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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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The Tibetan Revolt

News like the following is coming in about happenings in Tibet. A Khatmandu report says :

Three million Tibetans, who vainly rose in revolt against their communist masters a month ago, are now living in a land of massive prison camps, reports reaching the Nepali capital indicate.

The biggest of them all — situated at the northern slope of Mount Everest — houses nearly 200,000 Tibetans, it is said. Nuns and lamas, farmers and landlords—all those who asserted their basic right to freedom and religion—are the inmates.

It is gathered here that the entire population is put in concentration camps, understood to be about 20 in number and scattered all over the mountain kingdom's 470,000 square mile area.

Freedom of movement is denied, and so is the freedom of speech.

Every Tibetan is also required to report at every appointed hour at the nearest Army post and explain his whereabouts. Families in the concentration camps are tortured to reveal the whereabouts of their mission members.

Orphaned children — children of those who died fighting the Red Chinese — are roaming Lhasa streets, hungry and weeping. And any sympathy shown to the innocent babies is a punishable crime.

Members of every village are registered and get food through identity cards.

A Gangtok report says that Communist indoctrination of the Tibetans has started in a big way, it is said.

Under the guise of reforms the Chinese are striving to strip the monasteries of all authority and power. They have already put a ban on the drafting of 14 Tibetan children into monasteries. The next move will be to confiscate their property and grab their

treasures. It is feared that a liquidation list has been prepared : it includes rich merchants, landlords, and leading nationalists,

By way of practical action, Mr. Nehru could not have done more for Tibet immediately than he has done : the granting of political asylum to the Dalai Lama and giving shelter to a large number of Tibetan refugees (though, in regard to the latter, it is clear that the Government of India was not at first inclined to open the doors to the refugees as widely as Indians' overwhelming sympathy for the Tibetans ultimately forced it to do). What, however, one misses on this occasion is the expression of resentment at even a suspicion of the perpetration of aggression on the part of Western powers and the expression of moral condemnation which Mr. Nehru, assuming the role of mentor, lavishes on these aggressors. When, however, the suppression of national liberties takes place in the vicinity of India and at the hands of a Communist nation, he suddenly drops his idealism and becomes a realist, and though avowing sympathy for the suffering Tibetans, he emphasizes the need of maintaining correct and even friendly relations with the aggressor nation. If the Nehru Government had not given up the bases on the Tibetan frontier which India had established during British rule, it could conceivably have done something to relieve the oppressed Tibetans ; but even this means, slender as it would have been in any circumstances, is now denied to the Government. The only reward Mr. Nehru has received from the Chinese Government for this restraint is a spate of propaganda denouncing the Indians as "expansionists". The denunciation is of course wholly unjustified, but in a sense it will have a good effect, for Mr. Nehru will thereby know how the U. S. A. and the U. K. must be feeling when the Soviet Union and Red China vilify these countries on every conceivable occasion as imperialist and expansionist nations always engaged, it appears, in bringing peoples of the world under subjugation.

But two things Mr. Nehru may usefully do. When towards the end of 1950 the Tibetan Government appealed for help to the United Nations challenging the position that Tibet was China's vassal state, consideration of the appeal was postponed at the suggestion of the Indian

As in previous years there shall be no separate issue in June this year. The present is a joint issue for May and June, and the next one will be that for July, which will be posted on the 16th of that month.

delegate who expressed the belief that a peaceful settlement could be reached, safeguarding Tibet's autonomy while maintaining its historical relations with China. India later succeeded in getting China even to agree to the panch shila—China was the first country to agree to the five principles. Mr. Nehru has now seen how China respects her pledges and should therefore now take the initiative in formally complaining to the United

Nations about China's brutal aggression in Tibet. Another thing he may do is to call a Bandung conference and impress upon the Asiatic and African nations the lesson of the Tibetan outrage, viz. that it is not merely Western powers who are capable of committing aggression on an unoffending people; but that an Asian country may do it far more cruelly than they.

PROBLEM OF RESTORING PEACEFUL CO-EXISTENCE BETWEEN WHITES AND BLACKS IN CENTRAL AFRICA

The recent disturbances in Nyasaland following on the banning of the African Congress, putting the territory under an emergency law and detaining as many as eight hundred African leaders, may well wreck the moderate solution devised by the British Government for the two Rhodesias and Nyasaland, which is symbolised by the word "partnership" between the indigenous Africans and the immigrant whites. Whether the alleged plot of general murder of Europeans is found after the judicial inquiry that is proceeding to have a substratum of truth or not, there seems little doubt that there was an organized campaign to stir up disorder and disrupt law and order. Mr. P. J. Monkhouse, deputy editor of the "Manchester Guardian" and a competent observer wholly sympathetic to Africans' aspiration for independence, after a week's visit to Nyasaland has expressed his provisional opinion that "there was sufficient evidence of a determination by the leaders of Congress to nullify the authority of the Government in matters of ordinary administration, in order to bring pressure upon it to concede Congress's political demands", though he doubts whether it was necessary to detain so many people. It is the Government's claim that of the detained persons 250 have been released and against the rest it is going to bring charges of having committed criminal offences.

But even if the terrible repression of the Nyasa people is proved to be wholly justifiable in the interests of security, the policy of racial partnership and co-operation is doomed. Repression will leave such bitter feelings behind that there will be no hope for reconciliation in the near future. The demand of the African nationalists that Nyasaland secede from the Central Africa Federation is no doubt short-sighted. The demand arises because of the fear of the nationalists that the primitive Nyasalander would be completely dominated by the far more advanced whites in the federal government and that in the constitutional review that is to take place between 1960 and 1963 the British Government would be compelled by the settler community to give dominion status to the republic, with the consequent withdrawal of protection which has been guaranteed to Nyasaland and Northern Rhodesia as protectorates. The demand is short-sighted because the economic loss alone would be too great.

Economic Advantages.—The Federation brings unquestioned advantages to all the territories, but to none more than to Nyasaland. Nyasaland is a poor country and so overpopulated that large numbers of people have always to go to Southern or Northern Rhodesia for finding employment. Last year nearly 170,000 men were working away from their territory, a large proportion in Southern Rhodesia. The territory itself cannot possibly support the Government services from its own revenue. The medical, educational and transport facilities which the federal Government supplies may not be adequate, but it costs the federal Government some four million pounds a year. It is said that "nearly half of the total revenues which are spent in Nyasaland come from the federal Government as a result of federation." Some telling facts were given in the "Economist" recently about the economic benefits which the federation brings to Nyasaland. They may thus be summarized :

Health.—Recurrent expenditure has gone up from less than £300,000 to 1 million per annum, and capital spending has risen five-fold within five years.

Education.—Expenditure on education has almost trebled, allowing a 43 per cent. increase in the number of children attending primary schools, and a four-fold rise in the number of secondary school pupils. An artisan training centre for five-year apprenticeship courses has been started, with an initial outlay of £ 600 per trainee.

Finance.—On its own the Nyasaland Government would not have anything like enough revenue to pay for the functions it performs at present. The taxable capacity of the country is already overstrained. The only alternative would be retrenchment and a serious contraction of activity which would be a great tragedy for the country and its people.

