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[A MONTHLY REVIEW]

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CONSTITUTIONAL ADVANCE IN NYASALAND LIMITED BUT SIGNIFICANT AND HOPE-INSPIRING

At the end of a ten-day Nyasaland constitutional conference in London, the Secretary of State for the Colonies, Mr. Iain Macleod, could declare: "We are here to report agreement from the whole conference. There are no minority reports." The views advocated by the different political groups participating in the conference had clashed so violently that it was hardly to be expected that they could be reconciled and conclusions reached which every group from Dr. Hastings Banda's Malawi Congress Party to the local branch of Sir Roy Welensky's United Federal Party could accept. All the groups pledged themselves to work the constitution evolved at the conference with a determination to make it successful. The wonderful success achieved is a notable tribute not only to Mr. Macleod's progressive ideas and vision but to his patience and skill in negotiation.

The Nyasaland reforms are in themselves pretty meagre, but their value consists in this that they seem to have removed the African nationalists' suspicions which bedevilled the country latterly and restored the mutual trust between races which existed before Federation. In this sense the reforms may be said to be the start of a new era of friendship and co-operation in which, at any rate in the British Government's present mood of rapid de-colonialism, the new constitution might be relied upon to lead by quick stages towards democratic self-government and the interval to afford to the Nyasas a means of gaining political and administrative experience which, it is admitted, they sadly need but which is essential, as the Congo's tragic example proves, if the progress towards independence is to be orderly and steady.

Mr. Macleod had already laid the foundation for a change of African outlook by the ending of the Nyasaland emergency and the continuing release of detainees to which the Federal and Local Governments were stoutly opposed. He followed up this process of winning African confidence by showing that he was determined to set Nyasaland on the path towards constitutional reforms before a review of the Federal constitution became due. In this respect he was steadfast in carrying out the policy

announced by the British Prime Minister, Mr. Macmillan, in July 1959, viz., that Britain's aim was that the Protectorates of Northern Rhodesia and Nyasaland should move as soon as possible and as rapidly as possible towards self-government. Mr. Macmillan then said:

We have to think of increasing the constitutional responsibilities of the territorial Governments, as distinct from the Federal Government, so that the position of each component Government can gradually approximate to that of the Federation itself; and, as this determination becomes known, it will do a great deal to remove the fears, suspicions and uncertainties in Africa.

This gulf between the constitutional status of Southern Rhodesia and the Protectorates had first to be bridged before the Protectorates are in a position to answer the question to be put to them, viz., whether they are in a position to hold their own against the white settlers in Southern Rhodesia and whether the British Government's protection to them as Protectorates could be safely withdrawn. And it is the settled policy of the British Government that it was only when the Protectorates' answer to this question was in the affirmative that the whole Federation could "go forward to full independence and to full Commonwealth membership" and not a day too soon.

But constitutional advance in Nyasaland had become even more difficult than that in Northern Rhodesia, because the disturbances in Nyasaland of last year had arrested such advance and Nyasaland had lagged behind even Northern Rhodesia. Under changes introduced in the latter Protectorate the Legislative Council was enlarged, with members elected on the basis of an extended franchise, which brought nearly 8,000 Africans on to the voters' roll to form a quarter of the electorate, although most of the Africans possessed only a special franchise. Similarly, the ministerial system was introduced into the Executive Council, and two Africans were given ministerial portfolios. But Nyasaland had remained stationary except for the changes made in 1959 by execu-

tive order in the composition of the Legislative Council, though more progress was required in Nyasaland than in Northern Rhodesia, first because Nyasaland is predominantly African in character, which means Africans should wield more power there than in the other Protectorate and secondly, because in Nyasaland there was keen opposition to the Federation (indeed, the main plank of Dr. Banda's campaign was secession from the Federation) and the real and mature opinion of African nationalists could not be put to the test until the country had attained or nearly attained self-government. Dr. Banda had already come to place so much confidence in Mr. Macleod that he agreed to postpone the question of secession from the Federation. He declared before the start of the London conference that the conference was concerned with the domestic issue of Nyasaland's constitution and not with Nyasaland's relationship with the Federation, though on the latter subject he had not changed his former position. The removal of this complication must have greatly helped the deliberations of the conference.

In Nyasaland at present there is an Executive Council presided over by the Governor and comprising three ex-officio members (Chief Secretary, Attorney-General, and Financial Secretary), two official members, and four unofficial — a total of nine. Two of the unofficial members are African.

The Legislative Council consists of a Speaker and 27 members. Of these four are ex-officio, 10 official, and 13 unofficial members. Of the unofficial members six are non-Africans, elected on a non-African electoral roll by constituencies; of the seven African unofficial members three are elected by the African provincial councils and four appointed by the Governor. There is thus a majority of Africans among the unofficial members, but a majority of them consists of appointive members, and those who have a representative character are indirectly elected. In any case all the authority is in the hands of the Europeans.

The aims and policies of various political groups may be indicated here. Dr. Banda's Malawi Congress Party asked for a clear African majority in the Legislative Council elected by universal adult suffrage on a common roll. He proposed an enlarged legislature of 55 members, 46 of them to be Africans and the other nine to comprise the present six elected non-Africans and three senior officials. There would also be an immediate Cabinet system, with 10 or 12 Ministries. He demanded almost complete self-government to be introduced as early as next month.

On the other hand, the multi-racial United Federal Party contended that only by gradual and progressive changes in voting qualifications, spread over at least 15 years, could peaceful transition be achieved. The party would have a dual electoral system, with higher and lower voting qualifications. The lower qualification would be

an income of £120 a year (estimated to enfranchise 30,000 persons) and the higher qualification to be £300 (which would give about 10,000 voters). The Legislative Council would consist of 12 nominated members and six members elected on the higher voting qualifications roll and eight on the lower. Of the 12 nominated members one would represent the Asians and one the Coloured; the remaining 10 would not necessarily be Government officials. The Executive Council would comprise four nominated officials, two non-officials chosen from among those elected on the higher voting qualifications roll and two from those elected on the lower voting qualifications roll. The U. P. F. would have a ministerial system started as soon as any party could show a majority in the Legislative Council. It also emphasized the need for a check against discriminating legislation or administration.

