

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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FREEDOM OF THE PRESS CONSTITUTION, STATUTES AND COURTS

1.-Art. 19 (2) of the Constitution

At a time when public opinion is so much exercised over the Supreme Court's judgment in the "Pratap" and "Vir Arjun" case (on which we were venturesome enough to offer comments in the last two issues of the BULLETIN), we might cast a glance back at the amendment of Art. 19 (2) adding three new heads of permissible restrictions on the freedom of the press and see how advantage of these sweeping restrictions was taken by State legislatures in enacting draconian laws suppressing press liberty and how such laws fared in courts.

Dr. Kunzru's View of the Amendment

The enlargement of the scope of restrictions specified in Art. 19 (2) encountered vehement opposition from popular leaders in Parliament like the late Dr. Syama Prasad Mookerjee, Dr. Kunzru and the late Mr. Deshbandhu Gupta, then President of the All-India Newspapers Editors Conference. The result of such enlargement was graphically described by Mr. Kunzru in a passage which will never fade from the memory of the present generation. He said :

If the amendments proposed [i. e., additions to the possible restrictions which could be imposed under the new Art. 19 (2)] are accepted, then it is not merely that Art. 19 will be amended, but that, for all practical purposes, part (a) of cl. (1) of Art. 19 [guaranteeing freedom of speech and freedom of expression] will be deleted. The provision relating to freedom of speech and expression will be reduced to the position that Fundamental Rights occupy in the Continental Constitutions. In those Constitutions Fundamental Rights are no more than pious wishes. At the best, they are indications of the policy of the authorities; nothing more than that. I, therefore, think that if the Government really feel that the clause to which I have referred must be hedged round with such serious limitations as to make it valueless for all practical purposes, then they should courageously come forward and ask for the deletion of that clause [Art. 19 (1) (a)].

Amendment Unnecessary

The first point these leaders made was that there was no need whatsoever for inserting these new restrictions; that Art. 19 (2), as it stood, provided all the checks that could legitimately be imposed on freedom of expression. "Public order" was not specially mentioned in the Article; but, as the Supreme Court had pointed out in *Romesh Thappar v. State of Madras*, "serious and aggravated forms of public disorder" were provided against, and "relatively minor breaches of the peace of a purely local significance," which alone were left out, could always be handled by the authorities without making inroads on the concept of free expression. "Incitement to offence" was added as a new source of restrictions on the plea that the Patna High Court had said that even preaching of murder could not be penalized under the Constitution in the original form. Pandit Nehru and Mr. C. Rajagopalachari, then Home Minister, made much capital of this decision, but the leaders pointed out that the decision had already been set aside by the Supreme Court. And, if because of conflicting judgments of High Courts, it was found on a reference to the Supreme Court (such a reference was never made) that there was a lacuna in this respect, Dr. Mookerjee and Mr. Kunzru expressed themselves quite willing to supply it, provided that the amendment was severely restricted in scope so as to make it clear that incitement to violent crime fell within the ambit of cl. (2) of Art. 19. These leaders pleaded that, except for this, no change was needed, and that if the extensive changes that were proposed were made, they would effectively strangle freedom of expression.

Overbroad Language of New Restrictions

The Opposition leaders pointed out that the new heads of restrictions were in such overbroad language as to make a mockery of freedom of expression. "Public order" e. g. was "of unlimited scope" (Pandit Kunzru); it was a term "capable of the widest possible definition" (Dr. Mookerjee); it gives "blanket powers" to local authorities (Mr. Frank Anthony). Mr. Nehru fully

admitted that all the new heads of restrictions were couched in too broad terms, but he defended this by saying that the proposed amendment was but an enabling measure, not enactment of a law. "If you are formulating an Act," he said, "it is desirable that you use words precisely and definitely so that, as far as possible, they cannot be misused. But when you are enabling Parliament to function, then the question of narrowing and curtailing Parliament's powers does not arise." When Parliament actually uses the power now being given to it to restrict freedom by an Act, "Parliament can then sit tight over the amount of restriction to be imposed by law." "Of course, even an enabling measure has to be looked into and scrutinized to see that not too wide and unlimited powers are given so far as Fundamental Rights are concerned. At the same time you cannot, in the very nature of things, limit that enabling measure very greatly." He meant that when Parliament was being given power by a constitutional amendment to impose restrictions under certain heads, a general term might be used which might cover restrictions which were not either intended or desirable, but care should be taken when enacting a statute in pursuance of the power given to see that the statute did not in fact embody excessive restrictions.

The fallacy of this reasoning was neatly exposed by Pandit Kunzru and Dr. Mookerjee. They pointed out that if new heads of restrictions were inserted because, unlike the United States Constitution which set forth rights of individual and civil liberty in general terms leaving it to the courts to define their exact scope, our Constitution proceeded to enumerate the Fundamental Rights and also the limitations to which they could be subjected, making an elastic judicial construction of the rights impossible, then it followed that, in such a rigid Constitution, the limitations too must be expressed in precise concrete terms; to do otherwise would be to depart completely from the scheme of the Constitution which we had adopted. Moreover, if Parliament or State legislatures adopted legislation imposing restrictions which were far in excess of requirements but which at the same time were within the limits of the restrictions allowed by the Constitution because the words used in the Constitution empowering restrictions to be imposed were too general, the Constitution would afford no protection against violation of the guaranteed rights, which was the object with which Fundamental Rights were enunciated in the Constitution. With reference to the Prime Minister's defence that the amendment was but an enabling measure empowering Parliament to do certain things, Dr. Kunzru said :

This was a somewhat surprising remark. For the object of Fundamental Rights is not to confer powers on the State, but to confer rights on the individual so as to protect him against the tyranny of changing Parliamentary majorities in the future. That is what I understand to be the meaning of Fundamental

Rights. When you give Parliament the right to make a law that will affect our liberties, then our liberties are not guaranteed against an attack in moments of excitement under the direction of a Government that may find certain acts done by the people very inconvenient.

"Trust Parliament"

Why not trust Parliament (which may have been given too wide power in the Constitution by reason of the employment of loose expressions to impose restrictions) to use the power with discretion so that in practice no undue restrictions would be imposed? asked Mr. Nehru. He said :

I have never heard any one saying that in the United Kingdom there is no freedom of the press or freedom of any thing (else) because Parliament is all powerful—I have never heard that said. It is only here we seem not to rely on ourselves, not to have faith in ourselves, in our Parliament or our Assemblies, and rely, just as some of us may have relied on external authority like the British power of old days; we rely on some external authority—may be geographically internal [i. e., courts of law].