In the first four years of federation, the federal Government channelled a net £19½ millions into Nyasaland. Between 1945 and 1953 some £584,000 a year of capital flowed into the protectorate. Since federation the figure has risen to more than £2½ millions a year. As a result of the greatly increased level of development, which is now costing the federal Government some £3½ millions per annum

many more jobs are being created for Africans. The number of Africans in employment increased by 50 per cent. in the first four years of federation and in the same period their earnings went up by some 130 per cent.

But the Nationalists appear determined to push Nyasaland out of the federation at whatever cost, for to them it appears that for Nyasaland to be a member of a federation of which the whites of Southern Rhodesia will always be the dominating element is to lose its nationhood and that however great may be the material advantages which the federation will bring, they must sacrifice them at the altar of the mother country. But there can be no doubt that for Nyasaland the cost would be too heavy. As the "Economist" has said: "An independent Nyasaland would decline into a rural slum, lacking means to educate its own people to run it."

Fear of Loss of Protectorate Status.—It has been suggested by Mr. Monkhouse who says of the Nyasaland Government that it is not "a reactionary body, brutally upholding imperialist interests," but that "it is full of sincere men dedicated to the betterment of life in a country naturally poor and in many ways backward," that

the tension which led to the outbreak would have been greatly relieved if it had been possible for the British (or the federal) Government to declare that, whatever changes may come from the 1960 constitutional talks, there would not at this time be a withdrawal from Nyasaland of Colonial Office authority and a substitution of federal authority.

Although the Welensky Government was most averse to making any such declaration, it must be said in fairness to the British Government that it did issue such a declaration as the Northern Rhodesian elections were going on just in order to put a damper on Sir Roy Welensky's known ambition to control the policies of Northern Rhodesia. Moreover, as recently as 29th April, Mr. Lennox Boyd, Colonial Secretary, reiterated the pledge that the Colonial office was not going to hand over the power it now had and to abdicate the functions it was now discharging in regard to the affairs of Northern Rhodesia and Nyasaland. He said;

I could not say at this stage what would emerge from the 1960 conference (to discuss the future of federation). We stand by our pledges (that the two territories would continue, under the special protection of Her Majesty, to enjoy separate governments for so long as their respective peoples desire), and there is no question that after 1960 the federal Government will replace the Colonial Office as the final authority in territorial affairs.

But such assurances were not enough to remove the fears of the politically-minded Africans of Nyasaland that a local government responsible to a predominantly white electorate (such as the Government at Salisbury) would always be in a tremendously strong position to win from

the British Government the substance of what it wants.

Larger Political Objective.—But although the immediate political objective of the Nyasaland Congress seems to be to sever Nyasaland's connection with the federation, it also has the ambition of asserting the right of Nyasaland to an independent political existence. The African leaders seem to argue: the British Government maintains that it was following a new way of granting independence to plural societies; this may be true of the Rhodesias, but it cannot be true of Nyasaland, which is almost a purely black man's country. Nyasaland has some 2,700,000 African inhabitants and only 7,000 Europeans (as opposed to 200,000 in Southern Rhodesia), and 11,000 Asians. It need not therefore be considered as a multi-racial country at all and it should be dealt with as Ghana was dealt with in 1957. But Nyasaland is not at all like Ghana. The climate of Ghana is unsuitable for white settlement. If there is no appreciable number of Europeans there, it was not because of any restrictions put on their movement into the country. Even assuming that the British Government would be justified in banning Europeans and Asians from settling in Nyasaland, it must be admitted that Nyasaland lacks at present all the ingredients which go to create efficient organs of administration; there is no economic development such as is required if the state is to be viable; no educational progress, and no political framework appropriate to a modern self-governing state organized on democratic lines. Ghana's case was entirely different: it had a legislature elected by adult suffrage, free parliamentary institutions; a buoyant economy; expanding social services; and an efficient civil service. If Nyasaland were a trust territory, it is hardly likely that the United Nations would have insisted on giving it complete independence at one stroke; it would be permissible to think that the U. N. would have liked a policy of true racial partnership to be followed there so that the country would make greater political progress with the help of the more advanced partner, provided that care is taken to see that this partner does not try to be in a permanently dominant position. The task of statesmanship in Central Africa is to reconcile two basic fears:

the fear of the African that the European will use his wealth and influence to stop all political advance; and the fear of the European that if the African is given political power before he is educated to its great responsibilities he will use it to turn the Europeans out of their legal home.

Would it be too much to hope that the British Government will yet be able to persuade the Nyasaland Congress leaders that the country must ultimately be run by Africans, but that it would be ultimately to their advantage if they do not press their demands for adult suffrage and independence to an immediate issue but let their final demands be achieved by stages, making it

worthwhile for the white settler to remain in the country and to contribute his share for its advancement and relying upon the determination of the British Government to use its reserve powers if necessary so as not to allow the African interests to suffer?

But for the outbreak of disturbances, Nyasaland would have had a further instalment of constitutional reforms. At the present time the Legislative Council of Nyasaland has 23 members altogether, permanent officials being in the majority, and of them non-official Africans are five. This number was to be increased, but Dr. Hastings Banda, who has assumed leadership of the Africans now, insisted on a clear African majority—32 out of 40—at once. On the stalemate that arose Mr. Monkhouse writes: If Dr. Banda's objective had been approached by stages, "a relatively smooth path could have been expected, and the first proper African Government would have had some useful experience of administrative responsibility to build on."

Other Signs.—The other signs are at the moment encouraging. In Northern Rhodesian elections liberal-minded Europeans and moderate-minded Africans have won an enough number of seats in the legislature to enable them to have almost a controlling influence on the territory's future progress. The leader of this Central African Party—Sir John Moffat—understands the principle of racial partnership in its full implications and is determined, as far as lies within the power of himself and his colleagues, to make the policy effective. In 1954 he defined partnership as follows in the Northern Rhodesian legislature, and the resolutions he moved were carried with one dissentient:

1. The objective of policy in Northern Rhodesia must be to remove from each race the fear that the other might dominate for its own racial benefit, and to move forward from the present system of racial representation in the territorial legislature towards a franchise with no separate representation for the races.

2. Until that objective can be fully achieved, a period of transition will remain during which special arrangements in the Legislative and Executive Councils must continue to be made, so as to ensure that no race can use either the preponderance of its numbers or its more advanced stage of development to dominate the other for its own racial benefit.

3. During this period of transition, special legislation must be in force to protect, to the extent that may be necessary, the interests of either race. Meanwhile this Council notes and agrees with the statement of the Secretary of State that it is the duty of Her Majesty's Government to ensure that on contentious issues the balance is fairly held.

4. Every lawful inhabitant of Northern Rhodesia has the right to progress according to his character, qualifications, training, ability and industry without distinction of race, colour and creed.