In between Malawi and U. F. P. stood moderates such as the Congress Liberation Party, which would set a slower pace than the Malawi Congress in gaining self-government. It suggested a five-year transitional period. To start with, the Legislative Council would consist of 27 African elected members, six non-African elected members and three ex-officio. There would be common-roll voting for all taxable men, literate women over 21 years of age, and married women. The Executive council would comprise five African elected members of a majority party and three ex-officio members. After five years a general election would be held to achieve internal self-government for the Protectorate.

After listening to the views of the various delegates, Mr. Macleod outlined "four principles" on which he thought the new constitution of Nyasaland should be based. These were :

1. Legislature: The time has come for a clear African majority on the unofficial side, but the non-African communities have a vital contribution to make to the country's progress and prosperity. They must continue to have representation.

2. The vote: African opinion must now be expressed through the ballot box. A qualitative rather than universal franchise is appropriate on this, the first occasion, but in the "special circumstances" of Nyasaland this franchise must be broad and reasonable.

3. The Executive: As in Tanganyika, the Executive Council should remain advisory to the Governor.

4. Ministerial system: While some of the Executive Council members would continue to be drawn from the Civil Service, should the others be selected from the elected members of the Legislature? They might be given responsibility and associated with the work of Government departments.

Although Mr. Macleod indicated that he would not accept Dr. Banda's demand for "one man one vote," he

phrased his remarks in such a way as not to close the door on the idea. He seemed to say: Let Nyasaland have one ordinary general election (it has never had one so far), and who knows by the time a second one is due there might be full adult suffrage.

The conference accepted these four principles and also agreed with one voice to the recommendations made by Mr. Macleod which were to serve as a working basis for the next stage of constitutional development. These were:

(1) Franchise: A dual roll will replace the present limited franchise. It will extend the vote to about 100,000 people of all races. The qualification in the lower franchise which will benefit the African voters most is that they should have met their tax obligations for 10 years and be literate in English or any Nyasa language. Education has been widely spread at certain levels in some parts of the country, and therefore the educational qualification can be counted upon to expand the African vote rapidly. The question of women's suffrage is to be considered later.

(2) Legislative Council: The Legislative Council will comprise 33 members, of whom 28 will be elected members, three ex-officio and two nominated members of the Executive Council. Of the elected members, 20 would be returned from the lower electoral roll and eight from the higher. This means that 20 lower-roll elected members would be mostly African. Thus there will be a clear African majority in the Council. The Council will, however, remain advisory and the Governor will have the power to nominate extra members to provide a Government majority in an emergency.

(3) Executive Council: The Executive Council will have 10 members instead of nine as at present. Five of the members will be unofficials chosen from among the elected members of the Legislative Council, the Governor to make selection after consultation with the leader of the parties in the legislature; three of these

five will be members elected on the lower electoral roll and the other two will be members elected on the higher roll. That is to say, at least three members will be Africans. All the members will have ministerial status, with defined departmental responsibilities. But the Council will only advise the Governor, who will retain a veto and for whom final powers will be reserved. [It may be stated that a few days before the start of the conference Dr. Banda had declared that he was agreeable to concede two things as a transitional measure: that three top civil servants — the Chief Secretary, Financial Secretary and Attorney-General — might be included in the Cabinet and that the Governor should retain his veto and other reserve powers.] Three will be ex-officio members and two nominated officials who, however, could be replaced by elected members of the Legislative Council.

The agreement also deals with the judiciary, fundamental rights, the civil service, local government and the role of the chiefs.

All the delegates declared that they mean to work the new constitution and that they recognize that a reasonable period of trial for it will be necessary. The proposed constitution, as the "News Chronicle" has said, "stops a long way short of what Dr. Banda wanted," but he offered his co-operation in working the constitution because he has come to repose trust in Mr. Macleod's good will and desire to help the African nationalists as much as possible. He said that if anyone at the conference deserved credit for success, it was Mr. Macleod. He told the Colonial Secretary: "You have won my confidence completely. No reservation. I am going back home determined to work the constitution that has been agreed upon here." But the credit for the success of the conference is equally due to Dr. Banda for looking at the question of constitutional development in a spirit of moderation and responsibility. Without abating any of his aspirations he acted like a wise statesman in the long-run interests of his country.

NEW SHAPE OF AFRO-FRENCH COMMUNITY ALL FRENCH AFRICAN COLONIES PROCLAIM INDEPENDENCE

When in 1958 a referendum was taken, all French African colonies except one — Guinea — voted to remain within the French Community that was then set up. Members of the Community were internally self-governing; still in a wide range of subjects, from defence to higher education, the French Community at the centre exercised control. The shape of the Community had hardly been properly defined when it came to be radically changed — with France's consent.

Senegal and French Sudan formed themselves into the Federation of Mali and announced in July 1959 that their aim was to achieve sovereign independence,

though remaining in a confederal type of association with France. Madagascar too aspired for full independence within the Community so that it might become a member of the United Nations in its own right. General de Gaulle did not raise any objection. In December he agreed to negotiate independence with all those who desired to become independent. He offered to continue the generous financial aid of the French Government which was indispensable to most of the colonies and to conclude agreements respecting defence.

Mali and Madagascar quickly availed themselves of this opportunity and started negotiating co-operation

agreements with France providing for continued French aid and co-ordination of foreign policy and defence and simultaneously discussing the transfer of sovereignty. In June of this year they declared their independence.

