

Regd. No. B. 5681

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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

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

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

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

No. 118
July 1959

INTERNATIONAL COMMISSION OF JURISTS BRINGS A CHARGE OF GENOCIDE AGAINST CHINA

At the instance of the International Commission of Jurists, its Indian member, Mr. Purshottam Trikamdas, made a two-month study of the Tibetan uprising earlier this year and presented his report to the Commission on 5th June, and the Commission, approving the report, has communicated it to the United Nations and other international agencies with the request "to initiate such action as they might consider appropriate" and has made an appeal to jurists throughout the world "to help the Tibetan people in their struggle for freedom and justice."

The report is notable for laying far greater importance, as is proper for such a body, on the violation of fundamental human freedoms involved in the Chinese aggression against Tibet than on the purely political aspects of the problem, and for this reason we think it will attract far wider attention than if it had based its case, as many other bodies do, merely on China's complete disregard of its pledges of autonomy for Tibet, and we for our part cannot imagine that the United Nations can at all afford not to take notice of such a weighty document issuing from such a source,

The Commission of course has not, as indeed it could not have, ignored the political developments in Tibet. Tracing Tibet's history during the past fifty years, the report concludes that, until the Chinese invasion in 1950, Tibet was virtually an independent nation with no Chinese influence apparent in the country. It says :

A practically independent country is being turned by force into a province of China and the struggle of the Tibetans has been to regain their independence. And it adds that the Chinese Government has "consistently disregarded" its 1951 promise of broad autonomy for Tibet.

As a result of this political subjugation, there has been, the report says, "a deliberate violation of fundamental human rights." The Chinese have tried systematically to destroy private trade and commerce and there has been "arbitrary confiscation" of property. "A precise and deliberate" campaign is being carried on to destroy the Buddhist religion of the Tibetans and their monasteries, shrines and monuments. The report says :

We have evidence of instances and cases where the heads of monasteries have been killed, imprisoned and publicly humiliated. One case in our file refers to a very highly respected Lama who was stripped and dragged with a rope over a rocky terrain, as a result of which he died.

In Kham province alone, 250 monasteries were destroyed. Cases have been reported of head Lamas being dragged to death by horses, and a fairly large number sent as prisoners to concentration camps in China.

The report quotes reliable sources as saying that about five million Chinese have been settled in Tibet — compared with the Tibetan population of some three million — and that another four million Chinese would be brought into Tibet in the near future. The report further says that, as a result of the Chinese policy, thousands of Tibetans have died while acting as forced labour to build military and other roads in Tibet. A "systematic policy of killing, imprisonment and deportation of those opposed to the regime" is being followed. In short, the Chinese rulers have systematically tried to destroy all facets of Tibetan life.

Finally, the Commission brings a forthright charge of the international crime of genocide (mass destruction of peoples) against the Peking regime because of its "mass killings" in Tibet. The report says :

There is a prima facie case that on the part of the Chinese there has been an attempt to destroy the national, ethical, racial and religious group of Tibetans by killing members of the group and by causing serious bodily and mental harm to them,

These acts constitute the crime of genocide under the Genocide Convention of the United Nations of 1948.

In face of such a grave indictment, the United Nations cannot refuse to consider this Tibetan outrage, nor can India, we hope, recommend again, as in 1950, indefinite postponement of any U. N. action in connection with it.

The Dalai Lama himself, in his press conference at Mussoorie on 20th June, confirmed all the facts, recited

above, of brutal ill-treatment of the Tibetans by the Chinese Government; in particular, he said; "The number of Tibetans killed by the Chinese since 1956 was more than 65,000." "Five million Chinese have been settled in the north-east and eastern regions, and about 4,000,000 more are in the process of settlement. In addition 4,000,000 military and civilian personnel have been settled in the U and Tsang provinces." "Buddhist MSS, and objects of immeasurable value are being transported to China." "Until 1958, 1,000 monasteries have been destroyed. Countless Lamas and monks have been killed. Extermination of religion is continuing."

The Dalai Lama roundly indicted the Peking Government on a charge of genocide. The Chinese Government, he charged, was engaged in "total extermination of the people, religion and culture of the Tibetan race." He said:

Complete absorption and extinction of the Tibetan race is being undertaken.

Forced labour and compulsory exactions, systematic persecution of the people, plunder and confiscation of property belonging to individuals and monasteries and the execution of certain leading men in Tibet — these are the glorious achievements of Chinese rule in Tibet.

In case the truth of these statements was not accepted by the Chinese Government, the Dalai Lama threw out a challenge that Peking should "agree to an investigation on the point by an international commission." "On our part," he said, "I and my Government will readily agree to abide by the verdict of such an impartial body." Referring to these atrocities, the "New York Times" writes: "Professor Raphael Lempkin himself, who has done so much, almost single-handed, to make us more conscious of this monstrous crime (of genocide), could not cite a more shocking bill of particulars than that here brought forward in a few words."