Until in all the three regions the Africans win a sizeable number of seats in the legislature, so that they can

immediately exercise an appreciable influence, and an increasingly larger influence in future on the administration, they will hardly agree to wait in patience for racial partnership to work itself out in the right way. But progress in that direction is being made, though one may think in a tardy manner. The number of Africans this year in the federal Parliament is double what it was last year, and, what is more, the dominant settler community is getting reconciled to the Africans exercising increasing influence there. The Africans are making great advance in industry, and are beginning to fill responsible positions in the civil service; there are now African officers in the federal armed services; there is an improvement in the position in respect of the colour bar on railways and in hotels. The federal Prime Minister has just announced his decision to abolish post office "apartheid". No more post offices are to be built with separate entrances for whites and non-whites and existing barriers and partitions will be removed wherever practicable. Sir Roy Welensky has appointed an African to high office in the federal Government, occupying the position of Secretary to the Ministry of Home Affairs with special responsibility for the Office of Race Affairs. Similarly, the South Rhodesian Government has recently taken some measures for raising the status of the African. They include:

Legislation that makes it possible for leading Africans to stay in hotels formerly exclusively for Europeans. Adoption of the Industrial Conciliation Bill which for the first time provides for racial integration in labour negotiating machinery. Opening of the civil service to non-Europeans, with all attendant rights, including promotion, security and pensions. In addition, notice has been given that bills to put apprenticeship and workmen's compensation on a non-racial basis are to be introduced.

It may be, as the critics allege, that these measures do not proceed from a basic change of heart but are intended only to make an impression on the Colonial Office as to the progressive nature of the white settler community. But, even if so, it shows that the whites are not now so recalcitrant as before, and that is a gain.

It is very much to be wished that the extremists among the white settlers and among African nationalists will not compel the British Government to abandon the policy of racial partnership on which the Central African federation has been based and which appears to be the most promising way of reconciling clashing interests and giving independence to countries in which Africans form a predominating part of the population.

Is it possible for the present dismal situation to right itself in time? Mr. Monkhouse suggests in this connection that the British Government may offer to Nyasalanders the right to opt out of Federation, say, after ten years from now, "when political power within Nyasaland should have passed into African hands; so that the decision would be made by Nyasalanders with experience enough in government to be able to assess the pros and cons of separation fully. This surely is how such a decision ought to be made."

TWICE IN PERIL OF LIFE OR LIMB UNDER THE LAW

SUPREME COURT'S RULINGS ON DOUBLE JEOPARDY

On 30th March the Supreme Court of the United States had occasion in two cases to define the extent of the constitutional guarantee provided by the Fifth Amendment against double jeopardy: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb." The present state of the law on this subject may be thus summarized. The general rule is that when a jury has been empaneled and sworn the defendant is in legal jeopardy, and cannot be again tried for the same offence; all the more so, after acquittal (*Keppner v. United States* 195 U. S. A. 100 [1904]). In the *Keppner* case the question was whether Congress could constitutionally provide for writ of error on behalf of the Government in criminal cases, with a resulting new trial of the accused, although on the first trial he had been acquitted. The majority of the Court held (three Justices dissenting) that this could not constitutionally be done — that "the protection is not, as the court below held, against the peril of second punishment, but against being again tried for the same offence." But the fact that one has been indicted and tried in a state court for certain acts, does not prevent his being tried in a federal court for the same acts if they also constitute a crime against the United States, for he is, under such circumstances, being tried in different jurisdictions for offences against different sovereignties. This result follows from the fact that the Fifth Amendment is binding only on the National Government and does not operate on states, as was decided for instance in *United States v. Lanza*, 260 U. S. 377 (1922). In this case, Chief Justice Taft, who delivered the opinion of the Court, said:

An act denounced as a crime by both national and state sovereignties is an offence against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all the other guarantees in the first eight amendments, applies only to proceedings by the federal government (*Barron v. City of Baltimore*, 7 Pet. 243), and the double jeopardy therein forbidden is a second prosecution under authority of the federal government after a first trial for the same offence under the same authority.

Similarly it was held in *Palko v. Connecticut*, 302 U. S. 319 (1937), that the double jeopardy provision of the Fifth Amendment is not, as such, incorporated in the due process provision of the Fourteenth: "Nor shall any state deprive any person of life, liberty or property, without due process of law."

The instant cases involved "two sovereignties" — a state government and the federal government — bringing successive prosecutions for the same criminal act and in both cases the Supreme Court decided by 6 to 3 that the state and the federal governments were exercising their

established legal rights in thus arraigning the persons concerned and that the trials did not violate either the double jeopardy inhibition of the Fifth Amendment or the due process guarantee of the Fourteenth.

The first case concerned Alfonso Bartkus, who was acquitted by a federal court jury in 1953 on a charge of robbing a savings and loan association in Cicero in the state of Illinois. He was thereafter prosecuted in an Illinois court for the same bank robbery, convicted and given a life sentence under the Illinois Habitual Criminal law. It was argued that a state prosecution after a federal acquittal was not "due process." The Court rejected the argument. It held that an act that violates both federal and state statutes can be penalized in both court systems without being considered double jeopardy within either system. Justice Frankfurter, who wrote the majority opinion, said that the due process clause had never been interpreted to include a flat bar against double jeopardy, and that the states were free under the Constitution to retry prisoners in ways barred to the federal government by the Fifth Amendment. The basic concepts of American Federalism — with state and federal governments existing together — would, he said, be violated by barring successive prosecutions by the two. There would otherwise arise the possibility of the federal government preventing any state prosecution by trying a man first in any case where the same deed is an offence under state and federal statutes, and "it would be in derogation of our federal system to displace the reserved power of the states over state offences by reason of prosecution of minor federal offences by federal authorities beyond the control of the states." "The result would be," said Justice Frankfurter, "a shocking and untoward deprivation of the historic right and obligation of the states to maintain peace and order within their confines." Thus the Supreme Court held for the first time that a man may be tried by a state even though a federal jury has acquitted him of a similar charge.

The other case concerned Louis J. Abbate and Michael L. Falcone. They pleaded guilty, in an Illinois trial, to conspiring to dynamite some telephone facilities in connection with a union dispute and were sentenced to three months in prison. The two men were afterwards prosecuted in a federal court for plotting to destroy the same telephone equipment. The federal charge was based on the fact that some of the equipment was used exclusively by federal agencies. Abbate and Falcone were convicted by a jury and given, respectively, three-year and one-year prison terms.

In this case the Government had argued that federal law enforcement might be crippled if state verdicts foreclosed any future action by the federal government,

giving the example of a civil rights case in which federal prosecution would be barred after an ineffectual state prosecution. Justice Brennan, who wrote the majority opinion in the case, accepted this argument and upheld the federal conviction, ruling that the Fifth Amendment's guarantee against double jeopardy did not ban the two-court procedure.

In both cases Justice Black, with Chief Justice Warren and Justice Douglas, dissented. He held in the *Bartkus* case that the second prosecution in the state court violated the due process guarantee of the Fourteenth Amendment. He suggested that there would be more double prosecutions under the *Bartkus* rule. "After to-day," he asked, "who will blame a conscientious prosecutor for failing to accept a jury verdict of acquittal when he believes a defendant guilty and knows that a second try is available in another jurisdiction?" In the *Abbate* case he characterized the majority opinion as a finding that "one act becomes two when two jurisdictions are involved" and denounced it as a "dangerous fiction" productive of tyranny and one which violated the "spirit of our free country, the letter of the Constitution and the plain intent of the Anglo-Saxon common law." He wrote:

The Court apparently takes the position that a second trial for the same act is somehow less offensive if one of the trials is conducted by the federal government and the other by a state. Looked at from the standpoint of the individual who is being prosecuted, this notion is too subtle for me to grasp.