But the four French colonies in West Africa — Ivory Coast, Upper Volta, Dahomey and Niger — hung back. The Prime Minister of Ivory Coast, M. Houphouët-Boigny, used his great influence for a long time against this move towards a confederation made up of a number of independent African states. He was all in favour of a federal type of the Community. He desired that all the territories in the Community should have close organic links with France. He was greatly disappointed that instead of the ties becoming tighter they were becoming looser. These four West African colonies joined together in a Conseil de l'Entente, or a council of understanding, for the purpose of co-ordinating their economic and political policies. Seeing that his dream of a closer association with France and of a status of interdependence rather than that of independence was fading away, M. Houphouët-Boigny persuaded the entente countries completely to reverse the policy formerly advocated by him.

Not only had the Mali Federation and Madagascar given the French Community a form almost indistinguishable from that of the commonwealth, but the four states in Equatorial Africa — Chad, Gabon, the Central African Republic and the French Congo Republic — had also announced that they would follow the Mali and Madagascar example. This made the Ivory Coast Premier think that the entente countries stood in those conditions in danger of being regarded as second-class nations if they too did not become independent like the rest. In his opinion, the best way to counteract such an impression was to outdo all these countries in his demands on France. He decided to lay even greater emphasis on independence and international sovereignty than any of them. He demanded in the name of all the four members of the entente council that they should become independent straightaway without previously concluding any kind of co-operation agreement with France. This would be, to begin with, outside the Community; when that was an accomplished fact, they might negotiate treaties of co-operation with France. They asked that France should first propose the countries for admission to the United States as independent states, and that only thereafter would they think about their relations with France.

They explained that this change of attitude should not be understood as indicating hostility on their part. Indeed, the move was not unfriendly and did not imply a permanent severance of all connexion with the French Community; nor did it involve withdrawal of "French presence" from the four entente countries — "French aid is not being cut off, nor are the few units of French troops stationed in these countries being removed for the time being." These countries would also conclude

co-operation agreements like the rest and their constitutional status would be about the same. Whatever be the mode of achieving independence, the important fact is that all the former African colonies of France have now become independent — with the co-operation of France. Such a "mammoth independence operation," as it has been called, is unique in the history of the world.

Freedom of Movement

Apropos the passport case reported on a later page in this issue and the editorial comment of the "Times of India" thereon, it would perhaps be useful to cite here the provisions in some important constitutional documents concerning this subject. In most national Constitutions provision is made for freedom of travel within the territorial boundaries of the country and for the right of residence and settlement in any part thereof. The rights are conferred either by express provisions as in the Indian Constitution, Art. 19 (1) (d) of which guarantees the right "to move freely throughout the territory of India," and Art. 19 (1) (e) guarantees the right "to reside and settle in any part of the territory of India," or by general provisions about the rights of citizenship, as in the United States Constitution, 14th Amendment to which has been judicially interpreted to secure these rights.

But the question raised by the case under reference is one of freedom to travel abroad. It is of course impossible for any national Constitution to provide that the citizens of the country shall be permitted to travel freely in foreign countries; all that such a constitution can provide is that if a citizen wishes to leave the country with the intention of travelling abroad the Government shall allow him to do so without any impediment and that when and if he wishes to return to the country the State shall allow him to do so. This limited right is provided for in many constitutions.

The earliest constitutional document in this respect is the Magna Carta to which King John of England gave his assent on 15th June 1215. Art. 42 of this Great Charter says:

It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom: excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and merchants, who shall be treated as it is said above. Reference is made here to the preceding Article, which ran as follows:

All merchants shall have safety and security in coming into England, and going out of England, and in staying and travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient

and right customs, excepting in the time of war, and if they be of a country at war against us; and if such are found in our land at the beginning of a war, they shall be apprehended without injury to their bodies and goods, until it be known to us, or to our Chief Justiciary, how the merchants of our country are treated who are found in the country at war against us: and if ours be in safety there, the others shall be in safety in our land.

The concept of freedom of movement and that of other liberties and rights embodied in the Magna Carta had their origin in the usages and customs of the Anglo-Saxons, and the Magna Carta only gave legal status to those liberties and rights.

As the "Times of India" editorial has pointed out, Blackstone expressed the opinion that the right of personal liberty includes "the power of locomotion, of changing situation, or removing one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law."

The Articles of Confederation and Perpetual Union, which the 13 former English colonies approved on 15th November 1777 after having declared their independence, referred in Art. IV to freedom of travel. It was laid down therein that

The free inhabitants of each of these states . . . shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce.

The American Republics, which have occupied a position of leadership in the movement towards international recognition of the existence of basic human rights, met at Bogota in Colombia from 30th March to 2nd May 1948 and adopted the American Declaration of the Essential Rights and Duties of Man, Art. VIII of the Declaration says:

Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave except by his own will.

Lastly, the U. N. 's Universal Declaration of Human Rights, 1948, says in Art. 13:

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country including his own, and to return to his country.

Chinese Atrocities in Tibet

International Jurists' Report

The final report of the Legal Inquiry Committee of the International Commission of Jurists has been published.

The committee found that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group, though it did not find sufficient proof of the destruction of Tibetans as a race, nation or ethnical group. The evidence collected by the committee established that the Chinese would not permit adherence to and practice of Buddhism in Tibet; that they had systematically set out to eradicate this religious belief in Tibet; that in pursuit of this design they had killed religious figures because their religious beliefs and practices were an encouragement and example to others; and that they had forcibly transferred large numbers of Tibetan children to a Chinese materialist environment in order to prevent them from having a religious upbringing.

The committee further found that the Chinese authorities in Tibet had violated a number of recognized rights (among these were the right to life, liberty and security of) person by acts of murder, rape and arbitrary imprisonment; the Chinese committed acts of torture and inhuman treatment, they indoctrinated children and deported recalcitrants on a large scale; they forced monks and Lamas to marry; and they arbitrarily confiscated private property without paying compensation. Further, the right of free assembly and association was violated by the suppression of the Mimang movement and prohibition of meetings; democratic government was not permitted while the economic resources of Tibet were used to meet the needs of the Chinese.