Mr. Nehru was here going against the whole concept of Fundamental Rights enshrined in the Constitution. Dr. Mookerjee pointed this out effectively. He observed that if we had followed the British Constitution in which Parliament is omnipotent as a sovereign body, we would have had no Fundamental Rights properly so-called; but we have chosen a different route. Our Constitution has a chapter dealing with Fundamental Rights, and "as soon as you made that decision, along with it came the decision that you were deliberately curbing the powers of your Parliament; there is no escaping from this position." It is strange that Mr. Nehru should not have grasped the elementary principle that Fundamental Rights necessarily involve constitutional limitations on legislative power, and that it would not do if you want to assure the Fundamental Rights which the Constitution gives to confer, in the body of your organic law, power on Parliament and State Assemblies which you yourself admit may in certain instances be excessive.

Parliament should Deal with the Press

Seeing that the Government was bent upon introducing new grounds of restriction in Art. 19 (2) and not limiting in any way the scope of these additional restrictions, the idea was mooted that Parliament should have exclusive jurisdiction in framing laws relating to freedom of speech and expression, the underlying belief being that the Central legislature would be less prone to adopt restrictive legislation than local legislatures. It was hoped that in this way, although the Constitution might remain defective permitting imposition of restrictions which were too wide, Parliament might in practice refrain from im-

sing such restrictions. The idea was widely supported, and the Prime Minister himself viewed it with favour. He was willing to adopt the suggestion, not because as he said, he distrusted the State Assemblies, though it was possible for these Assemblies "sometimes to go beyond the mark," but because limitation of competence to enact restrictive legislation to Parliament would introduce uniformity in such legislation. Ultimately the suggestion was turned down and then a suggestion was made to the effect that all laws which might be framed by the States would be subject to the President's assent, so that, if not the Central legislature, at least the Central Government would have some control over the States' restrictive legislation. Mr. Nehru was all in favour of it. He remarked that State legislation affecting freedom of speech and expression would "automatically" come before the Union Government for examination. He said: "I do not say it is necessary in the sense that the law [passed by a State] does not take effect. But I am told that it is practically automatic and anyhow it has been in practice automatic. And such laws have to come up here, every one of them, first of all to the Home Ministry to examine and also to the Law Ministry to examine, and it comes before the President to see whether he expresses approval or not. . . . I go beyond that and if the House wishes I am perfectly willing to add that clause about the President's assent to Art. 19." But because of the opposition of the Law Minister and the Congress Party, the clause was eventually not added. Thus, State legislatures were freed from any legal limitations on their power to adopt restrictive legislation. Yet C. R. announced that the Central Government was thinking of replacing the Press (Emergency Powers) Act (which was revived by the amendment of Art. 19 though it had been killed by the Article as it then stood) by other legislation, and that "thereafter no other law by any other legislature would be entitled to go in contradiction to that law." Events have proved that even such a convention was totally disregarded.

Pre-Censorship

Because the Public Safety Acts in the States provided for the worst form of press restrictions—pre-censorship—the attention of Parliament was forcibly drawn to such provisions (which were validated by the amendment of Art. 19), and members asked for an assurance that the amendment would at least make it impossible for State legislatures to impose pre-censorship on newspapers. Mr. Nehru had already expressed himself against pre-censorship in a letter to Mr. Deshbandhu Gupta as President of the A.-I. N. E. C. He had said: "In the old days it was, or at least it was thought to be, the function of Government to stop such newspapers as the Government thought had an evil tendency. You cannot cure that evil by trying in a gov-

ernmental way to suppress it." The Home Minister, C. R., flatly said that the Government of India did not propose to include any such proposal in the Press Act which it was contemplating and because he had said that no State Assembly would be permitted to enact a law which would restrict press freedom to any greater extent than the Central Government's legislation would, it appeared likely that, however large might be the sweep of restrictions which legislatures would be empowered to impose, at least such drastic provisions as pre-censorship would no longer be possible. But the Opposition was not quite satisfied with this position; they insisted upon inserting in the amendment a clause directly forbidding pre-censorship and such like provisions. They were helped in this by C. R., who had earlier referred to a Swedish press law to show how better off in the matter of freedom our press was than the press of Sweden. Opposition leaders took advantage of this excursion of the Home Minister to show him that the Swedish Constitution prohibited pre-censorship altogether. Sec. 86 of the Constitution said:

By freedom of the press is understood the right of every Swedish to publish his writings without any previous interference on the part of public authorities. [The liability of a publisher of a newspaper is] that of only being prosecuted afterwards before a regular court on account of the contents of his publication.

The Home Minister gave an assurance that no prior restraints on publication would be allowed, only saying that no provision of this kind could be immediately enacted: he said: "Assurance was possible only yesterday; we could not make a law yesterday." The assurance was unequivocal; yet the Opposition was not content with a verbal assurance. In view of the fact that the amended Art. 19 (2) "would legalise censorship and bans on the entry of newspapers into States," for which there were provisions in the States' Public Safety Acts, Pandit Kunzru moved the following amendment:

The pre-censorship of news before their publication in a newspaper or other document, or the banning of the entry of newspapers and other documents into any part of the territory of India shall not be deemed to be reasonable restrictions imposed within the meaning of this clause.

"There is no justification whatsoever," he said, "in normal times, i. e., when a proclamation of emergency is not in force, for the pre-censorship of news before their publication or for placing restrictions on the circulation of a paper in any territory." The amendment was rejected.

"Reasonable" Restrictions

The Government agreed to provide in Art. 19 (2) that the restrictions to be imposed on freedom of expression shall be "reasonable," and the Opposition leaders admitted that it was "a very big change" to make the

reasonableness of the restrictions a justiciable matter, but they all believed that this change by itself was not enough to rid the Article of its dangerous features. Dr. Mookerjee said that the introduction of the phrase "reasonable" still left "a big gap;" Mr. Deshbandhu Gupta said that the change "was a very substantial gain," but still his objections to the measure "were of a fundamental nature" and they had remained. Dr. Kunzru said that the insertion of the word "reasonable" was "a very important change," and though it would enable courts to declare laws like those of pre-censorship void (the opinion of the Supreme Court in the "Pratap" case has proved that in this estimate he was too optimistic), it might not enable them to put down less gross evils and that in any case the change "has not placed us in the same position in which the United States is to-day."