The Court, without denying the almost universal abhorrence of such double prosecutions, nevertheless justifies the practice here in the name of "federalism." This, it seems to me, is a misuse and desecration of the concept. Our Federal Union was conceived and created "to establish justice" and to "secure the blessings of liberty," not to destroy any of the bulwarks on which both freedom and justice depend.

Justice Black cited a case of successive trials in the Soviet Union and said "similar examples are not hard to find in lands torn by revolution or crushed by dictatorship." "To-day's decisions," he concluded, "cause me to fear that in an important number of cases it can—and it will—happen here despite the Bill of Rights."

Attorney General's Order LIMITING DOUBLE JEOPARDY TRIALS TO A MINIMUM

Soon after the high court's decision was announced and the fear expressed in Justice Black's dissenting minute was known that there would be an increase in double prosecutions as a result of the majority decision, the Attorney General set to work to prepare a memorandum for the guidance of the 94 federal attorneys on the subject. For his own part he agreed with the majority ruling

that successive prosecutions for the same act by "two sovereignties"—the federal government and a state government—did not violate the constitutional prohibition against double jeopardy. But he recognized that "applied indiscriminately and with bad judgment, it, like most rules of law, could cause considerable hardship" such as what Justice Black had adverted to. He told the attorneys in the memorandum that it was their duty to observe not only the rulings of the Supreme Court but the spirit of the rulings as well. He noted that the majority decision had said that law enforcement officers should use care in double prosecutions, and the Attorney General's memorandum emphasized that if such care were taken there would hardly be any room for a complaint that the power affirmed by the court to try a second time would be abused. "The mere existence of a power", the Attorney General said, "does not mean that it should necessarily be exercised. Those of us charged with law enforcement responsibilities have a particular duty to act wisely and with self-restraint." And he gave a general direction that there should be no federal prosecution of persons tried previously by a state court for the same criminal act unless "the reasons are compelling", and he specifically ordered federal prosecutors to get his personal approval before starting such a prosecution.

Since in certain crimes against the public order and security there is, as the Attorney General pointed out, "a series of related acts", double prosecution cannot be totally abandoned without sacrifice of the public interest. This factor is quite apart from the right of the "two sovereignties"—state and federal—to enforce their laws that the Supreme Court again acknowledged as woven into the constitutional fabric of the Republic. In such crimes, as a commentator points out, the criminal is not only he who pulled the trigger, or planted the bomb, or set it off. It is also he who conceived and/or planned an act, especially one which was not an affair of just an hour or a day. Hence when, by reason of a technical flaw or a jury's foolish verdict, a criminal charged with an offence against a federal law is acquitted in that jurisdiction, the public interest is served by trying him in the state court for a separate offence by this same act against a state law. And vice versa. But, as the Attorney General noted in his memorandum, these circumstances will "seldom arise". And in order to ensure that full consideration be given to them, the Attorney General directed that the matter in the last analysis be referred to himself before a second prosecution is instituted. His order runs:

No federal case should be tried where there has already been a state prosecution for substantially the same act or acts without the United States Attorney first submitting a recommendation to the appropriate Assistant Attorney General...or should be approved [by him] without having it first brought to my attention.

PARLIAMENTARY PRIVILEGE IN THE U. S. A. A PLEA FOR THE ADOPTION OF THAT SYSTEM

In considering the proper scope of parliamentary privilege and the right mode of exercising it, we may with profit turn to the example of the United States of America. The essence of parliamentary privilege as understood in England is that parliament has the right to adjudge what acts, whether of members or non-members, constitute a breach of privilege or a contempt of its authority and to inflict punishment for such contempt as a matter of legislative power, without resort to judicial proceedings under the general criminal law. This method of treating contempts as something outside the orderly process of law and Parliament itself punishing them directly without intervention of courts has been deliberately discarded by the United States. Chief Justice Warren said in *Watkins v. United States*, 354 U. S. 178 (1957). "Unlike the English practice, from the very outset the use of contempt power by the legislature was deemed (in the U. S. A.) subject to the judicial review." And yet the United States is not found to suffer in any way on account of lack of this power in Congress, which is able to discharge its functions in as efficient a manner as the English Parliament is supposed to be able to do only because of the judicial power of commitment for contempt—described as the "keystone of parliamentary privilege"—as an aid to the performance of its legislative duties or as a means of protecting its privileges. We shall make an attempt in this article to show how this happens.

I — Privileges of Members

Before doing so, however, it would be well to state what the privileges and immunities of members of the U. S. Congress are. Art. I, sec. 6, cl. 1 deals with them. It runs as follows :

They (the Senators and Representatives) shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

It will be observed that the privileges are only two, unlike the broad undefined privileges which members of the Parliament of England are supposed to enjoy. The implication is that none other are really essential for enabling members to perform their legislative duties without impediment.

Freedom of Debate.— Much the more important of the two privileges is the one of freedom of speech or debate. Freedom of debate in Parliament is of course a prime essential to a free government, and it is guaranteed in practically all civilized countries. The privilege is taken from the Bill of Rights, where it was declared that "the freedom of speech, and debates, and proceedings in

Parliament ought not to be impeached or questioned in any court or place out of Parliament." In the U. S. A. the courts have declared that the privilege should be construed not strictly but liberally, because, as Chief Justice Parsons said as early as 1808 in his famous opinion in *Coffin v. Coffin*, 4 Mass 1, the privilege is "secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal." In this case it was held that the privilege covered reports, resolutions, and votes as well as ordinary speeches and debates, and whether occurring in the full assembly or in committee. The Supreme Court has adopted this interpretation. Citing this, the Court said in *Kilburn v. Thompson*, 130 U. S. 190 (1880) that the privilege applied "in short, to things generally done in a session of the house in relation to the business before it." But the privilege cannot go any further. C. J. Parsons said in the Massachusetts case: "A more extensive construction of the privileges of members . . . I cannot give . . . When a representative is not acting as a member of the house, he is not entitled to any privileges above his fellow-citizens; nor are the rights of the people affected if he is placed on the same ground on which his constituents stand." And this is acknowledged to be the limit of the scope of the privilege of freedom of speech in legislative assemblies. "It does not protect acts or words, otherwise illegal, though done or spoken by a member of the legislature within the legislative halls, if not in relation to business before it, and it would seem not to give immunity for the publication by a member outside of libellous matter which was privileged within the legislative chamber" (Burdick, "The Law of the American Constitution").