Chinese allegations that the Tibetans enjoyed no human rights before the entry of the Chinese were found to be based on distorted and exaggerated accounts of life in Tibet. Accusations against the Tibetan "rebels" of rape, plunder and torture were found in cases of plunder to have been deliberately fabricated and in other cases unworthy of belief for this and other reasons.

In dealing with the status of Tibet, the committee's view was that in international law Tibet was at least a de facto independent State when the agreement on peaceful measures for the liberation of Tibet was signed in 1951.

In the committee's view the just repudiation of the agreement by the Tibetan Government in 1959 restored Tibet to her pre-1951 independent status. For this reason the committee held that the question of Tibet was not a matter "essentially within the domestic jurisdiction of the Peking Government."

Regarding the 17-point agreement "on measures for peaceful liberation of Tibet," the committee found that, apart from the fact that it was neither "peaceful" nor "liberating," the Chinese had violated almost every clause of the agreement. The Tibetan Government was therefore fully entitled to repudiate the agreement and assume its pre-1951 status and thus "there is no obstacle in the Charter of the U. N. to the matter being raised before and decided by the organs of that body."

Criminal Procedure Code, Sec. 144

Curfew Order Quashed

AS VIOLATIVE OF RIGHT TO FREE MOVEMENT

A special bench of the Assam High Court consisting of the Chief Justice Mr. C. P. Sinha, Mr. Justice Deka and Mr. Justice Mehrotra on 2nd August quashed the order of the Deputy Commissioner of Kamrup of July 4 under sec. 144 Criminal Procedure Code, imposing curfew in and around Gauhati.

Their Lordships said the order far exceeded the limit of reasonable restrictions on the movement of persons.

The matter arose out of two applications filed under Art. 226 of the Constitution of India, praying for the issue of appropriate writs for quashing the aforesaid order.

The main contention of the petitioners was that their fundamental right guaranteed under Art. 19 (1) (d) of the Constitution had been infringed by the order of the Deputy Commissioner. It was also contended that the petitioners' freedom of movement had been restricted by the impugned order.

In giving the news, the P. T. I. added, the curfew between 10 p. m. and 4 a. m. now in force in and around Gauhati imposed under the Armed Forces (Assam and Manipur) Special Powers Act, 1958, is not affected by the High Court's judgment.

HABEAS CORPUS

A Jana Sangh Leader's Case

The " Organizer " has complained that although the Calcutta High Court, in disposing of the application of Mr. Babu Rao Jugade, Organizing Secretary of the Bengal Branch of the Jana Sangh, for a writ of habeas corpus, made in its judgment on 15th June a suggestion amounting to a recommendation that he be released at an early date, the West Bengal Government has not released him even after the lapse of more than a month after the judgment was delivered.

The facts of the case as given in the paper are as follows. In October 1958 the then Organizing Secretary, Mr. Ram Prasad Das, was arrested and detained under the Preventive Detention Act. He underwent detention for the full one year period—the maximum under the law—immediately after his release Mr. Jugade, who had meanwhile been elected Organising Secretary in his place, was put under arrest on 6th October 1959.

In the grounds of detention supplied to Mr. Jugade it was alleged that on 27th June 1959 he delivered an objectionable speech at the local Jana Sangh office in Murlidhar Sen Lane. Mr. Jugade in his application contended that he spent this day in South Calcutta and was nowhere near Murlidhar Sen Lane and therefore there was evidently no question of his having made any speech there. He maintained that his detention was mala fide.

Mr. Justice Mitter and Mr. Justice Bhattacharya ruled that Mr. Jugade was not able to substantiate his contention that his detention was mala fide and therefore dismissed his petition, but while doing so they said :

We do not think that the onus of proving mala fides, which is upon the petitioner, has been discharged. When an order of detention is, however, impugned as a mala fide order, we think it to be the duty of the Government not only to traverse the allegations but to come out with a straightforward statement of the facts so as to help the Court to pronounce upon the subject. As successive Secretaries of the Jana Sangh appear to have been arrested and detained for long periods, although nothing untoward appears to have occurred, we have no doubt that the Government will consider the question of releasing the detenu as soon as possible.

ESSENTIAL SERVICES ORDINANCE

Income-Tax Employees Acquitted

Two employees of the Income-Tax Department, Madras, Messrs. Joseph Raja and Shanmugham, were charged, under sec. 5 of the Essential Services Maintenance Ordinance promulgated by the President on 8th July in connection with the Central Government employees' strike, with having instigated clerks in the same department to join the strike.

The counsel for the accused raised a preliminary objection, questioning the maintainability of the prosecution. He contended that : (a) the Ordinance and the notification issued under sec. 3 (1) of the Ordinance prohibited only the strike in services declared as essential services by the Central Government and (b) the act or the accused constituted only an instigation of a clerk to join the strike in the office of the Income-Tax officer, Madras, which did not come within the category of services declared as essential.

Sec. 3 (1) of the Ordinance empowers the Central Government to prohibit, by a general or special order, strikes in any essential service specified in the order, if the Government is satisfied that in the public interest it is necessary or expedient to do so. The Presidency Magistrate, Madras, on 27th July acquitted the accused.

Upholding the objection raised by the accused, the Magistrate remarked :

A strike is illegal only if it is a strike by a body of persons employed in any essential service. It is clear that the Ordinance is not intended to be a general prohibition of strikes in all departments of the Central Government.

It is directed only against strikes in services which are declared to be essential services. It cannot be and is not disputed that the Income-Tax Department has not been declared to be an essential

service under the Ordinance. The only point, therefore, to be considered is whether the act of the accused in instigating his co-employee in the office of the Income-Tax Officer would constitute an act in furtherance of a strike which is illegal under the Ordinance. The act of the accused in having instigated an employee of the Income-Tax Department does not come within the scope of sec. 5 of the Ordinance and as such there is nothing by way of an accusation which has to be put to the accused. The accused is entitled to be and is accordingly acquitted.

