much concern in the United Kingdom, and members of Parliament criticised the Government for not pressing the Union Government for her release. A fortnight had passed and yet nothing was known as to the charges that were brought against her. As the "Guardian" wrote, "Perhaps it is hard to frame a charge against her because she has done nothing to offend, except to befriend Africans in a spirit of Christian fellowship." This shows that the Union Government's onslaught is "not merely on African nationalism but on those others who have striven to make more tolerable the relations between black and white in South Africa." At last an offer was

made for Miss Stanton's release if she would consent to leave the Union. She declined the offer, and the British Government told the Union Government that she should either be released unconditionally or put on her trial.

## Commonwealth Convention of Human Rights

### A Labour M. P.'s Suggestion

Influenced no doubt by the detention of Miss Stanton and some other British citizens in South Africa, Mr. Hilary Marquand, a front bench Labour member of Parliament, asked in a parliamentary question whether at the Commonwealth Prime Ministers' meeting in May the U. K. Government would consider concluding a Commonwealth Convention of Human Rights like the European Convention of Human Rights and setting up an appropriate court of adjudication. The question was "brusquely rebuffed" by Mr. Butler on the ground that the strength of the Commonwealth was largely due to "the absence of this type of formal, institutional machinery" and that the subjects could not be considered at the Prime Ministers' meeting.

The "Guardian" criticizes the answer as "unnecessarily negative." It points out that although fundamental rights placed by the Constitution beyond legislative interference are not in the line of thinking of Britishers, India, Ceylon and Malaya have already inscribed such fundamental rights in their constitutions, and Nigeria, Cyprus and Kenya are similarly writing into their constitutions a Bill of Rights guaranteeing several basic human rights. It also points out that the Judicial Committee of the Privy Council is still a final court of appeal for a great part of the Commonwealth, and habeas corpus applications and great constitutional issues are already a part of the court's work. Moreover, the "Guardian" points out, Britain has signed and ratified the European Convention on Human Rights for herself and on behalf of almost all her dependent territories, with certain reservations. She has accepted the Commission for inter-state disputes though she has refused to accede to the Court's jurisdiction or to accept private applications before the Commission on the ground that international law does not recognize individuals as capable bringing their own and other nationals before a supra-national tribunal. But even this restricted commitment can lead to unexpected situations. The "Guardian" says:

We might easily face the embarrassment of the Federal Republic of Germany taking Britain before the Commission about the treatment of a citizen of the Union of South Africa who happened to be residing in Swaziland or Basutoland. If this seems fanciful, the British Government needs only to be reminded that Iceland has been considering applying to the Commission about the detention of Dr. Banda, and possibly the restrictions on Jomo Kenyatta. Such an action could lead to the European Council of Ministers condemning the action of a British Government. How much better would it be for such political issues to be raised and settled round the fireside, so to say, of the Commonwealth community?