Press Commission's Anticipations

The Press Commission, that is to say, the majority of its members, took a far more complacent view of the restrictions on freedom of expression, which the amended Art. 19 (2) permitted the legislatures to impose. And it pointed out that, apart from constitutional safeguards which might be considered inadequate, there were "two other lines of defence against undue encroachment over the fundamental right of freedom of expression." It said:

One is the legislature itself and the other is the High Courts and the Supreme Court. Although the Constitution invests the legislatures with power to place restrictions on the freedom of speech and expression for certain purposes, the power would, we trust, be exercised with discrimination and circumspection. If any restrictions are placed by the legislatures on the fundamental right, we have no doubt that the impartiality and the broad and realistic outlook of the High Courts and the Supreme Court will ensure that the power is not exercised by the legislatures in an arbitrary or unreasonable manner.

It will be our attempt to show in the next two sections of this article that both these anticipations—in regard to the legislatures and the courts—have been falsified, and the disappointment is all the keener because the restrictions imposed by the Punjab legislature and allowed by the Supreme Court as valid took the worst possible form—not only previous censorship but suppression of publication altogether, in regard to which Parliament had obtained from the Ministry the firmest possible assurances.

II. -- State Legislature

Application of Sec. 144, Cr. P. Code

The Punjab Government first began enforcing pre-censorship orders on local newspapers under sec. 144 of the Criminal Procedure Code. They apparently apprehended immediate danger from writings in the press

opposing the language formula they had evolved for the State and must have convinced themselves that a speedy remedy was required to meet the situation that might possibly arise from publications which they could not approve of. Orders were issued to certain newspapers requiring them to submit their articles or news to a censor and directing them not to give any publicity to opinions or items of news which the censor did not pass as printable. Apart from the fact that the Central Government had promised that if any restrictions were to be placed on freedom of the press, they would be placed by itself and that no local Government would have authority to place such restrictions, or at any rate these restrictions, if proposed by any local Government, would be subject to rigid control by the President, i. e., by the Central Ministry itself, and apart also from the fact that the Central Government had promised that pre-censorship, the very worst form of restriction, would not be allowed, it should be noted that pre-censorship orders were issued under sec. 144, Cr. P. C., which the Press Laws Enquiry Committee had recommended should not be made applicable to the press, saying that "instructions should be issued by Government to magistrates that orders in respect of newspapers should not be passed under this section." The Press Commission too endorsed this recommendation. But the Central Government has so far ignored this as well as the few other liberal recommendations of the Commission; it has also proved itself oblivious of the assurances given by it when amendment of Art. 19 (2) was under debate. Two newspapers on which pre-censorship orders were enforced went to the Punjab High Court seeking relief, but by the time their writ applications challenging the validity of the orders came on for hearing the orders had expired and the constitutional question remained undecided.

The Punjab Press Act

But obviously because the High Court in its judgment enunciated principles to be observed in cases involving interference with the liberty of the press, which convinced the Punjab Government that the Court would declare the orders to be invalid and improper if the orders had already not expired, the Government thought it better to proceed by legislation instead of by executive orders under sec. 144, Cr. P. C. And the Government, being thorough-going thought that if special legislation had to be adopted, it should go the whole length in suppressing freedom of the press. It therefore got the legislature to pass a law—the Punjab Special Powers (Press) Act—last year, taking power to itself not only to impose pre-censorship for unlimited time (under sec. 144 the imposition was at least limited in operation to two months), but to suppress publication of news and comments, and to ban circulation of outside newspapers in the State, again for unlimited time, and, wonder of wonders, to require newspapers to publish matter which the Government might direct them to

publish (a provision which we are sure is unheard of even in totalitarian countries where suppression of the press by orders of Government is not a rare event). How the Government could think that the validity of such a law could possibly be sustained is incomprehensible to us, but probably the Government felt that more drastic a law was the more lenient would the courts be. Nothing else could explain how, in face of the strong remarks made by the Punjab High Court, it could venture to put on the statute book a law the like of which is not known in any civilized country. The bill met with serious opposition in the legislature, men like the revered Principal Ralla Ram begging on their knees that the Government should for the honour of Punjab refrain from such legislation. But, disregarding all such appeals, the Government put the measure through. Perhaps the legislature was influenced by the Chief Minister's promise that no action would be taken under the law against any newspaper except with the consent of an advisory board to be set up, but no one has since heard of the constitution of such a body or of a reference to it.

Central Government's Assurances

Here one may stop to ask oneself whether the Press Commission's expectation that the legislatures would use the new power conferred on them by the amended Art. 19 (2) to curb the freedom of the press with great self-restraint can be said to have been realized. We for our part never thought that the expectation would be realized in full in regard to minor restrictions, but we were simple-minded enough to feel that no such restrictions as the Punjab Government was authorized to impose under this law, which are totally destructive of the freedom of the press, would ever be imposed. We were also simple-minded enough to feel that if any state legislature contemplated the enactment of such legislation, the Nehru Government would pull it up sharply and save the State from an eternal disgrace. But the Central Government allows these things to happen, contrary to its solemn promises, thus bringing the whole of India into disrepute all over the democratic world.

III.—Judicial Opinions on Press Restrictions

Punjab High Court's Strong Stand

If the Press Commission's expectation in regard to the self-restraint that State legislatures would exercise has been entirely falsified, what about its expectation in regard to the "broad" view that it thought the courts could be relied upon to take in case the legislatures were so foolish as to impose restrictions destructive of press freedom?

We must say that the Punjab High Court has fulfilled the expectation in dealing with pre-censorship orders passed against two newspapers under sec. 144, Cr. P. C. It did not declare the section in its application to the press void,

as, we believe, the American courts would have done; but it did a great public service by saying that in judging of the validity of the pre-censorship orders it would apply the "clear and present danger" test which is invariably applied in the United States in cases in which the restrictive statute cannot be declared void on its face. The Punjab High Court went further and said that, in considering any restrictions on freedom of the press, it is the nature of the fundamental right which is to be safeguarded rather than the restrictions to be imposed on it that must primarily be considered by the courts. It is the application of this principle which in the United States has given to freedom of the press a preferred status over all other rights, and this preferred status has in its turn given this right a sanctity all its own. The principle enables the courts to require the State which pleads that interference with freedom of the press was necessary in the circumstances to make good its plea. It shifts the burden of proof from the newspapers whose liberty has been curbed to the State which curbs it by calling upon the State to show by concrete evidence that the circumstances were such as to justify the particular restrictions to which the newspapers have been subjected.