RAJASTHAN'S MUNICIPALITIES EXTENSION ACT

Extending the Term of Municipal Boards

NOTIFICATION VOIDED

The Rajasthan High Court on 20th July allowed the writ petition filed by Mr. Ghasi Ram, Jana Sangh leader of Toda Raisingh in District Tonk, in regard to the Government notification extending the term of the Municipal Board of Toda Raisingh.

The petitioner stated in his writ petition that the election of the Municipal Board, Toda Raisingh, took place in July 1959, but because the Congress lost its majority which it had in the previous Board, the Government malafide extended the period of the old Board upto 15th September 1959 and refused to administer oaths to the newly elected members. Further, the Municipal Board was converted into a Panchayat on 14th September 1959, and the old members, whose term had already expired, were converted into Panchas and a new term of three years was given to them. Thus the newly elected members are still not being allowed to function and the old members, whose term expired long ago, are still continuing.

Government contended that it had unfettered and unlimited powers of extension and the Court could not put any restrictions on them. The petitioner's counsel contended that the Town Municipalities Extension Act was enacted only to give power to the Government to extend the term of those Boards in which the electoral rolls were yet to be prepared and elections had therefore not yet been held. It was never intended to give arbitrary, naked, unlimited power to the Government to extend the term of Boards to any number of years, even after the holding of the new elections. It was argued that if the powers of the Government regarding extension of the term of a Board are interpreted to be unfettered, then the result would be that it would be open to the Government to hold elections but not allow the newly elected members to take charge, if they happened to belong to the Opposition parties. It was pointed out that it would also be open to the Government to continue in office the members of any Board they liked for any length of time, and not hold fresh

elections even after the expiry of the normal term, and that if this was allowed, then it would be a negation of democracy and would undermine the rule of law.

The Hon'ble Mr. Justice Jagat Narayan, in the course of the judgment, observed that if the Government were allowed to extend the terms of the Boards even after the new election, it would mean complete perversion of the democratic process. His Lordship accordingly held that the Government notification extending the term of the Municipal Board, Toda Raisingh, till 15th September 1959, after the holding of election in July 1959, was illegal and void and that the newly elected members were entitled to function.

Writ was issued, and the Collector, Tonk, has been directed to administer oaths to the newly elected members at an early date. The old members, whose terms expired long ago, have been restrained from functioning as such.

High Courts' Power to Issue Writs

"Negligence" of Petitioner

OPERATION OF ART. 236

Mr. Justice Dwivedi of the Allahabad High Court on 15th July observed in a judgment :

A party who by his own negligence creates a situation of which he later complains is scarcely entitled to consideration in his favour under Art. 226 of the Constitution, specially when the order impugned is an interlocutory order and it is not shown that irreparable harm will be done to him.

His Lordship said such a party could not get the assistance of this Court even under Art. 227 of the Constitution unless the case had "some special features" His Lordship said the present case had no "special features."

His Lordship was delivering judgment in a writ petition of Raja Shivpati Singh and others against the District Judge, Basti, and Syed Sharafat Hussain. His Lordship dismissed the writ petition.

According to the petitioner, the dispute related to agricultural plots, some in the village of Dhanaura Mustahkam and the rest in some other villages of Basti. Respondent No. 2 instituted a suit in the court of the Civil Judge, Basti, for joint possession of the plots with the petitioners. The suit was instituted on July 4, 1955. During the pendency of the suit, village Dhanaura Mustahkam was brought under the consolidation scheme by the U. P. Government and under sec. 12 (5) of the U. P. Consolidation of Land Holdings Act, trial courts and appellate courts were required to stay all pending suits about land in villages held for agricultural purposes which came under consolidation operations.

But none of the parties to the suit cared to inform the trial court about the fact that village Dhanaura Mustahkam had been brought under consolidation operations and, therefore, as required by sec. 12(5), the suit should be stayed by the trial court. The trial court

decreed the suit in favour of respondent No. 2 for joint possession.

The petitioners appealed to the District Judge against the trial court's decree. They did not raise the objection on the grounds of appeal that the suit should have been stayed by the trial court but later they raised this objection by means of an application and prayed that the suit be remanded to the trial court for retrial. On this application of the petitioners, the District Judge held that the decree of the trial court qua the plots situate in the village of Dhanaura Mustahkam was invalid, but the appeal regarding other plots was still pending before the District Judge.

The petitioners prayed for quashing the interlocutory order of the District Judge and remanding the entire suit for rehearing to the trial court.

FREEDOM OF MOVEMENT

Cancellation of a Passport HIGH COURT JUDGMENT

Mr. Ismail Karamali Pirbhoy had a passport issued to him by the Regional Passport Officer, Bombay. It was valid till May 15, 1957, for travelling to Iran, Iraq, Syria, Saudi Arabia and Pakistan. In fact he had used the passport for going to Pakistan. The passport was renewed till May 15, 1959. Thereafter when he applied for renewal, the Regional Passport Officer, Mr. R. C. Chawan, rejected his application and returned the passport to the petitioner after cancelling it.

Mr. Pirbhoy thereupon filed in the Maharashtra High Court a petition for a writ of mandamus directing the officer to issue a new passport for the countries for which the passport had originally been issued.

The petitioner contended that the cancellation and non-renewal of his passport infringed his fundamental right and the cancellation of his passport was arbitrary and against the principles of natural justice. By reason of cancellation, the petitioner had been deprived of his right to travel abroad and re-enter India. The respondent, in defending his action of cancellation of the passport, said that the petitioner had not travelled to any place except Pakistan. He had not gone to any place of pilgrimage either.

Mr. Justice K. K. Desai on 22nd July dismissed the petition, saying that he was unable to grant relief by way of mandamus. He rejected the petitioner's contention that non-renewal or non-issue of a passport infringed the fundamental rights guaranteed under Art. 21 of the Constitution (which lays down that " no person shall be deprived of his personal liberty except according to procedures established by law ") and Arts. 19 (1) (d) and (e) (which confer respectively the right " to move freely throughout the territory of India " and " to reside and settle in any part of the territory of India "). The petitioner had claimed that under Art. 21 he was entitled

to travel abroad without any hindrance and that he was entitled to return to India without any hindrance. If he had no passport and if he went out of India without a passport, it would be an offence for him to re-enter India without a passport.