Nehru's Anæmic Policy towards Tibet

It has become transparently clear that beyond giving political asylum to the Dalai Lama and refuge to the Tibetans who have fled Tibet Mr. Nehru's is unwilling to offer any help, even of a diplomatic nature, to Tibetans in undoing the brutal aggression of the Chinese. He could not possibly have refused asylum to the ruler of Tibet without laying India open to utter ignominy; but the asylum was granted on condition that the Dalai Lama carries on no political activities while he is on Indian soil. The Dalai Lama's announcement that his government will function wherever he and his Ministers are is promptly followed by an official announcement that the Indian Government will not recognize the Dalai Lama and his Ministers as an emigre government, and on account of this anomalous position of his asylum it is said that the Dalai Lama is planning to move on to

Indonesia, in order to save the host country from any embarrassment.

Mr. Nehru has flatly stated that India will not be associated with any move to take the Tibetan problem to the United Nations. It is difficult to understand his reluctance in this respect, particularly when it is remembered that the Peking Government is not charged merely with an act of aggression like the Anglo-French aggression on Egypt in October 1956, in which case India was but too ready to lift her voice in the world organization, but with the horrible crime of genocide. In fact, even if China was not guilty of anything worse than aggression or violation of Tibet's territorial integrity, it was India's duty to refer the matter to the U. N. This becomes her inescapable moral obligation in view of the role she played in 1950 when the Tibetan Government's appeal was before the U. N. On 7th November, the Government of the Dalai Lama sent a Note to the United Nations, denying that China had sovereignty over Tibet, charging the Chinese Communists with aggression, and appealing to the United Nations for protection. On that occasion India's delegate, the Jamsaheb of Nawanager, told the Steering Committee of the U. N. Assembly that, as the Chinese invasion had come to a halt some 300 miles from Lhasa, India believed that a peaceful solution of the Tibetan question was possible and that a settlement could be reached which would protect the autonomy of Tibet. And because of this assurance the Steering Committee on 24th November agreed to postpone action indefinitely on Tibet's appeal. Having been responsible for taking the problem out of the U. N. then, India is in honour bound to bring the matter before it now, when Tibet is once again subjected not only to aggression, but to a reign of terror such as is not known in modern times.

Mr. Nehru was asked at a press conference why he was so unwilling to bring China before the bar of the U. N. The reason he gave was that Red China was not a member of the United Nations. But China's non-membership did not prevent the U. N. from admitting the Tibetan question in 1950 and will not be a bar to the U. N. considering it now. If nine years ago the U. N. did not in fact consider it, it was because of India's intervention on behalf of China. And if India, as events have proved, did Tibet a wrong then, she might now welcome an opportunity to undo the wrong and render some service to Tibet. It is true that the United Nations, as at present constituted, will be unable to give any tangible help to Tibet. But even stern condemnation of China by the world organization will be a potent moral influence. However, it is doubtful whether India would be willing even merely to condemn China as an aggressor, whether in the U. N. or outside. The shameful part she played in the Hungarian problem suggests that however glibly Mr. Nehru may talk of the independence of countries subject to Western powers, he cannot summon courage enough to denounce aggression when a mighty Communist country is the aggressor. He was

keen on banding the Asia-African countries together against Western imperialisms at the Bandung conference, but he seems unwilling to band them together again, as Mr. Jayaprakash Narayan is trying to do, against an Eastern imperialism when the victim of this imperialism is itself an Asiatic country. Mr. Nehru cannot persuade himself to get away from the double standard which he has made the cornerstone of his foreign policy.

The Dalai Lama recently declared that he did not quite understand what Mr. Nehru's policy was towards Tibet. Perhaps he meant that not much help would be forthcoming from that quarter. He is quite right if this was what he intended to convey by his diplomatic language. He would be relying on a broken reed if he formulated plans for Tibet's deliverance on the basis of an expectation that the Government of India would do anything which might even remotely offend the Peking Government. By implication Mr. Nehru has made this clear. He has said his policy towards Tibet is guided by three considerations: 1. security of India, 2. friendly relations with China, and 3. sympathy for the Tibetans. All these considerations are unexceptionable, but to Mr. Nehru's mind the country's security overrides all other considerations. He has convinced himself that India would be insecure if any action on her part would provoke Red China to take retaliatory measures because India appeared to take too close an interest in Tibetan affairs. And all the genuine sympathy he feels for Tibet is submerged by his concern lest China injured Indian interests. It is his firm belief that India must maintain friendly relations even with an aggressor country, though on principle that country deserves a different kind of treatment at India's hands.