Freedom from Arrest.— The constitutional privilege of freedom from arrest has latterly come to have a narrowly limited application, and that for two reasons, as was pointed out by Burdick in 1922: (1) "'treason, felony, and breach of the peace' have been declared to cover all criminal offences (*Williamson v. United States*, 207 U. S. 425 [1908]), and (2) "there is comparatively little provision in the law at present for arrest in civil actions." "Indeed", says Corwin, "since abolition of imprisonment for debt the immunity has lost most of its importance."

II — Legislative Power to Punish for Contempts

If the Constitution of the United States confers but limited privileges upon members of Congress, it totally denies to the houses of Congress the mode of enforcing those privileges which is adopted in England. In the

latter country, under the influence of what May calls "the mediaeval conception of Parliament," as a court of judicature, Parliament itself, even in these modern days, adjudges a man to have committed a breach of privilege and proceeds to punish him for it. The existence of such judicial power in a legislative body is, however, contrary to the basic structure of the United States Constitution. In *Kilbourn v. Thompson* (supra) the power of Congress to punish non-members was fully discussed. Kilbourn's alleged contempt consisted of his refusal to answer certain questions before a committee of the House of Representatives. In support of the right of the House to punish in this case was urged the authority exercised in this regard by the English Parliament. The Supreme Court pointed out that both the House of Lords and the House of Commons are but branches of the ancient High Court of Parliament, which exercised both legislative and judicial functions, and have as such exercised the right of punishing for contempts, while the houses of Congress have only such powers as are expressly or by reasonable implication granted by the Constitution, and are expressly forbidden to deprive any person of liberty without due process of law. Justice Miller, speaking for the Court, said :

No general power of inflicting punishment by the Congress of the United States is found in that instrument (i. e., the Constitution). It contains in the provision that no "person shall be deprived of life, liberty, or property without due process of law," the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this Court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established. An Act of Congress which proposed to adjudge a man guilty of a crime and inflict the punishment, would be conceded by all thinking men to be unauthorized by anything in the Constitution.

The powers and privileges of the House of Commons in England on the subject of punishment for contempt, rest on principles which have no application to other legislative bodies, and certainly can have none to the House of Representatives of the United States—a body which is in no sense a court, which exercises no functions derived from its once having been a part of the highest court of the realm, and whose functions, so far as they partake in any degree of that character, are limited to punishing its own members [Art. I, sec. 5, cl. 2: "Each house may punish its members for disorderly behaviour"] and determining their election [Art. I, sec. 5, cl. 1: "Each house shall be the judge of the elections."]

Another matter in which the Constitution authorizes Congress to exercise penal jurisdiction, it was pointed out, was this: "The House of Representatives has the

sole right to impeach officers of the government and the Senate to try them" [Art. I, sec. 3, cl. 6].

The next leading case is that of *Marshall v. Gordon*, 243 U. S. 521 (1917), in which it was reiterated that Congress does not possess the power to punish the citizen for contempt that was exercised by the English Parliament when the Lords and Commons were one and which continued to be exercised even after the Parliament's division into two houses. Perhaps, the Court said: "by the force of routine the mere reminiscence of the commingled (legislative and judicial) powers led to a continued exercise of the wide authority as to contempt formerly existing, long after the foundation of judicial-legislative power upon which it rested had ceased to exist." In any case, "no power was expressly conferred by the Constitution of the United States on the subject except that given

Contempt Power of the Legislature

By Prof. Kenneth C. Wheare

Emphasizing the great importance of preserving the right of a member of Parliament to freedom of speech in Parliament and to immunity of action outside Parliament in the performance of his duties, Professor Kenneth C. Wheare points out the danger of treating outside criticisms as contempt of Parliament. He says :

On another aspect of parliamentary privilege, however, I have wondered, in following the cases that have arisen since the end of the war, whether the House of Commons was not becoming a little too sensitive and touchy about criticisms of itself by citizens. If criticisms are to be freely construed as contempt of the House, and punished or condemned accordingly, the rights of the citizen will be narrowly restricted. Is it entirely satisfactory that the House should itself be the judge of whether contempt has been committed and of the punishment that should be imposed ?

to the House to deal with contempt committed by its own members" under Art. I, sec. 5, nor was such a power implied from the legislative powers granted. Chief Justice White, who wrote the opinion of the Court, said on this point :

As the possession by Congress of the commingled legislative-judicial authority as to contempts which was exercised in the House of Commons would be absolutely destructive of the distinction between legislative, executive, and judicial authority which is interwoven in the very fabric of the Constitution, and would disregard express limitations therein, it must follow that there is no ground whatever for assuming that any implication as to such power may be deduced from any grant of authority made to Congress by the Constitution.

Implied Power of Preserving Order

Chief Justice White pointed out that while the general power of dealing with contempt could not be held to be an implied power of Congress, a limited power to deal directly with contempt could be implied, as ancillary or incidental to the power to legislate expressly granted, so far as such power was necessary for Congress to preserve and exercise its legislative authority. In this connection he cited with approval the following declaration in *Anderson v. Dunn*, 6 Wheat, 204 (1821) :

From the power to legislate given by the Constitution to Congress there was to be implied the right of Congress to preserve itself, that is, to deal by way of contempt with direct obstructions to its legislative duties.

But the implied power is strictly limited. Chief Justice White said :

We think from the very nature of that power it is clear that it does not embrace punishment for contempt as punishment, since it rests only upon the right of self-preservation; that is, the right to prevent acts which, in and of themselves, inherently obstruct or prevent the discharge of legislative duty or the refusal to do that which there is an inherent legislative power to compel in order that legislative functions may be performed.

The Court mentions, by way of illustration, the following acts with which the houses of Congress may deal directly, under the auxiliary implied power, as contempt: "either physical obstruction of the legislative body in the discharge of its duties, or physical assault upon its members for action taken or words spoken in the body, or obstruction of its officers in the performance of their official duties, or the prevention of members from attending so that their duties might not be performed, or finally with contumacy in refusing to obey orders to produce documents or give testimony which there was a right to compel."

Where a particular act causes interference with the performance of legislative duty, it comes within congressional jurisdiction to deal with it directly under the implied power of Congress to preserve its functions and therefore without resort to the modes of trial prescribed for substantive offences under the criminal law. What acts are of this nature so as to warrant the use of the implied accessory power in order to prevent the right to exercise the powers given from being obstructed, and virtually destroyed must be left to the determination of Congress, "and of course in such case as in every other," said Chief Justice White, "unless there be manifest an absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference." But, as a rule, as Justice Brandeis declared in *Jurney v. MacCracken*, 291 U. S. 125 (1935),

"assertions of congressional privilege are subject to judicial review" (vide BULLETIN, p. iv : 330).

At this point we may state that even British judges have accepted the conclusions that flow from this leading American case : (1) that, even without the general power to punish for contempt associated with the peculiarly English doctrine of parliamentary privilege, legislative bodies have the power, whether expressly enforced or not, to punish as contempts those acts of members or others which tend to obstruct the performance of legislative duty or to defeat, impede, or embarrass the exercise of legislative power; and (2) that it is unnecessary to confer on legislative bodies any more extensive power to punish for contempt in order to enable them to exercise their legislative functions in an effective manner. In *Keilley v. Carson*, 4 Moo. P. C. 63 (1842), in which it was ruled that the *lex et consuetudo parliamenti* does not apply in the absence of legislation; the Privy Council established these two principles.