His Lordship said :

It is patent that a passport is a document addressed in the name of the President of the Republic of India to the Governments of foreign nations for giving protection to an Indian citizen. Now, there is no law directing the President of India to issue a passport to anyone. Nothing has been pointed out as and by way of statutory enactment, making it obligatory and incumbent on the President to issue a passport to a citizen. It is obvious that the President is not bound to issue a passport under any statutory obligation created in this connection.

It was next urged that for travelling abroad an income-tax clearance certificate was required under sec. 46A of the Income-Tax Act and in the form there was a blank space in which the passport number had to be filled in. Therefore, if no passport was issued it would not be possible to give the number of the passport in the application form for obtaining a clearance certificate. This showed that an Indian citizen was entitled to a passport. His Lordship said that the only thing which was made obligatory under sec. 46A was the obtaining of a certificate. It was not obligatory on a person who wanted to travel abroad and who had not obtained a passport to insert the number of the passport. There was no statutory enactment that the certificate under sec. 46A should not be issued to a person who had no passport.

His Lordship also held that the respondent had not arbitrarily refused to renew the petitioner's passport. Counsel for the respondent had informed the Court that any application that would be made by the petitioner for the issue of a passport of whatever nature would always be duly considered by the respondent in the same manner as he considered all other applications.

Comment of the " Times of India "

The " Times of India " made the following editorial comment on this case.

While it is correct, as held by the Bombay High Court, that there is no statutory obligation on the President of India, any more than on any other sovereign authority in the world, to grant a passport to a citizen or a foreigner, the passport officer cannot turn down an application for the issue or renewal of a passport arbitrarily or capriciously—still less cancel a valid passport without compelling causes. A passport is not merely a request to foreign powers to grant protection and comfort to an Indian citizen. It further requires all persons concerned (which would include port and police officials empowered to superintend the movement of travellers) " to allow the bearer to pass freely without let or hindrance, and to afford all assistance and protection of which he may be in

need" according to the tenor of the instrument. The right to travel is bound up with the free movement of one" person. But while Art. 19 (d) of the Constitution recognizes in terms the right of a citizen to move freely within the territories of India, there is no corresponding constitutional right to travel abroad. It may be—and in a sense ought to be—implicit in the right of personal liberty guaranteed by Art. 21. But, as far as we are aware, no law or constitution in countries with time-honoured traditions of freedom, like the U. K. or U. S. A., expressly concedes such a right to its nationals. Among English constitutional authorities, we believe Blackstone alone countenances the right of free travel. In his view it is implicit in the right of personal liberty which includes "the power of locomotion, of changing situation, or removing one's person to whatsoever place one's inclination may direct without restraint except by due course of law."

It would seem that the right of free travel, though unwritten, exists in the consciousness and general usage of civilized nations and its negation is repugnant to the spirit of free constitutions. Till recent years passports for foreign travel were granted as a matter of course and inspected merely as a matter of form. It is only the insane international tensions and the suspicions and hostilities engendered by them that compel all governments to exercise a strict scrutiny and impose restrictions upon the issue of passports. In our own country the recent racket in flaked or forged passports also naturally provoked the jealous vigilance of the police and passport authorities. Nevertheless, considering the right of every government to regulate and restrict the free movement of individuals within and without its territories in the interest of national security, the spirit if not the letter of a free constitution like ours demands that there should be no undue official impediments in the granting or renewal of passports.

RIGHTS OF GOVERNMENT SERVANTS

Compulsory Retirement and Removal SUPREME COURT'S RULING

The appeal by the former Inspector-General of Police, PEPSU, Mr. Dalip Singh, against a judgment of the PEPSU High Court upholding the legality of his retirement under orders of the then Rajpramukh, was dismissed by the Supreme Court on 19th July. Mr. Justice Das Gupta delivered the judgment.

Mr. Dalip Singh, who was Inspector-General of Police of Patiala State, was confirmed as the Inspector-General of the new State of PEPSU on its formation. The Rajpramukh issued an order under which Mr. Dalip Singh was retired for administrative reasons with effect from August 18, 1950. On a request by the appellant the authorities communicated to him the allegations against him.

Being dissatisfied with his retirement, the appellant brought a suit in the court of the District Judge, Patiala, for a declaration that the order was unconstitutional. The appellant also claimed arrears of his salary. The court decided the suit in favour of Mr. Dalip Singh, holding that the retirement amounted to a "removal" from service and that the procedure as laid down in Art. 311 of the Constitution should have been adopted before any step could be taken against him.

This judgment and the decree was reversed by the High Court, and thereupon the appellant preferred an appeal to the Supreme Court. It was argued before the Supreme Court that the retirement was illegal, first because the respondents had failed to comply with the provisions of Art. 311 and secondly because the Rajpramukh had retired him under Rule 278 of the Patiala State Regulations which were not in operation at that time.

Rule 278 of the Regulations provides that "the State reserves to itself the right to retire any of its employees on pension for political or other reasons." The Supreme Court, after examining the law governing the currency of the Regulations, expressed the view that these were in force at the time when the Rajpramukh issued the order and the order was not illegal on this ground.

The Court then dealt with the second argument of the appellant that his retirement amounted to removal from service. Referring to the case of Shyam Lal, the Court observed that the following two tests had been laid down to determine whether compulsory retirement in any case amounted to removal for the purposes of Art. 311 of the Constitution. "The first is whether the action is by way of punishment. . . . The second is whether by compulsory retirement the officer is losing the benefit he has already earned as he does by dismissal or removal."

According to the Court, the order of the Rajpramukh could not be said to be one of removal so as to attract the provisions of Art. 311 of the Constitution. The appeal was dismissed in the circumstances.