The Dalai Lama at his first press conference in Mussoorie gave expression to his feeling of desperation that Mr. Nehru would not apparently extend even as much support to Tibetans as he gives, for instance, to the Algerians. France's legal relationship with Algeria is not like that of China with Tibet. France is not the suzerain but the sovereign power in Algeria and has not promised Algeria the kind of internal autonomy which China has solemnly promised Tibet. And yet Mr. Nehru pleads in season and out of season for Algerian independence, but he will not allow himself to say a word in favour of Tibet's national sovereignty. The most he is willing to do is to maintain that Tibet's autonomy should be unimpaired, though he knows, or ought to know, that in Communist parlance autonomy means nothing at all. He takes up an idealist position in denouncing the subjection of any country by Western powers; but he promptly drops his idealism and becomes a stern realist when an eastern country is subjugated by an Eastern power. There cannot be a worse exhibition of the different standards that Mr. Nehru applies to Western and Eastern powers. It would almost seem as if he believes that his so-called non-alignment policy requires him in all circumstances to favour Eastern powers, particularly if they are powerful,

Chinese Sovereignty — Basis of Nehru's Tibetan Policy

Early in the eighteenth century Manchu emperors invaded Tibet and began exercising some outside control, establishing a garrison and a Mission of political officers in Lhasa. However, even at this period, Chinese authority was partial and intermittent, and it steadily weakened afterwards. If the authority that was then exercised could be called suzerainty, this suzerainty was exceedingly loose and largely of a nominal character. In the early years of the twentieth century the Chinese Imperial Government made a bid for establishing greater control over Tibet, but after the outbreak of the Chinese Revolution in 1911, the Tibetans rose and besieged the Chinese garrison. All the Chinese troops in the country were evacuated and the Chinese Mission in Lhasa evicted. Thus Tibet has to all intents and purposes been an independent nation since World War I. And she stayed virtually independent till Red China committed aggression against her in 1950. She could even claim in the appeal she then made to the United Nations that Tibet possessed not only de facto but de jure independence.

But Mr. Nehru accepts Chinese suzerainty over Tibet and says Tibet's struggle for political freedom can be supported only to the extent that her freedom is subject to this suzerainty. In normal conditions a politician of Mr. Nehru's vision would not approve of this anachronistic concept of suzerainty, particularly when the suzerainty is as tenuous as in the case of Tibet. But his recognition of Chinese suzerainty has rendered him impotent to give any significant help to Tibet, even assuming that he could bring himself to give such help as against Communist China. The only excuse Mr. Nehru could plead for recognizing China as a suzerain power is that such recognition formed the fulcrum of the British Government's policy towards Tibet, and as the present Indian Government has succeeded to that Government it also must recognize Chinese suzerainty and base its policy thereon. But the British Government's recognition was largely the result of a clash of British and Czarist imperialisms and Mr. Nehru, because of the change in circumstances, need not regard this policy as a legacy handed down to him by the former rulers which he must maintain intact.

It appears that the British never desired to annex any part of Tibet for themselves; all they wanted was to open up trade relations with Tibet and to "break down Tibetan isolationism." But another power — Russia — had appeared on the scene, and the British thought they must do something in order to prevent any possible penetration by this power into Tibet. Alarmed by contacts between the Dalai Lama and Russian agents, Lord Curzon in 1903 dispatched a mission to Tibet with an armed escort under Col. Younghusband. The avowed

aim of the mission was to induce the Dalai Lama to enter into negotiations with a view to settling disputes about frontier trade relations. However, the Tibetans refused to negotiate. The mission met with resistance and fresh troops had to be sent so that what was proclaimed to be a peace mission became in fact a military expedition. The "sack of Lhasa" followed. The Tibetan Government was compelled in 1904 to sign a convention providing, inter alia, for the opening of two fresh marts in Gyantse and Gartok and giving guarantees to Britain against concessions to foreign powers (the power chiefly aimed at being Russia). This so-called Lhasa treaty was confirmed by an Anglo-Chinese Convention in 1906.

In 1907, an Anglo-Russian Convention was signed under which, as part of the arrangements to diminish friction between Britain and Russia, the respective spheres of interests of the British and Russian Governments in Asia were defined. Each of these powers recognized Chinese suzerainty in Tibet and stipulated that neither Russia nor Britain should interfere in the internal administration of Tibet, or seek concessions in Tibet except through the Chinese Government, or acquire *lein* over Tibet's revenues.

This makes it clear that if Britain recognized China's suzerainty over Tibet it was with a view to keep her rival — Russia — from obtaining a foothold in the country.

"The Peking Convention of 1906 and the Anglo-Russian of 1907 (which were supposed to govern the international position of Tibet) placed them (the Chinese) in a strong position. Tibet was enfeebled by the British attack, and perhaps somewhat dazed by the crowd of events." So China determined to re-establish her position in Tibet and, in 1909-10, Chinese forces invaded the country and seized Lhasa. With the fall of the Manchu dynasty in 1911, however, the Chinese troops in Tibet mutinied, and the Tibetans were enabled to drive them out of Lhasa and to recapture most of the country. The independence of Tibet was proclaimed by the Dalai Lama in 1913.