The case was this: Keilley was adjudged by the House of Assembly of Newfoundland guilty of contempt for having reproached a member "in coarse and threatening language" for words spoken in debate in the House. A warrant was issued and Keilley was arrested. When brought before the House he refused to apologise and indulged in further violent language towards the member and was committed. Having been discharged on habeas corpus proceedings, he brought an action for false imprisonment against the Speaker and other members of the House. As a justification the defendants pleaded that they had acted under the authority of the House. A demurrer to the plea was overruled and there was a judgment for the defendants. An appeal was made to the Privy Council.

The main question canvassed before Their Lordships was whether the House of Assembly of Newfoundland had the power, such as is possessed by both Houses of Parliament in England, to adjudicate upon a complaint of contempt or breach of privilege consisting of the use of insolent language against a member out of the doors of the House. And Their Lordships decided that the House had not the power, since such power had not been expressly granted to the local legislature by the Crown. After quoting the aphorism of the Roman law to the effect that the conferring of a given power (in this case the power to legislate) carried with it by implication the right to do those things which were necessary to the carrying out of the power given, Baron Parke, who spoke for Their Lordships, said :

In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure free exercise of their Legislative functions, they are

justified in acting by the principle of the Common Law. But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions.

That is to say, "in virtue of the grant of legislative authority there would be a power implied to deal with contempt in so far as that authority was necessary to preserve and carry out the legislative authority given," but no further.

* * * *

III—Conclusion

Finally, we may refer to the relevant thought to which Chief Justice White gives expression in the concluding portion of his judgment that "the wise foresight of the fathers" has saved the United States from having unnecessarily to subvert the Constitution in dealing with contempts. He said:

[The founding fathers] substituted for the intermingling of legislative and judicial power to deal with contempt as it existed in the House of Commons a system permitting the dealing with the subject in such a way as to prevent the obstruction of the legislative powers granted and secure their free exertion and yet at the same time not substantially interfere with the great guarantees and limitations

concerning the exertion of the power to criminally punish.

We too have our own great constitutional guarantees, but the decision of our highest tribunal that parliamentary privilege has greater authority than any fundamental rights has rendered them inoperative. Why not take the opportunity which the Constitution itself presents in that it contemplates the definition of parliamentary privileges as they are to apply in India to define them in the narrow way in which they are enumerated in the United States Constitution and, what is far more important, to leave their enforcement, as in the United States, to the normal process of law, so that the privileges may be subject to constitutional limitations? Even in England it is latterly felt that parliamentary privilege tends to be unduly stretched, thus putting the rights of the citizen in peril, and the basic right of the freedom of the press is always in danger of being encroached upon. Even in England the suggestion is made in influential circles that Parliament be divested of the judicial power it now enjoys in dealing with cases of breach of privilege. It may be difficult to carry out the suggestion in that country because hoary traditions are bound up with it and have invested it with a sort of sacrosanctity. However, we need not consider ourselves to be so wedded to a system under which the legislature's decisions in this regard are not open to review by the courts of law. The experience of the United States shows that the exercise of judicial power by legislative bodies is not necessary either for the protection of parliamentary privilege or for the protection of the legislature in the discharge of legislative functions to which the legislature should confine itself. The United States has wisely extricated itself from the distortion of constitutional principles which the commingling of legislative and judicial powers involves. It would be equally wise for us to do so.

"RIGHT TO WORK" LAWS

LABOUR'S FIGHT TO PRESERVE COMPULSORY UNIONISM

As in our country similar problems in the field of labour are arising, we may give some details of the top-priority issue on which organized labour in the United States successfully fought the last election in highly industrialized centres and consider the merits of the position it took up in the campaign.

There are nineteen states in the U. S. A. which have adopted what are called "right-to-work" laws, which provide in short that no worker shall be barred from a job because he refuses to belong to a union. Organized labour, however, considers such laws, making it illegal to force workers to join unions as a condition of holding their jobs as a serious obstacle in the way of its growing strength,

and it insists upon maintaining closed shops, i.e., shops that refuse to employ any but union members. And in order to give effect to this policy of a closed or union shop, it also seeks to have the power to enter into what are closed shop contracts or union contracts with employers, imposing upon the latter the obligation of employing none but union members. In the November election labour put forward the demand that the right-to-work laws prohibiting the all-union shop and compulsory union membership shall, by federal legislation or if necessary by constitutional amendment, be invalidated.

So far as federal law is concerned, the Labour Management Relations Act (colloquially known as

the Taft-Hartley Act) authorizes unions and employers to enter into contracts that establish union membership as a condition of employment. However, a specific provision in the Act gives precedence to state laws outlawing compulsory unionism. This is contained in sec. 14 (b), which provides that "nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labour organization as a condition of employment in any state or territory in which such execution or application is prohibited by state or territorial law." That is to say, states are left free under the law to pursue their own policies, whether in favour of or against closed shop or closed-shop agreements. The National Labour Relations Act or the Wagner Act of 1935 lays down that employees have the right to self-organization or to collective bargaining through their own representatives without discrimination or coercion by the employer. Sec. 8 (3) of the Act forbids the closed shop: it declares that it shall be an unfair labour practice for an employer "by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labour organization." But, because it was not thought desirable to interfere in such a drastic way with the laws of several states which authorize closed-shop agreements between employers and labour organizations, a proviso was introduced removing the ban upon such agreements in states where they were legal; that is to say, the proviso made no change in the status quo. Federal law thus imposes no restriction: it leaves the states entirely free to decide what kind of labour organizations they will permit, provided only that labour will have the right to organize itself.

The Supreme Court has held the "right-to-work laws" banning the closed shop or closed-shop agreements to be valid as affording to non-union workers the legislative protection which labour organizations after a long fight with the employers secured for themselves (*Lincoln Fed. Lab. Union v. N.-W. Iron & Metal Co.*, 335 U. S. 525 [1949]). This judicial decision is everywhere regarded as morally a sound one.

Labour must of course have the right to organize. In the first case concerning the Wagner Act giving to employees the right to self-organization which reached the Supreme Court (*N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1 [1937]), the Court said:

Long ago we stated the reason for labour organizations. We said they were organized out of the necessities of the situation: that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and his family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employer and resist arbitrary and unfair treatment;

that union was essential to give labourers opportunity to deal on an equality with their employer.

Justice Frankfurter said the same thing in *American Fed. of Labour v. American Sash and Door Company*, 335 U. S. 538 (1949):

The coming of the machine age tended to despoil human personality. It turned men and women into "hands." The industrial history of the early nineteenth century demonstrated the helplessness of the individual employee to achieve human dignity in a society so largely affected by technological advances. Hence the trade union made itself increasingly felt, not only as an indispensable weapon of self-defence on the part of workers but as an aid to the well-being of a society in which work is an expression of life and not merely the means of earning subsistence.