Supreme Court's Judgment

If the Punjab High Court came up to the expectation of the Press Commission, could that be said of the Supreme Court which held the section of the Punjab Press Act prohibiting publication of news or comments valid? The Supreme Court had to deal with the same sort of situation arising out of the same or very similar language formula for Punjab; even one of the parties to the litigation was the same—the "Pratap" of Jullundur. And yet what a tremendous difference one finds in the Supreme Court's approach to the problem from that of the Punjab High Court! To the latter freedom of the press was something to be made secure against legislative interference; to the former apparently it was a right which could be tampered with if the Government could make the slightest show of plausibility. The Punjab Government pleaded in both cases that there was a danger of a breach of the peace if the papers were allowed to publish certain matter either without previously censoring it or even without censoring it. The Punjab High Court asked for proof apart from its affidavit. The Supreme Court was content to be guided by the affidavit; it was not prepared to make any further independent inquiry into the circumstances since the newspapers subjected to prohibitory orders could not produce evidence to prove the mala fides of the official issuing the orders, as if every order issued in honest belief that, but for prohibition, disorder might break out must be judicially supported. Formerly, when there was no such thing as a fundamental right, a prohibitory order issued by an official at his absolute discretion was valid if the bona fides of the official could not be successfully challenged. But the insertion of fundamental rights in,

the Constitution made the Punjab High Court probe the matter further. In the Supreme Court's opinion its scrutiny was to be limited to finding out whether the discretionary authority was exercised in good faith. It proceeded on the basis that the responsibility thrown on it of an appraisal of facts to ascertain whether the restrictions imposed on the papers (in this instance, total prohibition of publication) were reasonable or otherwise was sufficiently discharged when the papers could not prove the mala fides of the official who imposed restrictions.

It will be wrong to blame the result flowing from the Supreme Court's decision on the Constitution. The amendment of Art. 19 (2) is bad enough; but even after the amendment the decision could have been otherwise than it was. The fact is that the sort of inquiry that the Punjab High Court was prepared to make was evidently thought by the Supreme Court to be beyond its jurisdiction, and there, it appears to us, it went hopelessly wrong; it just abdicated its function. There was good reason to hope, as Dr. Kunzru hoped, that whatever else the loosely worded amendment of Art. 19 (2), which by such wording threw the door open to all kinds of restrictions, rendered judicially incurable, restrictions like those of pre-censorship and outright suppression of publication and of circulation would be held void; and if this hope has not been realized, one has only to thank the Supreme Court for it.

Indian and American Legislatures'

Attitude towards Freedom of the Press

From what we have stated in the leading articles in the last two issues of the BULLETIN, it will have become clear what a great contrast there is in the general attitude of the U. S. and Indian judiciary to restrictions on freedom of the press, if the Indian judiciary's attitude is to be judged by the Supreme Court's recent judgment in the "Pratap" and "Vir Arjun" case and not by the Punjab High Court's earlier judgment in the "Pratap" case. In the United States the Supreme Court has given primacy to freedom of the press, on the ground that "a free press is a condition of a free society" (Associated Press v. United States 326 U. S. 1 [1945], throwing the burden of proof upon those who impose restrictions on the liberty of the press to show clearly that the restrictions were justified, and by this means has given this "indispensable" freedom a sacrosanctity, keeping it sacred from the intrusion of the Government except in circumstances threatening other social interests "clearly and immediately." The Punjab High Court showed itself in the above-mentioned case to be equally jealous of safeguarding the right of free expression by declaring that "the character of the right, not of the limitation, determines the propriety of the restrictions." But our Supreme Court not only did not call upon the Punjab Government to prove that what the Court itself admitted were "wide restrictions" on the right were reasonable, but concluded that they were reasonable

because the newspapers concerned could not prove that the restrictions, however wide they might be, were not imposed in bad faith. And the Punjab High Court and the High Courts elsewhere must hereafter adopt the same complacent attitude until on a future occasion, possibly, the Supreme Court reverses itself.

A similar contrast appears in the attitude of the U. S. and Indian legislatures to this question. We do not regard the Punjab Press Act which is of the utmost severity imaginable as typical of Indian legislation. (The provision in the Punjab Act compelling newspapers to publish matter of its choice is a novel idea even in the most totalitarian countries; these only suppress newspapers, but do not keep the papers in existence only in order to make them the vehicles of their own views; and even in such an unheard-of provision the Supreme Court sees merit in that the compulsion is but limited in extent.) We cannot believe that the legislatures of other States will ever go that length in curbing the press. Yet they have nothing like that aversion to interference with the press which the legislatures of the states in the U. S. A. have shown. We infer that the Americans have never tried to bring in legislation prohibiting publication of any matter in the press or imposing direct pre-censorship on the press or banning circulation of newspapers within their boundaries. This inference is based on the fact that, with the most diligent search we have made, we have been unable to find any cases recorded in the Supreme Court reports challenging the validity of the legislation or of the prohibitory orders, as one would expect such cases to come up before the highest judicial tribunal if any such legislation was passed in any state. Cases that are recorded involve only indirect interference with freedom of the press, and in every such case that we know of the Supreme Court has ruthlessly struck it down.

Restriction of circulation of printed matter sometimes occurs in the United States on account of postal regulations. For instance, there is a law which makes obscene material non-mailable; and there is another law which confers power on the Postmaster General to refuse to deliver the mail to any person whom he finds to be using the mail in conducting lotteries or fraudulent schemes. "But that power has been zealously watched and strictly confined" (Hannegan v. Esquire, 327 U. S. 146 [1946]). President Jackson proposed to utilise this power for a totally different purpose: he recommended to Congress that a law be passed prohibiting the use of the mails for the transmission of publications intended to instigate the slaves to insurrection. But a Congress committee reported adversely on the recommendation, which in consequence had to be dropped. Staggered by "the extent of the control which the right of prohibiting circulation through the mail would give to the Government over the press," the committee put its foot down on the proposal and asked Congress to throw it out. It said;

If it be admitted that Congress has the right to discriminate in reference to their character (i. e., the character of newspapers and pamphlets), what papers shall or shall not be transmitted by the mail, [such a discriminating law] would subject the freedom of the press on all subjects, political, moral and religious, completely to its will and pleasure. It would in fact, in some respects, more effectually control the freedom of the press than any sedition law, however severe its penalties. The mandate of the Government alone would be sufficient to close the door against circulation through the mail, and thus, at its sole will and pleasure, might intercept all communications between the press and the people.