Britain had again to take note of the movements of Russia, who by a treaty in 1912 with Outer Mongolia, which had been a political dependency of the Manchu Empire, had gained further influence in that country. In order to checkmate this influence, the British Government proposed the following year a tripartite conference of Tibet, China and Britain at Simla, the purpose of which was to discuss the political status of Tibet. The conference, however, proved abortive. A draft convention was no doubt initialled, providing for the division of Tibet into two zones. In "Inner Tibet," comprising the portion of Tibet nearest to China, the Chinese Government was to be permitted to appoint officials and to colonize the territory. "Outer Tibet," comprising the rest of the country, was to be

fully autonomous, and the Chinese Government was to abstain from all interference in its administration. At this conference the British Government was prepared to recognize Chinese suzerainty over Tibet, provided that China agreed to grant autonomy to her. But the Chinese Government later repudiated the initialling of the proposed convention, which enabled the Tibetan Government to claim did in its Note to the U. N. in 1950 that China had by this act of repudiation renounced "the benefits that would have accrued to her" under the convention, and that Tibet was fully independent, not only in practice but in theory. The British, however, were not prepared to go so far and the British policy of recognizing Chinese suzerainty was restated in a memorandum to the Chinese Government in 1921 and again in a note dated 5th August 1943. In the years which followed the Simla conference, first the Nationalist and then the Communist Governments of China enlarged earlier Chinese contentions and claimed Tibet as an integral part of China. And what happened some ten years ago is well-known. Pretending that "the spiritual head of Tibet, the Panchen Lama," who had fallen into Communist hands, had appealed to Red China to "liberate" Tibet in the latter part of 1949, Mao Tse-tung invited the Tibetans to become "members of the big family of unified, prosperous China" and added that "the People's Liberation Army can surely satisfy the yearnings of the Tibetan people." And soon afterwards, in October 1960, Tibet was actually "liberated," in deference to the people's wishes!

Mr. Shyam Gopal Roy has clearly shown in an article that the present situation has logically developed from the recognition of Chinese sovereignty over Tibet. He says:

When the problem of Tibet appeared nine years ago with the entry of Chinese troops into that unfortunate land of Lama theocracy, the issue was not complicated. The simple issue then was whether Chinese suzerainty over Tibet was to be recognized, Mr. Nehru underscored China's right to send troops to Lhasa in exercise of her suzerain rights. Since that day whatever has happened in Tibet is only a record of events written one after another down the line drawn to pattern.

The issue must be laid bare. The issue is: Do we still concede Chinese suzerainty—and today it is only another name for sovereignty—over Tibet? If so, Tibet is lost. And let us tell this plainly to the Dalai Lama. Let the illusions be cleared. But if we are serious in our concern for Tibet and if our sympathy for her is not just so many platitudes, then we must disown our blunder of 1950, reject Chinese suzerainty over her and tell Peking frankly that the Tibetans must be given the right of self-determination.

Mr. Nehru rejects all imperial legacies. The Chinese suzerainty over Tibet is a Chinese-British-Czarist imperialist legacy. Why should he own it?

At one of his recent Press conferences Mr. Nehru said: "Ultimately the relationship between the two nations is decided either by the strength of arms or by negotiations." In the context of the contemporary Sino-Tibetan events, that relationship has been decided by the strength of the Chinese arms. Mr. Nehru seems to have accepted it. It is not suggested that at any future date such would be his reasoning should a calamitous situation occur. But we have been a party to Chinese action in Tibet. We had admitted that Peking had a right to shoot at Lhasa, that she could deny freedom to Tibet. The admission was made on the promise of future good conduct on Peking's part in her relations with us. This, in short, is the background of Panchshila. Is it not born in sin (as Acharya Kripalani has said)?

To be blunt, our own national selfishness cost Tibet her liberty. She looked to us alone. She had none else to look to. And all the world was looking

to us nine years ago how we reacted to Chinese aggression. Tibet appealed to the United Nations. We crippled it by acknowledging Chinese suzerainty over her. If only we had taken courage then, the situation would have been different today. It would not have amounted to war with China. But it would have, probably, resulted in a boycott of China by all the non-Communist nations of Asia, all of whom were waiting for a lead from us. But we failed then.

Tibet had a right to independence, has still an inalienable right to determine her own destiny. She has a right to be independent not because we want her to be a buffer between us and China. Her right to independence has been bestowed on her by history. Just as the British denied her that right in order to keep China friendly, we too have denied her that right so far. This is a guilt which we will leave to our posterity. It is not too late to atone for it. It is not too late to call a conference of Asian nations, China included, and demand collectively that China withdraw from Tibet. If nothing happens, at least we will have unburdened ourselves of the guilt.