Although the need for labour to organize itself in unions appears so obvious to us now and unionization has become almost a shibboleth, time was when it was hotly disputed under the influence of the notions of classical economists by whom, as Justice Frankfurter has said, "basic human rights expressed by the constitutional conception of 'liberty' were equated with theories of laissez faire," and these sentiments were at that time reflected in judicial pronouncements. Thus, the validity of even the notorious "yellow-dog contracts," which were agreements whereby the worker was required to bind himself not to be a member of a trade union while remaining in the employment, was sustained. In *Adair v. United States*, 208 U. S. 161 (1908) a federal law which prohibited discrimination against workers, and in *Coppage v. Kansas*, 236 U. S. 1 (1915), a Kansas statute outlawing yellow-dog contracts were struck down by the Supreme Court as denying due process of law by limiting "freedom of contract," though the employer's freedom here protected was "the freedom to require that those who worked for him should not be free to join a union." Later, in 1932, the Norris-La Guardia Act made yellow-dog contracts unenforceable in the federal courts, and in 1935, as said above, the National Labour Relations Act made the employees' right to self-organization and to collective bargaining the basic features of labour relations. Laws concerning other matters also like fixing minimum wages and maximum hours were held invalid in accordance with laissez faire doctrines.

However, thereafter the tide turned; the economic ideas changed and along with this change there came a change in the attitude of the Supreme Court. It no longer held, as before, that every legislative attempt to change the economic order as necessarily "infected with unconstitutionality;" it came to look upon measures strengthening the wage-earner's bargaining position with sympathy and favour. And now the workers' right

of association is universally accepted, and labour organizations have become a great power.

But having come into their own, labour unions now desire to monopolize power and deny to non-union labour the rights which they have secured for themselves after such a prolonged and bitter fight. One of the objections to outlawing the yellow-dog contract was to preserve the workers' freedom to contract. Labour unions are now seeking to prevent the states from guaranteeing just this freedom to the non-union labourer. In *Lincoln Fed. Lab. Union v. North-Western I. & M.* (supra), labour unions challenged the right-to-work laws of two states prohibiting a closed shop or closed-shop agreements and claimed for themselves, in effect, the right to compel employers to employ none but their own members. They justified this claim for mandatory union membership on the following ground (to quote the words of Justice Black who delivered the opinion of the Supreme Court) :

The right of unions and union members to demand that no non-union members work along with union members is "indispensable to the right of self-organization and the association of workers into unions"; without a right of union members to refuse to work with non-union members, there are "no means of eliminating the competition of the non-union worker"; since, the reasoning continues, a "closed shop" is indispensable to achievement of sufficient union membership to put unions and employers on a full equality for collective bargaining, a "closed shop" is consequently an "indispensable concomitant" of "the right of employees to assemble into associations through labour organizations."

Since, the unions seemed to say, they had been given the right to self-organization, let them also be given the right to force workers to join their own organizations as a condition of holding their jobs, which alone can make their right to self-organization effective. The demand means in effect, as Justice Black said in rejecting the claim, a "return, at least in part, to the due process philosophy that has been deliberately discarded" (in yellow-dog contracts and other cases). Said Justice Black :

Claiming that the Federal Constitution itself affords protection for union members against discrimination, they nevertheless assert that the same Constitution forbids a state from providing the same protection for non-union members. Just as we have held that the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded non-union members.

The moral basis of this decision is to be found in the words of Justice Brandeis, as quoted by Justice Frankfurter

in his concurring opinion in the above case. Mr. Brandeis, "who had been a staunch promoter of unionism" before he was appointed to the Supreme Court bench, made an appeal to the employers that they should help in building up unions and making them strong. At the same time he said to the workers :

The objections, legal, economic and social, against the closed shop are so strong, and the ideas of the closed shop so antagonistic to the American spirit, that insistence upon it has been a serious obstacle to union progress. (1910.)

The American people should not, and will not, accept unionism if it involves the closed shop. They will not consent to the *exchange of the tyranny of the employer for the tyranny of the employee*. (Emphasis added.) (1912.)

Nor, according to Mr. Brandeis, was such monopoly of power and the power to tyrannize it confers necessary. He said :

It is not true that the "success of a labour union" necessarily means a "perfect monopoly." The union, in order to attain or preserve for its members industrial liberty, must be strong and stable. It need not include every member of the trade. Indeed, it is desirable for both the employer and the union that it should not. Absolute power leads to excesses and to weaknesses. Neither our character nor our intelligence can long bear the strain of unrestricted power. The union attains success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are non-unionists. (1915.)

COMMENTS

Parliamentary Privilege

A-I. N. E. C.'s Position

For some time the journalists in India have been so busy considering their own economic position that they have had no time to pay any attention to the onslaughts made by the Government on the freedom of the Press. The most glaring instance of such neglect was afforded by the Punjab's Press Act which, though it imposed most sweeping restrictions on the liberty of the Press such as pre-censorship, prohibition of all comment, etc., did not provoke even a formal protest on the part of the press. The constitutionality of this draconian legislation was later upheld by the Supreme Court and yet the press did not feel much concerned about it.

At about the same time the question of Parliamentary Privilege and the threat its assertion held out to press freedom was raised. The question was specifically brought to the attention of the All-India Newspaper

Editors' Conference, but this body did not pay any attention to it. The "Searchlight" case, however, and the Supreme Court's frank and uncompromising statement in regard to it that Parliamentary Privilege prevails over Fundamental Rights, has now at long last shaken the Conference out of its complacency. Recently it passed a resolution on the subject, in which it stated its own position to be that Fundamental Rights should have greater authority than Parliamentary Privilege. The resolution runs as follows:

The A.-I. N. E. C. notes that the powers, privileges and immunities of the House of Commons of Parliament of the United Kingdom will prevail in India until they are defined by the legislature by law. The Press in India cannot get the benefit of Art. 19(1)(a) in respect of the publication of reports of parliamentary debates, as clauses (2) to (4) of Art. 105 or 194 are supreme and not subject to the provisions of the Constitution. The Press Commission of India has referred to the over-sensitiveness of legislators, and if the traditional privileges of Parliament are interpreted in a narrow way, the Press may not get the desired protection even in respect of bona fide and faithful publication of the proceedings of the legislature.

If it is for the use of Legislature to determine if any breach of privilege is committed, the Press in India cannot lean on Art. 19(1)3(A) in respect of the publication of the proceedings of legislatures. In view of this situation, the A.-I. N. E. C. finds that on the issue of privileges the Press occupies a very subordinate position, inasmuch as Parliament has the power or privilege of prohibiting the publication of report of debates or proceedings that take place within its precincts. The Press in India asks for the position that when there is a conflict, the privilege should yield to the extent it affects the fundamental right under the Constitution of India.

WITHDRAWAL OF PROSECUTIONS

Kerala Government's Application TURNED DOWN BY MAGISTRATE

The Kerala Government sought the withdrawal of the case against eight workers of the Trivandrum Municipal Corporation, who were charged with assaulting new recruits on a public road when the accused were on strike in March last. Two of the accused were charged with having forcibly snatched away a lathi from a police constable who attempted to prevent the accused from attacking the new recruits.