Compare the concern here shown for uninterrupted circulation of newspapers with the total unconcern which the Punjab legislature showed by enacting a law empowering the Government to intercept communications between the press and the people "at its sole will and pleasure." The Supreme Court invalidated this section of the law, but only because it did not set a time limit to such interception and did not expressly provide a right to the newspapers concerned to pray that the Government might in its goodness reconsider the matter. And the legislature promptly put in these "safeguards" with full knowledge that the Government would still have full power of stopping circulation of any newspapers "at its sole will and pleasure." The Supreme Court has already given it an assurance that a section, so amended, will not be declared void.

Preventive Detention Act

Continued for Another Three Years

The Preventive Detention Act, due to expire at the end of this month, has been given another lease of life for three more years. That is to say, this system of detaining persons without trial has been continued, under one law or another, ever since the British rulers brought it into vogue during World War II. After attaining independence and the establishment of the Republic, the Congress Government first had it inserted in the Constitution for use in peace time and in circumstances that do not partake of the character of an emergency, for which there is no parallel in any democratically governed country, and then passed legislation permitting detention of suspected persons without framing charges against them and without putting them on trial in a regular court of law.

It is not merely persons likely to endanger the security of the State against whom the weapon is used, but it is also used against persons whose activities are capable of disturbing the public peace or who are engaged in illegal hoarding of grain, etc., which are things one would have thought the ordinary criminal law would be quite competent to deal with, as in every other civilized country

such activities are in fact successfully dealt with without recourse to such lawless law. But the Government will not think of altering the Constitution or repealing or even suspending the law. Nor would it even think of limiting its operation to persons who imperil the security or the defence of the country or of any State.

There is no wonder if the Government always finds some excuses to prolong the life of the Act. This time the agitation of the Dravid Kazhagam in the South, the "Save Hindi" agitation in Punjab, espionage in Kashmir and such other things are made the scapegoat. The "Save Hindi" agitation itself appears to be responsible for well-nigh a hundred detentions, apart from others in the case of which the advisory board reported that there was no justification for detention. If this kind of trouble makes the situation abnormal calling for deprivation of personal liberty, one may ask: Will the situation be ever normal in the eyes of the Government, permitting it to dispense with this harsh measure? Mr. Tridib Chaudhari was fully justified in exposing the Government's pretence that the measure is only temporary. The logic of facts would lead the Government to foist the measure permanently on the country, by extending its life by a year or two or three years at a time. The "Times of India" puts the point thus:

If the Government wants to use the slightest disorder in any part of the country as an excuse to prolong the life of the Act, it might as well put it permanently on the statute book. Why does it maintain the pretence of treating it as a temporary measure? The normal law of the land can easily take care of the kind of threat to peace for which the Government wants to keep the Preventive Detention Act in reserve.

The Home Minister even attempted some theoretical defence of the law. He said that those countries which had no preventive detention law on the statute book to-day (he forgot that every one of the democratic countries is in this category) had arrived at that position after long travail. "For decades and centuries they had much more drastic laws than those of preventive detention." This is simply untrue; the fact is that as soon as the value of Freedom of Person was realized and democracy was introduced, either constitutional or statutory provisions were introduced in every country forbidding detention without trial and treating personal security as the most fundamental of all Fundamental Rights. Almost the first thing the United States did after the revolution was to embody a provision in its Constitution withdrawing from the Federal legislature competence to enact such a law except in conditions in which in India a proclamation of emergency would be issued. Not content with this, every state similarly prohibits its legislature from enacting a law denying personal freedom to its citizens. India is unique in this respect; if she has a law of preventive detention it is not because the Indian Republic is yet in

its infancy, but because its rulers are not mature enough to value either personal freedom or democracy.

If any comfort is to be derived from citing examples of other newly liberated countries which have also similar legislation on the statute book, one can only point, as the "Statesman" has very obligingly done, to countries in Africa and Asia like Ghana. Would the Home Minister like India to be placed on the same pedestal? Was the outcry raised against the British Government for arbitrary detention merely because it was a foreign government and was the great enthusiasm then shown for civil liberty by Mr. Nehru more than any other Congress leader only due to the fact that it helped the nationalist movement to put on a good garb?

Sub Judice

The Speaker of the Punjab Vidhan Sabha and the President of the Punjab Legislative Council ruled the other day that the incidents in the Ferozepur Jail are sub judice. Both of them did so because the Punjab Government conveyed this information to the presiding officers. It seems the Punjab Government is not being well served by its legal advisers and the permanent servants. "Sub judice" means "under the judge." The term usually applies to proceedings in a court or a tribunal, whether in original proceedings or in appeal or review. It passes one's comprehension how the incidents in the Ferozepur Jail could be described by any stretch of imagination as being "under a judge" or "sub judice," when the matter was raised in the legislature. Justice Capoor who held the inquiry into the incidents had completed his inquiry more than six weeks ago. He had submitted his report to the Government more than five weeks ago. He is no longer functioning as an inquiry officer. The submission of the report is tantamount to pronouncing judgment; the fact that the Government had not published his report did not in any way extend the life of the "judicial proceedings" he was holding. Were it so, it would imply that if the report was not published by the Punjab Government the matter would always remain sub judice and therefore out of court in the legislature.

Or is it contended that the matter is sub judice because the Government has not passed orders on the report? But the Government is not a court for purposes of the rules of the legislature. The main function of the legislature is to look into what the executive is doing and pass judgment thereon. A motion for adjournment is one of the instruments whereby the legislature applies its probe into the working of the Government. To prevent its being applied by "untrue" representation of facts to the legislature is to flout all principles of democratic government. But if it be accepted that the matter is sub judice on that account, is it contended that if the Punjab Government thinks it fit not to pass any orders on the report for another six months, the legislature would continue to be

debarred from discussing the matter in any shape or form?

A motion for adjournment of the House may be rejected on several grounds, some of which may not apply to raising the matter in the legislature in other forms. But when a matter is declared sub judice, its discussion in the legislature in any shape or form is ruled out till it ceases to be sub judice. The President and the Speaker have thus prevented the matter from being raised in the legislature till the Punjab Government says that the matter has ceased to be sub judice.