TOTAL DISFRANCHISEMENT OF THE AFRICANS UNDER S. AFRICA'S SO-CALLED BANTUSTAN ACT

Dedicated to the policy of strict racial separation, Dr. Verwoerd, Prime Minister of the Union of South Africa, has taken a final step towards full implementation of apartheid in the Bantustan Act, which the South African Parliament passed about a month ago. Cynically styled as an act for the "Promotion of Bantu Self-Government," what the law does is to abolish even the token representation which the Africans had enjoyed in Parliament. In 1936 the Africans were removed from the common electoral roll and were given the right to be represented by three whites in the House of Assembly and by four whites in the Senate — all the other 264 members of Parliament representing the white electorate. But even this indirect election of Africans is now ended by the new measure. This is done under the plea of separate development of the two races, Africans to have no representation in the white area and the whites to have no representation in the black part of South Africa, thus carrying the policy of apartheid all down the line.

In exchange for this disfranchisement, the Africans are offered internal self-government in eight African "home-land" regions. The new law provides for the establishment of national units for the Africans in native reserves, which will be endowed with a measure of local self-government. Each unit will consist of separate ethnic groups or nations, each nation managing its affairs in its own territory. What is the extent of this right of self-government which they will exercise? Councillors

in the national homes to be established would not be elected; they could be dismissed by the Government at any time; the administration of the homes would be controlled by a Minister. The Institute of Race Relations says:

It (the Act) adds a few minor powers to those of African territorial authorities established under the Bantu Authorities Act of 1951, and empowers the Government to delegate others. But these territorial authorities can be established only for tribal areas in the reserves comprising a mere 12 per cent. of the area of the country where less than half the African people live.

Approximately one-third reside on European-owned farms and about one-quarter, who comprise, generally speaking, the most advanced and developed Africans, in the urban areas. *All these are not included in the scope of the system at all.*

The Government claims that if the Africans at the outset would have but a limited measure of self-government in the tribal areas, the avowed aim of the Act being to provide for "the gradual development of self-governing Bantu national units," there is no reason to suppose that they will not be eventually self-governing, and in fact one may reasonably look forward to the "ultimate emancipation" of these units. The Prime Minister told Parliament that the Government was fully prepared to envisage "the possibility of the ultimate full independence of native areas."

When the areas become fully independent, what will happen is, as Sir de Villiers Graff, Leader of the Opposition, pointed out, South Africa will be divided into eight black States and one multi-racial State, for the region preserved for the whites will continue to have a large native population, which is the source of supply of labour to the whites. And the result would be disastrous. Sir de Villiers said if an almost unbroken horseshoe of black dominions were established round the Union's land-locked borders and eastern seaboard, these areas might well become "a springboard for propagation of foreign ideologies" and bring the influence of a Communist State within the borders of South Africa. Further, Sir de Villiers asked whether the Government believed that the emancipated Bantu enjoying independence in their own areas would not be interested in the lot of their black brothers in the multi-racial area who under the Prime Minister's plan would be denied all political rights.

The Prime Minister, however, sees no other way of preserving the supremacy of the whites, who form a small island in a vast black sea, than to divide South Africa among different nationalities. The only alternative to this plan, according to him, was a common multi-racial country where whites would be outnumbered by blacks by three or four to one, and Dr. Verwoerd for his part had no hesitation, he said in Parliament, in choosing a smaller white State, where the white man would be able to control his own territory and work out his own destiny, rather than a big State which would eventually become non-white.

The only encouraging sign in this gloomy landscape is the rise of an intellectual revolt against the way in which the Government is carrying out its apartheid policy, and the banner of revolt is raised by Africaners who belong or once belonged to the Nationalist Party. For instance, Professor du Plessis of Potchefstroom University warned the Government against enacting the Bantustan bill into law. He charged that the regime's only move in the direction of self-determination, or the right to determine their future, for non-whites was the "threat of a futile Balkanization of the country" (he referred to the proposal to divide South Africa into separate units based on race). Similarly, Professor Kruger and Professor Coetzee (also of Potchefstroom), who are members of the South African Bureau of Racial Affairs, often described as the "conscience" of the Nationalist Party, believe in the development of races on separate lines, but they feel that the regime has proceeded recklessly and in some cases cruelly, and that its course can lead in the long run only to disaster for the whites generally and for the Africaners in particular. (Professor du Plessis, a convinced member of the Nationalist Party, has been expelled from the party because of his criticism of the Prime Minister's policy, and the other two Professors may meet with the same fate.) But, in spite of all such protests on the part of intellectuals, Dr. Verwoerd doggedly insists on sticking to his own policy. For Dr. Verwoerd has a one-

track mind. As Professor Pistorius of Pretoria University, who because of his liberalism left the Nationalist Party several years ago, said recently: "Other Prime Ministers talked apartheid; Verwoerd has put it into effect."

Administrative Tribunals

High Courts' Writ-Issuing Power to be Retained

It appears that, because of the strong views expressed on the subject by the Law Commission in its report on judicial reforms, major changes will be made in the Government's plans to set up administrative tribunals. A special representative of the "Statesman" wrote in that paper:

"Of the likely changes in the shape and scope of the administrative tribunals the most important will be that relating to the High Courts' power to issue writs under Art. 226 of the Constitution.