INCOME-TAX ACT

Co-operative Societies under the Act PROFITS FROM NON-MEMBERS

The profits earned by a co-operative society from business operations with people other than its members are exempt from the payment of income-tax by virtue of the notification issued by the Central Government under the Indian Income-tax Act, according to the judgment of the Supreme Court delivered on 2nd August.

The appellant, the Hoshiarpur Central Co-operative Bank Ltd., filed its income-tax returns for 1948-49 and 1949-50. The Income-tax Officer included in the assessment of the bank certain profits which had accrued from trading in sugar, cloth, kerosene oil, etc. The Bank had undertaken this business with the approval

of the Registrar of Co-operative Societies and claimed exemption from income-tax under the notification issued by the Central Government under sec. 60 of the Indian Income-tax Act.

The principal question of law arising in the assessment was whether the profits earned by the co-operative society from business with non-members were exempt from the payment of income-tax. The income-tax authorities and the Punjab High Court decided this question against the bank and held that such profits were liable to tax. The High Court, however, granted a certificate of fitness to appeal to the Supreme Court.

The Supreme Court observed that sec. 60 of the Indian Income-tax Act empowered the Central Government to exempt any class of income from the payment of income-tax. The Central Government had issued a notification under this provision whereby the income of co-operative societies was given the benefit of this provision. According to the Court the terms of the notification were not limited to the income which accrued from business with members only, but extended to the income of the society from activities which were within the scope of its powers.

On this view the Supreme Court allowed the appeal of the Hoshiarpur Central Co-operative Bank Ltd. against the Commissioner of Income-tax, Simla.

RENT CONTROL ACT, DELHI

Tenant's Petition Rejected

BY THE PUNJAB HIGH COURT

Mr. Justice Bishan Narain of the Punjab High Court on 22nd July dismissed a revision petition filed by Mr. Khushal Chand and held that sec. 15 of the Delhi and Ajmir Rent Control Act, 1952, did not entitle a tenant to impose any conditions before choosing to stay in a house which was to be reconstructed.

The landlord, Mr. Dewan Chand, filed a suit for ejection of the petitioner on the ground that he needed the premises for rebuilding. The suit was compromised and a decree for ejection of the tenant was passed. The tenant failed to vacate the premises. The landlord reconstructed the whole building except the premises occupied by Mr. Khushal Chand.

The landlord filed a fresh suit and claimed ejection of the tenant on the ground that he wanted to rebuild the premises. The trial court decreed the suit and the Senior Sub-Judge, on appeal, upheld the judgment of the trial court. Aggrieved by the orders of the lower courts, the tenant filed a revision petition in the High Court.

The tenant submitted that the landlord did not produce any cogent evidence to prove that he wanted to reconstruct the premises. He further contended that

under the provisions of sec. 15 of the Delhi and Ajmir Rent Control Act the courts were required to ask the tenant whether he would like to occupy the premises after their reconstruction. The petitioner urged that the courts did not give him any opportunity to make the choice and hence the order for his ejection was bad in law.

His Lordship asked the petitioner to elect whether he would like to remain in the premises after they were rebuilt but the tenant wanted to impose some conditions. The Court held that sec. 15 of the Act did not permit the tenant to impose any condition and, therefore, felt that the tenant had failed to make any choice.

His Lordship also found that the landlord had proved his case.

NOTES

Restrictions on Demonstrations

Japanese Supreme Court's Ruling

At the time of the recent turbulent demonstrations against the Kishi Government and the new security treaty with the United States, several local authorities in Japan felt compelled to issue public security ordinances, the main feature of which was that they required police authorization to be obtained before a demonstration or public rally was held. When students and others took part in unauthorized demonstrations, they were hauled up before the court for breach of the ordinances.

Three such cases came up recently before the Japanese Supreme Court. They involved 15 people in all, including a former chairman of the extremist Zengakuran student federation, who were charged with violating public safety ordinances made by three local authorities of Tokyo, Hiroshima and Shizuoka. The demonstrators challenged the constitutionality of the anti-demonstration ordinances.

The basic issue before the Court was the apparent conflict between the need for effective legal means of maintaining public law and order and Art. 21 of the Japanese Constitution guaranteeing "freedom of assembly and association, as well as speech, press and all other forms of expression." The Court on 20th July ruled, by a majority of 12 to 2, that the ordinances were constitutional. They said that although freedom of expression was a basic right of the people and democracy's foundation, it should not be exercised to the extent that it adversely affected public welfare.

Two Judges dissented. Mr. Justice Fujita in a dissenting opinion said :

In our impatience to emphasize the need for controls, we must not neglect the essential basic freedoms guaranteed by the Constitution.

Civil Rights in U. S. A.

A MAJOR ISSUE IN THE IMPENDING ELECTIONS

In the November elections in the U. S. A. civil rights will form one of the principal issues between the contending parties. The Republican Party has adopted a strong civil rights plank. Because we have been commenting on the achievements and failures of the Eisenhower Administration in this field, we believe our readers will be interested to know and will appreciate the significance of this programme, the principal features of which are given below.

In a preamble the party plank says :

This nation was created to give expression, validity and purpose to our spiritual heritage — the supreme worth of the individual. In such a nation — a nation dedicated to the proposition that all men are created equal — racial discrimination has no place. It can hardly be reconciled with a Constitution that guarantees equal protection under law to all persons.

In a deeper sense, too, it is immoral and unjust. . . . Equality under law promises more than equal right to vote and transcends mere release from discrimination by government. It becomes a reality only when all persons have equal opportunity, without distinction of race, religion, colour, or national origin, to acquire the essentials of life — housing, education, and employment. . . .

We recognize that discrimination is not a problem localised in one area of the country, but rather a problem that must be faced by north and south alike. Nor is discrimination confined to the discrimination against Negroes. Discrimination in many, if not all, areas of the country on the basis of creed or national origin is equally insidious. . . .