The Punjab Government seems to forget that a motion for adjournment is as much an occasion for the Government's justifying its policy as for the Opposition's attacking it. It looks strange that a democratic Government should prevent the legislature's supervision of its policy by resort such subterfuges. One should have expected that the Capoor report should have been released for publication as soon as it was made, even if it held the jail officials and *others* guilty. It is not the party in power alone which is interested in securing honest, impartial and non-partisan administration in the Punjab including its jails. All citizens of the Punjab irrespective of party affiliation are equally concerned therein. The citizens at large, including members of the party in power, if they are interested in sound administration—as I assume they are—have a right to learn what happened in the Ferozepur Jail. The Punjab Government, the party in power and the Council of Ministers as its mouthpiece were not at trial at Ferozepur; some of its public servants are. By holding a judicial inquiry the Government conceded that there was something to inquire about in the incidents. By avoiding—or delaying—debate and discussion on the Capoor Report in this way may not the Government give the citizens of the Punjab the impression that it counts some of its members (?)—and supporters—among the guilty men?

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COMMENTS

New Wave of Executions in Hungary

ALL-PARTY PROTEST BY BRITISH M. P.'s.

In view of the reports of a fresh wave of executions and reprisals in Hungary, three members of the British Parliament representing all three political parties have issued a statement in which they say:

We have heard that six Hungarian students have been executed for printing protests against the Russian occupation. We have not even been told their names, or the full indictments against them. They were anonymous victims of tyranny.

We have also heard that, recently, several university professors, including Dézso Keresztury and

Domokos Kosary, have been arrested. The former was an author, Minister of Education in the second post-war Government, and leader of the Peasants party. The latter was a well-known historian and the biographer of Kossuth.

There are still other members of various groups of people among whom freedom of thought survives held in prison in Hungary awaiting trial. On their behalf, humanity must maintain its protests.

News of the execution of the students was followed by reports from reliable sources in Vienna that seven former leaders of a workers' council have also been done to death. After a secret trial, the Hungarian court of appeal substituted death sentences, to be carried out immediately, for less savage ones passed by a lower court. Their crime was that they merely stood up for workers' influence in a nominally workers' State. Even the Government does not pretend that they were "counter-revolutionaries" or "fascists."

The Graham Mission

The latest move taken by the Security Council in attempts to solve the long drawn-out Kashmir dispute—the dispatch once again of Dr. Frank Graham, U. N. representative for India and Pakistan, to negotiate a settlement between the two countries—inspires little hope of being fruitful. Even in cases of blatant and cruel aggression like that in Hungary, in which the Security Council has not only the duty but authority to stop the intervention, the United Nations has proved impotent. There is therefore little wonder that it should not succeed in cases where the Council has authority only to mediate between the disputants, unless both of them are in a mood to reach an amicable settlement—which is a rare event. The Kashmir question is thus hanging fire in the United Nations like many other questions, that of the re-unification of Korea, for instance, which came up in the General Assembly just about the time of the Kashmir question. The Assembly passes every now and then resolutions calling for an end being put to the division imposed upon the peninsula, but even where the solution is patently urgent and its righteousness is undoubted, the resolutions cannot go into effect. It has become just a routine matter for the United Nations to express a wish that the partition should come to an end, and in like manner the Kashmir question, too, which is a bit more complicated, has become almost a routine question, with little hope that India and Pakistan will come to an agreement and end the dispute which is eating into the vitals of both countries.

The UNCIP's resolution of 1948 suggested demilitarization, reduction of forces and a plebiscite as successive steps towards a peaceful solution of the problem and it was accepted both by India and Pakistan. If only Pakistan had carried out the first stage of the programme outlined in

the resolution all would have been well, but her remissness in the matter led to all kinds of complications, which have made the problem well-nigh insoluble. The United Nations is trying in various ways to bring about an agreement about demilitarization so that ultimately the Kashmiri people should be able to decide by a free vote whether their State should accede to India or Pakistan. It was first suggested by Pakistan that a U. N. force should be dispatched to the occupied part of Kashmir to demilitarize it completely so that India might then agree to take the final step of a plebiscite. Subsequently it was suggested that the question whether demilitarization had taken place or not be referred to an arbitrator so that if it be decided that Pakistan was lagging in the matter she might be required to carry out the demilitarization process to a sufficient degree if she was keen on reaching the final stage of a plebiscite. But India would not agree to either of these suggestions as violative of her sovereignty. An attempt was therefore made in the Security Council last month to secure, through Dr. Graham, some advance both in the matter of demilitarization and reduction of forces, and the resolution sponsored by five nations including Australia was modified by removing from it some features which were objectionable to India, and Dr. Graham is thus given a free hand to ascertain in what way some progress towards these two matters and thereafter towards a final solution of the problem could be reached, but in view of India having already rejected the resolution, the prospects of the mission succeeding are far from bright.

One only wishes that India had made it clear that if only the preliminary steps contemplated in the 1948 resolution were satisfactorily carried out, she would even now raise no objection to the final disposition of Kashmir being determined by a plebiscite. Although she has said nothing to the contrary, the utterances of Kashmir's Prime Minister that the matter is definitively closed raise doubts in the minds of some people. The special correspondent of the "Statesman," Mr. Prem Bhatia, for instance, believes that a plebiscite is now out of question. Referring to "the present vigorous approach" of Mr. Krishna Menon as compared to the past "feeble approach" of his predecessors including Mr. B. N. Rau, Mr. Bhatia says, approvingly, that Mr. Krishna Menon has "succeeded in driving home the moral that a plebiscite in Kashmir was neither intended by India nor a practical possibility." Such assertions about India's intentions are very unfortunate.

In this dispute we have come to such a pass that almost any solution, even if it be not wholly just, would be far better than no solution, for the tension between India and Pakistan, if allowed to continue and grow, will be ruinous to both countries.

Activities of Christian Missionaries

NIYOGI COMMITTEE'S CHARGES "UNPROVED"

Dr. A. Krishnaswami, as Rapporteur of the U. N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, has presented a report in which he has dealt in detail with the report of the Niyogi Committee in which it was stated that Christian missionaries were using unfair means to convert aboriginals of Madhya Pradesh to Christianity and recommendations were made to impose drastic restrictions on the humanitarian activities of the missionaries, through which, it was charged, undue influence was exerted on those brought into the Christian fold. Referring to the orphanages or schools maintained by Christian missionaries and the hospitals, dispensaries or workshops run by them, Dr. Krishnaswami said :

It has sometimes been argued that the advantages procured through educational or humanitarian work constitute a material inducement to people to change their religion or beliefs. While it may be true that the material advantages in certain isolated cases have amounted to outright bribes to induce members of the less fortunately placed sections of society to change their faith, it would certainly be improper to generalise from a few instances.

That fears of undue influence being exercised are sometimes exaggerated may be seen from the experience of several countries.