The kingpin of the original scheme to set up these tribunals to administer fiscal revenue and administrative law was that higher tribunals alone should revise the decisions of the lower tribunals, and therefore the jurisdiction of High Courts under Art. 226 should be barred.

This the Law Commission has firmly refused to countenance. In fact it has urged that under no circumstances and on no pretext should the powers of the High Court under Art. 226 be curtailed.

There are indications that this view will be accepted, although the Union Government still stands by its belief that administrative tribunals would be conducive to a speedier and more inexpensive system of justice in cases arising from administrative actions.

In this connexion the Law Commission has pointed out that on practical grounds also it would be inexpedient to exclude the administrative tribunals from the jurisdiction of the High Court. The Commission argues that a kind of supreme administrative tribunal which exists in France and which was being contemplated for India, would not be feasible in this country.

According to the Commission, the Indian traditions of justice and jurisprudence as well as those relating to an individual's relation with the State are materially different from French.

In other words, the impact of the Law Commission's findings on the administrative tribunals scheme will be that instead of supplanting the regular courts in the realm of administrative law, the proposed tribunals will now only supplement the judicial machinery.

It has also been suggested by the Law Commission that if and when administrative tribunals are appointed a proper procedure for them should be prescribed by law, which should also ensure that appropriate reasons are recorded by the tribunals for any decisions taken by them.

It is significant that the Law Commission's findings on administrative tribunals are preceded by strong denunciation of recent utterances of politicians, including

the Prime Minister, criticizing judges and judicial procedures.

According to the Commission, this kind of criticism and impatient legislation to restrict the jurisdiction of courts is bound to imperil the very authority of the rule of law and thus weaken the foundations of democracy.

The Commission has argued that the rule of law and judicial review acquire increased importance in a Welfare State where a large number of social enactments impinging on individual rights have to be enforced; more so in a country like India where the Opposition is weak and both the executive and the legislature tend to be intolerant of court decisions contrary to their wishes."

The "Statesman," writing editorially on this topic, refers to the various tribunals, already in existence, for special matters like labour disputes, income-tax assessments, election petitions, railway rates and certain compensation claims. But the decisions of these bodies, the paper says, "are subject to judicial review, either in appeal, where special statutory provision has been made for the purpose, or under the writ jurisdiction of the High Courts and the Supreme Court; there is also the special power of the latter under Art. 136 of the Constitution to grant leave to appeal against the decisions of tribunals or other statutory bodies." "The main new element sought to be introduced in the practice of setting up administrative tribunals" is "the exclusion of the writ jurisdiction, though not the power of the Supreme Court to grant special leave."

Then the paper proceeds:

The procedure before tribunals has not been such as to cause complete confidence because their direct subordination to the executive makes their impartiality a matter of doubt. Appellate tribunals with a superior status may correct some of the grosser errors committed at the lower levels, but their prestige suffers likewise so long as they are responsible only to the executive and not to an independent authority, like the Supreme Court.

It is perhaps inevitable that tribunals should increase to deal with numerous matters which depend more on ministerial policies than on legal principles; but they can at no stage be granted immunity from judicial control without affecting the rule of law. No tribunal can be expected to deal fairly with an issue challenging its own competence to hear a matter or that of a department to enact a rule or issue an order; nor can it be expected to follow strictly all legal precepts and judicial techniques.

The Government's proposal to introduce a system of administrative tribunals is prompted largely by the delays in High Courts in the disposal of writ petitions, which suspended administrative action often for long periods. But "the remedy is to speed up the processes of the High Courts."

Writ of Habeas Corpus in a Protectorate

One Mr. Andrew Mwenya, an inhabitant of Northern Rhodesia, was detained in custody by local authorities, but on the same day on which he had been released on a writ of the habeas corpus by the local courts, he was served with an order confining him to his district. Thereupon he made an application to the Queen's Bench Division of the British High Court for a writ of habeas corpus on the ground that the restriction order to which he was subjected was void. On 12th May the Court gave leave to serve notice of the application on the Secretary of State for the Colonies, the Governor of Northern Rhodesia and the District Commissioner for the district to which the applicant was confined.

At a hearing of the application by the Lord Chief Justice, Mr. Justice Slade and Mr. Justice Winn, the Attorney-General raised the preliminary objection, in respect of the latter two officials, that the Court was incompetent to issue habeas corpus to a protectorate such as Northern Rhodesia. He pointed out that the Court of King's Bench had issued the writ to Canada, *ex parte Anderson*, 3 E. and E. 487 (1861), but this decision was nullified by the Habeas Corpus Act of 1862, which provided that no writ of habeas corpus should issue out of England by authority of any court or judge "into any colony or foreign dominion of the Crown [such as St. Helena] where the Crown has a lawfully established court of justice having authority to grant or issue the writ and to ensure its due execution in the colony or [foreign] dominion." The power to grant relief by habeas corpus in such areas had been vested in the courts lawfully established there.