The Republican party is proud of the civil rights record of the Eisenhower Administration. . . . Although the Democratic-controlled Congress watered them down, the Administration's recommendations resulted in significant and effective civil rights legislation in both 1957 and 1960 — the first civil rights statute to be passed in more than eighty years. . . . The new law will soon make it possible for thousands and thousands of Negroes previously disenfranchised to vote.

After describing what the Administration has actually done, the party says it recognizes that much still remains to be done. In this connection it pledges itself to carry out the following reform and says "the pledge is practical and within realistic reach of accomplishment" :

1. We pledge continued vigorous enforcement of all the civil rights laws guaranteeing the right to vote to all citizens in all areas of the country.

2. We pledge that the Department of Justice will continue its vigorous support of court orders for school desegregation.

3. We pledge continued support for legislation to establish a commission on equal job opportunities to make permanent and to extend with legislative backing the excellent work being performed by the President's committee on Government contracts.

4. We pledge action to prohibit discrimination in housing constructed with the aid of federal subsidies.

5. We pledge the removal of any vestige of discrimination in the operation of federal facilities or procedures.

6. We pledge our best efforts to change present Rule 22 of the Senate (the Filibuster rule) "and other appropriate Congressional procedures that often make unattainable proper legislative implementations of constitutional guarantees."

Compulsory Bible Reading in Schools

Held Invalid by a Federal Court

The First Amendment to the United States Constitution not only guarantees freedom of religion along with freedom of speech and press but also bans all laws "respecting an establishment of religion." But this latter clause is liable to different interpretations and has in fact been differently interpreted. According to Cooley, the clause was meant to forbid preferential treatment of any particular religion or sect; it forbids, Cooley says, "the setting up or recognition of a state church, or at least the conferring upon one church of special favours and advantages which are denied to others." But it is also interpreted, as for instance was interpreted by Jefferson in a letter in 1802, as "building a wall of separation between church and state." And this principle of separation of church and state is often carried to extreme lengths. The principle is supposed to imply that religion is excluded altogether from the legitimate concerns of government in the United States. Thus, in the opinion of some, it not only forbids the state from extending any kind of aid to religion directly or indirectly, but it also eliminates the state from religious instruction and religious observances in public schools.

The question whether a state could validly require Bible reading in the public schools has always been a matter of controversy. In some states the courts have allowed it, but in some others they have forbidden it as contrary to the "establishment of religion" clause of the First Amendment. Recently a federal court declared

unconstitutional a section of a Pennsylvania law requiring that at least ten verses from the Bible be read at the opening of each school day. The parents of some children, who themselves are members of the Unitarian church and attend church services regularly, raised an objection to the law on the ground that religion was a personal matter and the state ought not to meddle with it; and that religious instruction should be left to the family rather than the state assume responsibility for it. The three-man court unanimously accepted this contention. It said: "The Bible is essentially a religious work. To characterize the Bible as a work of art, of literary or historic significance, and to refuse to admit its essential character as a religious document would seem to us unrealistic." The daily Bible reading dictated by the state can hardly do less than "inculcate... various religious doctrines in childish minds." It added that this amounted to "religious instruction or promotion of religious education." Since such religious instruction is conducted under the mandate of the state legislature, the state is "supporting the establishment of religion" and therefore is violating the First Amendment.

On the other hand, the supreme court of New Jersey in *Doremus v. Board of Education*, 5 N. J. 435 (1952), held that a requirement that a certain number of verses from the Old Testament be read at the opening of the school day did not contravene the First Amendment. It said that the Old Testament was not sectarian and therefore did not comprise the kind of religious instruction which could be attacked as indoctrination and that such religious instruction was not forbidden by the Constitution. It should be added that an appeal from this decision was dismissed by the Supreme Court in 1952.

CIVIL LIBERTIES UNITS' NEWS

Punjab Civil Liberties Council

Resolutions of the Executive Committee

The following are the resolutions passed by the Executive Committee of the Punjab Civil Liberties Council, which met at Ambala on 6th August under the chairmanship of Pandit Sri Ram Sharma, M. L. A.

1. The Executive Committee of the Punjab Civil Liberties Council notes with anxiety that the Punjab Government is not abiding by letter and spirit of law in dealing with civil disobedience movements. Wholesale arrests under preventive sections and demand of sureties,

irrespective of the financial position of a person, may not be illegal but are certainly against the spirit of law. This practice of demanding excessive sureties under preventive sections of the Criminal Procedure Code has been repeatedly deprecated and disapproved by the Punjab High Court, but in utter disregard of these strictures the Executive is still abusing its powers under these sections. The offences which are otherwise bailable are thus made non-bailable.

The Council feels that disobedience of law should not be met by counter lawlessness on the part of the authorities. The rule of law is indispensable for parliamentary democracy and whoever undermines the majesty of law, whether the people or the government, harms the cause of freedom and democracy.

2. The Council views with apprehension the growing and undue interference in day-to-day administration on the part of the ministers, legislators and other persons wielding or posing to wield influence with the government at all levels and urges upon the Government to take early steps to put a stop to this kind of abuse of power and influence.

3. The Council notes with concern that the Punjab Government is not following the lenient policy adopted by many other States to the Central Government employees in withdrawing cases against them instituted in connection with their recent strike, particularly when the situation has changed. On the other hand, reports are coming of the arrest of these employees even up to date. In our State there are no reports of any cases involving sabotage or violence. Therefore, the Council appeals to the State Government to withdraw all the cases against the employees and others connected with the said strike without any further loss of time.

4. The Council urges the Punjab Government to appoint a Police Commission on the lines of the other States' Police Commissions, to inquire into the present working of the State police and recommend to the Government the ways and means to make drastic improvements in the administration of the police. The Council feels that the need for the appointment of such a commission is all the more urgent in view of the coming to light of serious misdeeds and departures from established practices on the part of the Punjab police in the recent Triple Murder Case of Karnal, in which senior police officers including the Superintendent of Police, Shri Grewal, were tried.