Turning to the examples of unfair conversion given by the Niyogi Committee, the Rapporteur said that no evidence had been produced to prove such charges, and added :

Even if the instances mentioned in the Committee's report had been substantiated, they would not have justified the Committee in arriving at the conclusion that foreign missionaries pursued activities of an undesirable character.

The Committee's analysis of missionary activities and its recommendations provoked outspoken criticism not only from the members of the Christian faith but from the members of other faiths as well. The general consensus of opinion in India has been, and is, opposed to drawing up a bill of indictment against missionaries, and it was, therefore, not surprising to find responsible men belonging to different political schools of thought criticising the Niyogi report not only for erring in its presentation of facts, but also for overstepping the bounds of propriety and national interest in attempting to reverse the general trend in favour of a broad-based freedom.

CONTEMPT OF COURT

Interference with the Course of Justice

ALLEGATIONS AGAINST PUNJAB'S CHIEF MINISTER

Mr. Piara Singh of Karnal district filed a contempt of court petition in the Punjab High Court, alleging that

the Chief Minister of Punjab, Sardar Kairon, had interfered with the course of justice and had thus committed contempt of court.

He stated in his petition that an inquiry into the death of three people, alleged to have been shot dead by the police, had been transferred from one magistrate to another and the Chief Minister had called some senior police officers to Delhi and asked them to change their statements in connexion with the case.

The petitioner further alleged that these officers were later transferred from the district and the superintendent of police was also reduced in rank. The petitioner claimed that the Chief Minister interfered with the course of justice and that this amounted to contempt.

Chief Justice Mr. Bhandari and Mr. Justice Khosla, who heard the petition as a special bench, dismissed it on 11th November. Their Lordships wrote separate judgments but gave an agreed finding. Mr. Justice Khosla observed :

The respondents have denied the allegations made by the petitioner, although the statements filed in this court might appear to contain some apparently alarming admissions.

The Chief Justice said in his judgment :

A magistrate cannot be regarded as a court within the usual acceptance of the term, for while holding an inquiry under this section he performs no judicial function. It may be that a proceeding under sec. 176 is a judicial proceeding within the meaning of the Criminal Procedure Code, for it is a proceeding in the course of which evidence is or may be taken, but it can by no stretch of meaning be regarded as a proceeding before a court.

Mr. Justice Khosla in his judgment, observed that it must be held that the magistrate was not acting as a court within the meaning of the Contempt of Courts Act and that even if there was any interference with the inquiry no contempt of a court subordinate to the High Court was committed.

Thus the ruling was that a magistrate holding an inquiry under sec. 176, Cr. P. C., is not a court within the meaning of the Contempt of Court Act.

FREEDOM OF WORSHIP

Jains Prevented from Entering a Jain Temple HIGH COURT GIVES RELIEF

The President and Secretary of the Jain Sangh, Ratlam, filed petitions in the Madhya Pradesh High Court as members of the Jain community praying that the orders of the Collector and the Tahsildar of Ratlam forbidding them to enter and worship in the Shri Shanti Nath temple at Ratlam, built by a Jain 167 years ago, be quashed.

It appears that some time in October 1954 a rumour was started that a Shiva Ling had been removed by Jains from the temple, and in response to an agitation for re-installation of the Ling, the Collector after inquiry took possession of the temple in the belief that the Jain community had no exclusive right of possession, control and management thereof, and after satisfying himself that a Shiva Ling had been removed, had a Shiva Ling placed there through the Tahsildar on 26th

November 1954. He also posted a police force at the temple and prevented Jains from entering it for worship.

The Madhya Pradesh Government advocate admitted in his arguments that the placing of the Shiva Ling in the temple by the Tahsildar could not be supported under rule or law.

A division bench of the High Court consisting of Dixit and Newaskar JJ. on 29th October ordered the removal forthwith of the Shiva Ling from the temple and directed the State Government and the Collector and the Tahsildar not to prevent the petitioners from entering and worshipping in the temple "in utter violation of the fundamental rights" of the Jain community. "The material produced before the Court," Their Lordships said, "unmistakably shows that the Ratlam temple is a public Jain temple and not a public Jain-cum-Hindu temple."

The Government advocate had contended that any order that the High Court might make for the removal of the Shiva Ling and allowing the petitioners to enter the temple for worship would be futile and "not capable of performance."

Their Lordships, referring to this contention, observed :

It is incomprehensible how the direction, which this Court may issue, would be futile when the temple is in existence, when the Shiva Ling is there and when the petitioners are still prevented from entering the temple for worship. A writ or direction issued by this Court would be effective and has to be enforced. Any suggestion that, for certain reasons, it may be difficult and even impossible for the opponents to carry out the orders, can only be viewed with dismay and cannot but impel us to say that it would be the end of the rule of law when the State and its authorities find themselves in a position where they cannot enforce the orders of the Court and secure obedience to them.

HABEAS CORPUS PETITION

A Punjab M. L. A. Released from Detention

ON A TECHNICAL GROUND

Choudhary Dharam Singh Rathi, a member of the Punjab Legislative Assembly, was arrested on 18th August and placed under detention under the Preventive Detention Act on an order made by the district magistrate of Karnal for the part he played in the "Save Hindi" agitation as a member of the Hindi Raksha Samiti. Mr. Dharam Singh filed a petition in the Supreme Court for a writ of habeas corpus challenging the validity of his detention.

The petitioner urged in support of his petition that his arrest had been ordered because he had severely criticized the Government in the Legislative Assembly and the reasons for his detention as stated by the Government did not bear any relation to the maintenance of public order, which was the alleged ground for his arrest.

The Government of the Punjab stated in its reply to the petition that the record of the case relating to the detention of the petitioner showed that as a member of the Hindi Raksha Samiti he had been engaging in activities which were prejudicial to the maintenance of public order. It was further stated that the detenu had been actively engaged in the Punjab Hindi Samiti agitation, which was neither peaceful nor non-violent.

The petitioner further submitted that even if his original detention was justified his continued detention was illegal as the Advisory Board constituted under the Detention Act had failed to send a report to the Government regarding the propriety of his detention within ten weeks of the date of detention, as required by sec. 10 (1) the Act. When questioned by the Court whether this was a fact, counsel for the State asked for time to ascertain the exact position. The Court, however, declined to adjourn the case and since the allegation of the petitioner regarding non-compliance with the law remained unanswered it directed that he should be released.