Counsel for the applicant conceded that the Act of 1862 had imposed this curtailment on the jurisdictional right but said that he would add a rider that the writ should run "at least where the place in which a British subject was detained by a Crown servant was a territory under subjection to the Crown," and Northern Rhodesia, he said, "was in fact in a state of maximum subjection to the Crown." In Protectorates the Crown exercised full scale sovereign power only short of annexation. The mere fact that courts of justice were established in Northern Rhodesia and that they had power to issue writs of this nature did not mean that the Royal Prerogative was qualified to the extent that the jurisdiction of this Court was taken away.

The Lord Chief Justice said that they had come to the conclusion that they had no jurisdiction to issue the writ to the Governor or the District Commissioner.

After the application as against these officials had been dismissed, the question remained whether the writ could issue to the Colonial Secretary.

Counsel for the applicant pleaded that the persons unlawfully detaining the applicant were members of the Colonial Service, of which the Secretary of State for the

Colonies was the head, and no doubt could be entertained that if the writ were to go to him he would in fact be able to produce the body of the applicant before the Court. If the powers of the local Executive were being misused and the applicant was being illegally restrained, and the Minister had in fact the power to give directions and make orders, or tender advice which constitutionally would have to be accepted, the Court should allow the writ to go.

The Attorney-General replied that there was no shred of evidence that the Secretary of State had had any part in the making of the restriction order in respect of the

applicant; it was the act of the Governor and there was no consent, nor was any required, by the Secretary of State. Habeas corpus was issuable only to persons who had custody—using the word in the broad sense as comprising actual and constructive custody—and there was no ground for holding that the Secretary of State had custody in that sense.

The Lord Chief Justice said (19th June) that the Court was of the opinion that a prima facie case had not been made out that the Secretary of State had sufficient control to constitute him a custodian to whom the writ would issue.

LEGISLATIVE INQUIRIES INTO SUBVERSION

AS AFFECTING INDIVIDUAL RIGHTS

On 8th June the Supreme Court handed down major decisions in two closely related cases involving Congressional and state investigations in Communist subversion. The decision in each case was by a majority of 5 to 4, and the majority and minority were composed of the same justices in both cases. The majority rulings in these cases are regarded in civil liberties circles as going far towards increasing the legislative power in curbing the individual's rights.

1.—The Barenblatt case

Mr. Lloyd Barenblatt, a former instructor in psychology at Vassar College, when questioned by a sub-committee by the House of Representatives' Committee on un-American Activities during the course of an inquiry concerning alleged Communist infiltration into the field of education in 1954, refused to answer questions about his Communist associations on the ground that the committee had no constitutional authority to inquire into his political and religious beliefs or any "other personal and private affairs" or "associational activities." He was convicted of contempt of Congress, sentenced to six months in jail and fined \$250. The conviction was unanimously affirmed in 1957 by the Court of Appeals. The Supreme Court then granted certiorari and remanded the case to the Court of Appeals for further consideration in light of *Watkins v. United States*, 354 U. S. 178 (1957), reversing a contempt of Congress conviction, which was decided after the Court of Appeals' decision had issued. The Court of Appeals by a vote of 5 to 4 again affirmed. Thereafter the Supreme Court again granted certiorari to consider Mr. Barenblatt's statutory and constitutional challenges to his conviction, and particularly his claim that the Court of Appeals' judgment was contrary to the Supreme Court's judgment in the *Watkins* case. The holding in that case, reported at p. iv : 296 of the BULLETIN, was that a Congressional committee could not compel answers from a witness unless he had been adequately apprised of the subject-

matter of its inquiry and of the pertinence thereto of the particular questions asked.

The Supreme Court upheld the conviction, as stated above, on 8th June by a vote of 5 to 4. The majority opinion was written by Justice Harlan. The judgment asserted at the outset the Congressional power of investigation with the "attendant use of the compulsory process" "to secure," as was said in *McGrain v. Daugherty*, 273 U. S. 135 (1927), "testimony needed to enable it (Congress) efficiently to exercise a legislative function belonging to it under the Constitution." The Court said that the scope of this power of inquiry "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution;" but broad as it is, it is yet "subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights."

Referring to the *Watkins* case which the petitioner had cited in defence, the Court said that the inquiry was within the constitutional limitations set by the *Watkins* ruling; that *Watkins*' conviction had been reversed solely on the ground that "Watkins had not been adequately apprised of the subject-matter of the sub-committee's investigation or the pertinency thereto of the questions he refused to answer." Here, however, the petitioner was sufficiently apprised of the topic under inquiry and "the connective reasoning whereby the precise questions asked related to it." (The questions which he was asked and which he refused to answer were, e. g. whether he was then or had ever been a member of the Communist Party.) The subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education and pertinency was made to appear to the petitioner "with indisputable clarity," and the questions put to Barenblatt concerned his participation in the Communist Party and Communist activities in educational circles.