After the strike of the Municipal workers had been called off, the State Government decided to withdraw all pending cases arising out of the strike except those involving "serious violence."

The Assistant Public Prosecutor, in his application for the withdrawal of the case, told the Court that the

"situation which necessitated the launching of the prosecution has ceased to exist."

The Second Class Magistrate of Trivandrum, Mr. T. A. Paraman, said on 30th April, in rejecting the application, that by categorising the case as one not involving "serious violence" the Prosecutor "seems to have in mind only the quantum of violence and not the nature of violence. The arbitrary classification of offences for the purpose of the withdrawal of prosecutions, without considering the nature of violence is patently wrong in principle."

The Magistrate also said that if the cessation of the situation which gave rise to an offence was a valid ground for withdrawing the prosecution, no prosecutions at all would be possible. The Magistrate added:

It is no consolation to the injured persons in this case nor is it just to tell them that they can have no remedy in law because the situation which caused them to be beaten up has ceased to exist.

It is also not in the interests of law and order that offenders and the public at large should gather the impression that a strike is a 'situation' under which they could commit any offence and still get away with it. In the interests of law and order, the courts of law should, as far as it is within their domain, discourage such an impression hardening into an attitude on the part of the public.

The Magistrate referred to the charge that a policeman's lathi had been snatched away by two of the accused. "It is a naked and daring challenge to the authority of the State inasmuch as the State is entrusted with the maintenance of law and order and the policeman is the lowest unit in the system for maintaining law and order. If such open challenges to law and order are allowed to go unpunished, society would relapse into the Hobbesian State of nature where life will be nasty, brutish and short." "When the Government seeks to excuse such offences in the name of the cessation of the situation" which necessitated the launching of the prosecution, "it amounts to abdication of the functions entrusted to it."

U. P. EVICTION ACT, 1953

Held Invalid

BY THE ALLAHABAD HIGH COURT

Mr. Justice Gurtu and Mr. Justice Roy of the Allahabad High Court on 25th April allowed a writ petition filed by a cultivator of Naini Tal district and quashed the order of the additional district magistrate ordering his eviction from 41 acres of Government land under sec. 4 [1] of the U. P. Government Land (Eviction and Rent Recovery) Act. This Act was passed by the U. P. legislature in 1953 with a view to providing for a speedier process for the eviction from Government land of people occupying the same without authority and for recovery of arrears of rent in respect of such land.

Their Lordships declared the Act ultra vires of the Constitution of India. They said:

It seems to us that by providing a special procedure for ejection from Government land by this Act and by providing the same procedure for ejection from Government premises by another Act, the Legislature is creating something in the nature of a droit administratif so that disputes relating to occupation of

Government property, in contradistinction to disputes arising in respect of title, should be decided by special authority and by a special procedure, though fortunately the decision is still amenable to the jurisdiction of this court. The ground for differentiation in this case is merely speedy ejection from the Government land. The classification cannot be held valid under Article 14 of the Constitution.

The Court issued a writ directing the opposite parties not to proceed to deal with the land in question under the Act and issued an order for the restoration of the land already taken possession of to the petitioner.

PROVISION OF HOUSES FOR WORKERS

No Statutory Obligation On Employers SUPREME COURT DECISION

Allowing the appeal by the Patna Electric Supply Company against its workmen, Mr. Justice Gajendragadkar, speaking for the Supreme Court, stated on 23rd April that in the present economic conditions of the industry it would be inexpedient to impose on employers the obligation to provide housing accommodation for their employees.

The workmen of the appellant company had demanded the provision of housing and had supported their claim on the basis of the recommendations of the Bihar Central (Standing) Labour Advisory Board. The Industrial Tribunal adjudicating on this demand directed that the company should undertake the construction of 15 quarters for the workmen within one year of the publication of the award. An appeal against this decision was dismissed by the Labour Appellate Tribunal.

The company having obtained special leave to appeal from the Supreme Court urged that housing facilities are the primary responsibility of the State and the Tribunal had misconstrued the recommendations of the Labour Advisory Board as placing an obligation on the employers to provide housing. The company further submitted that it had no financial capacity to meet this liability.

Mr. Justice Gajendragadkar examined the judgments of the lower tribunals and stated that the ground on which housing had been awarded in favour of the workmen was that an obligation to provide this amenity had been created by the report of the Labour Advisory Board. In the view of the Supreme Court this impression of the lower tribunals was incorrect and it did not appear that the employer was under any obligation, statutory or otherwise, to construct houses for the workmen.

The Court also considered the alternative argument advanced by the respondent that in any case on principles of social justice the tribunal was correct in directing the company to provide the workmen with housing. On this aspect of the question the Court said:

In considering the claim of the workmen in a sympathetic way on the ground of social and economic justice industrial adjudication has to bear in mind the interests of the national economy and progress which are relevant and material.

On this consideration the Court held that in the present economic conditions of the country a tribunal

would not be justified in placing the burden of housing on the employer. The appeal by the company was accordingly allowed.

NOTES

Another Set-Back for Civil Rights

KEY PROVISION DECLARED UNCONSTITUTIONAL

We recorded in the last issue, at p. v: 277, that the suit brought by the Justice Department against the registrars of Macon county in Alabama was dismissed by a federal district court. Now we have to record that the suit brought by the Department in the other voting right case was also dismissed on 16th April by another federal district court.

The Justice Department had charged in this suit that the five registrars of Terrell county had prevented Negroes from registering as voters. The complaint noted that only 48 of the 5,36 Negroes of voting age in the county were registered. It further pointed out that the registrars kept records of whites and Negroes on cards of different colours and used literacy tests unfairly to exclude Negroes. The department named four Negro teachers with college degrees who it said had been excluded by the literacy test. It asked the court to require registration of these four and of other qualified Negroes, and it also asked for an injunction to halt the practice of exclusion followed by the registrars.

The proceeding was brought under the Civil Rights Act of 1957, which allowed the Justice Department to use civil injunctions for the first time to protect Negro voters, instead of the clumsy and often ineffective weapon of criminal prosecution. District Judge Davis held that this key provision of the Act was unconstitutional. The judge did not pass on any of the particular facts alleged in the suit; instead, he considered the statute on its face, without regard to its application in this particular case and said that on its face the statute was invalid.

His reasoning was as follows: The Fifteenth Amendment, prohibiting racial discrimination in voting, applies only to "state action." This concept means that only state officials, or those acting under state law, are barred from discriminating against Negro voting in a state election. The ordinary private citizen is not barred by the Federal Constitution from interfering with Negro voting in a state election. The Federal Government can reach the private citizen only when he interferes in a federal election. But the 1957 Civil Rights Act covers both state and federal elections. It would allow the Attorney General to move against a private citizen in a case concerned only with state elections; and thus it would give him powers which are reserved for the states. The judge conceded that in this case the Attorney General had not taken private action, but held that this did not "alter the scope of the statute," of which future Attorneys General might take advantage.

Thus, at the moment, the Civil Rights Act is in a shambles; but the Justice Department is going to take an appeal against the judgment to the Supreme Court, and it is confidently expected that the high court will vindicate the constitutionality of the Act.