NOTES

Civil Rights Commission

As contemplated by the Civil Rights Act passed at the last session of Congress, President Eisenhower has appointed a six-man commission to look into the civil rights of Negroes and report to Congress at the end of two years. The personnel of the commission justifies the remark made by the President that he wanted a non-partisan group representing "the spectrum of opinion" on civil rights and persons "whose reputation is that of being of a judicial turn of mind." On the whole the commission is "distinctly moderationist in tone," as the "New York Times" has observed. The chairman of the commission is Mr. Stanley F. Reed, who retired recently from the Supreme Court bench. He is known to be cautious and conservative. He joined in the Court's unanimous decision of 1954 holding racial segregation in the public schools unconstitutional. He was also the writer of the decision in *Smith v. Allwright*, 321 U. S. 649 (1944) holding the white primary in Texas unconstitutional, and of the decision in *Morgan v. Virginia*, 328 U. S. 373 (1946), outlawing racial segregation in interstate transportation—two very important decisions concerning discrimination of races. Justice Reed comes from the border of Kentucky, while two others are Southerners, one of them being Mr. John S. Battle, who was Governor of Virginia—a key State in the South—from 1950 to 1954; he is known to be a man of moderate views. Mr. J. Ernest Wilkins, Assistant Secretary of Labour, is also included as a member, and he is a Negro by race. On the whole the personnel of the commission is well selected. Its primary task will be to investigate charges that Negro citizens are being denied the vote for reasons of "colour, race, religion or national origin." There is ground for hope, as the "Times" says, that "the commission will not follow the timid road, but will take a liberal view of its duties and dare to assume a badly needed position of constructive non-partisan leadership." [Since writing this, Mr. Reed has resigned from the committee.]

Application of the Jencks Decision

TWO COMMUNIST LEADERS TO BE RE-TRIED

The Jencks decision in a narcotics case (vide p. iv : 299 of the BULLETIN), to the effect that the defence must have access to the professional informers' reports to the Federal Bureau of Investigation and that the Government must choose either to disclose its evidence in the shape of such reports or else to waive prosecution, is being applied in political cases.

Thus the Supreme Court on 16th October reversed on appeal the convictions of two Communist leaders, Scales and Lightfoot, in which the Government had depended on F. B. I. reports, which however it refused to disclose. The Solicitor General had already advised the Court a month before that the Jencks decision necessitated avoidance of the Scales and Lightfoot convictions. The Court did so and ordered a re-trial of the defendants.

Scales and Lightfoot had been convicted under the membership clause of the Smith Act, which makes it a crime to belong to an organization that teaches or advocates the overthrow of the Government by violence. The cases were the first test of the constitutionality of the membership clause. The Supreme Court did not decide that issue. It set aside the convictions on the basis of its ruling in the Jencks case.

If the Government proceeds with re-trial and the accused are convicted, the question of the constitutionality of the membership clause will then come up for consideration before the Supreme Court.

Denial of a Passport Upheld

It will be recalled that Secretary of State Dulles refused to issue a passport to Mr. W. B. Dayton, a cosmic ray physicist who has been trying for the last three years to come to Bombay to join the Tata Institute of Fundamental Research. The Secretary of State had information that Mr. Dayton had associated with persons in the Communist Party who had been active in spying and that he had been present several times in an apartment where secret Government documents were microfilmed for transference to the Soviet Union by the Rosenbergs who were executed in 1953 for atomic espionage. But the only reason Mr. Dulles assigned for refusal of the passport was that travel abroad by Mr. Dayton "would be contrary to the national interest."

Mr. Dayton took the matter to the Court of Appeals. The question before the court was whether the Secretary of State could base his denial of a passport partly on confidential information that it would be detrimental to the national interest to disclose. The Appeals Court on 24th October upheld the right to do so by a 2 to 1 decision. Judge Prettyman, who spoke for the court, said that the Supreme Court had not yet ruled on the issue of "permissible reliance upon confidential information in a passport case." The dissenting Judge felt that a broad finding that denial of the passport was "in the national interest" should be accompanied by more specific showing that "the grant would be likely to cause harm to the national defence or to the conduct of foreign affairs." An appeal is going to be made to the Supreme Court.

Supreme Court Refuses to Interfere IN A SCHOOL INTEGRATION CASE

We referred in October (vide p. v : 15) to a Federal district court's decision ordering integration of public schools in two cities of Virginia. In the order the judge had called the Pupil Placement Act of the state "unconstitutional on its face." The statute removes from local school boards the authority to assign pupils and vests it

in a special Pupil Placement Board. The state authorities had thought that the law would pass muster since it does not require but merely permits white and Negro pupils to be assigned to separate schools. An appeal was preferred from the judge's order to a Court of Appeals which affirmed the order, ruling that the placement law was inadequate to provide the relief demanded by Negroes who sought admission to previously all-white schools. But the Appeals Court stayed the order pending a ruling by the Supreme Court. Thereupon the state took the matter to the Supreme Court. It contended that the pronouncement from the district court was "impetuous" and that no such declaration should have been made until the issue of constitutionality of the law had been passed on by the state courts. A test suit is pending in the supreme court of the state. In this case two white children were suspended from a county school when their mother refused to sign the placement form required by the statute. The Federal Supreme Court on 21st October refused to interfere with the lower court's order. The judge will now have to fix a new date for integration of schools in the two cities.

Appeals Court Orders Start in Integration

DISTRICT COURT'S ORDER REVERSED

Two years ago a Negro belonging to the county of Prince Edward in Southern Virginia went to court to try to gain admittance of his four children to a white school. A district court judge issued an order for desegregation but refused to fix a time limit for it because of public opposition, racial tension and threats to close the schools.

An appeal from this order was filed in a Circuit Court of Appeals, and the three judges of the Appeals Court on 11th November unanimously reversed the lower court's order and said in effect that Prince Edward County—and by extension the rest of the state—must get started towards integration of public schools. The court said:

The fact that the schools might be closed if the order were enforced is no reason for not enforcing it. A person may not be denied his rights under the Constitution because of action taken or threatened in defiance of such rights.

The order appealed from will accordingly be reversed and the case will be remanded to the court below with directions to enter an order directing the defendants [the school authorities of Prince Edward County] to make a prompt and reasonable start in compliance with the lower court's order enjoining discrimination on the ground of race or colour.

If the lower court now orders a start towards integration, as is most likely, it is doubtful whether segregation leaders would allow the order to go into effect. For they have announced that in such an eventuality they would make the county authorities close down the schools. They have made plans to send white children to "private" schools in churches and, if necessary, in private homes. An association has been set up to take charge of the "private" school system, and a fund is being collected to pay for segregated tuition costs.