FIRST AMENDMENTS RIGHTS

The Court then turned to consider the petitioner's contention that the sub-committee's inquiry into his past or present membership of the Communist Party infringed his rights of freedom of speech and association protected by the First Amendment. On this point Justice Harlan said :

Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. . . . Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.

It is true that "Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to a (legislative) purpose," but in this case Congress had a valid legislative purpose, viz., one of national self-preservation against Communist attacks.

This Court in its constitutional adjudications has consistently refused to view the Communist Party as an ordinary political party and has upheld federal legislation aimed at the Communist problem, which in a different context would certainly have raised constitutional issues of the gravest character. . . . To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that party were just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II.

The critical element in the weighing of private and public interests was "the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from unwilling witnesses." In the last analysis the power of Congress to investigate and legislate in the field of Communist activity "rests on the right of self-preservation."

COMMUNIST ACTIVITIES IN EDUCATIONAL INSTITUTIONS

Mr. Barenblatt had objected to the entry of Congress into the field of education, asserting that the investigation was aimed not at revolutionary aspects but at the theoretical class-room discussion of communism. The Court rejected this contention. It said :

(It cannot be fairly concluded) that this investigation was directed at controlling what is being taught at our universities rather than at overthrow. (When academic freedom is claimed,) this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain,

But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls.

The Court rejected the petitioner's contention that in its inquiry the sub-committee was interested only in exposing alleged subversives to public obloquy, and said :

So long as Congress acts in pursuance of its constitutional power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.

There is no indication in this record that the sub-committee was attempting to pillory witnesses. Nor did petitioner's appearance as a witness follow from indiscriminate drag-net procedures, lacking in probable cause for belief that he possessed information which might be helpful to the sub-committee. And the relevancy of the questions put to him is not open to doubt.

We conclude that the balance between the individual and the governmental interests here at stake must be struck in favour of the latter, and that therefore the provisions of the First Amendment have not been offended.

Dissenting Judgment

Justice Black wrote a dissenting judgment, in which Chief Justice Warren and Justice Douglas joined. This judgment said :

The Court here fails to see what is here for all to see—that exposure and punishment is the aim of this committee and the reason for its existence. I cannot believe that the nature of our judicial office requires us to be so blind.

Justice Brennan joined the dissenters only on this point. He wrote: "No purpose for the investigation of Barenblatt is revealed by the record except exposure for the sake of exposure. An investigation in which the processes of law-making and law-evaluating are submerged entirely in exposure of individual behaviour is outside the constitutional pale of Congressional inquiry."

Referring to the majority's statement that the Communists do not constitute a political party, Justice Black said :

No matter how often or how quickly we repeat the claim that the Communist Party is not a political party, we cannot outlaw it, as a group, without endangering the liberty of all of us. . . . For mixed among those aims of communism which are illegal are perfectly normal, social and political goals.

Once we allow any group which has some political aims and ideas to be driven from the ballot and from

the battle for men's minds because some of its members are bad and some of its tenets are illegal, no group is safe. . . . Today Communists or suspected Communists have been denied an opportunity to work as Government employees and in just about any other job. In today's holding they are singled out and, as a class, are subjected to inquisitions which the Court suggests would be unconstitutional but for the fact of "communism."

Justice Black rejected the majority view that public and private interests must be balanced in construing the First Amendment. But even on balance, Justice Black said, the majority did not weigh the interest "of the people as a whole in being able to join organizations, advocate causes and make political 'mistakes' without later being subjected to governmental penalties for having dared to think for themselves." In his view the nub of the case was :

Ultimately, all the questions in this case really boil down to one — whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution we will have the confidence and courage to be free.

2.—The Uphaus Case

The case of Dr. Willard Uphaus, executive director of the New Hampshire World Fellowship Centre, was very similar. The centre describes itself as a pacifist organization. Acting under a legislative resolution empowering him to investigate subversive activities, the Attorney General of New Hampshire demanded from Dr. Uphaus a list of the guests of the centre and letters concerning those who lectured before the organization. Dr. Uphaus refused to supply the information. After having been adjudged in contempt, he was ordered held in jail until he decided to supply it. However, he was released on bail pending outcome of appeals. In his appeal to the Supreme Court Dr. Uphaus contended that the Attorney General's orders violated constitutionally protected rights of association, speech and belief. The appeal noted that Dr. Uphaus had denied membership in the Communist Party and denied advocacy of violence in the letters and lectures. Dr. Uphaus contended that the decision in *Sweezy v. New Hampshire*, 354 U. S. 234, 1957— vide p. iv : 296 of the BULLETIN—applied to his case and asked immediate reversal of the contempt conviction. In this case the Supreme Court on 17th June 1957 overturned the conviction of Mr. Paul M. Sweezy, holding that the New Hampshire legislature had given the state's Attorney General too sweeping a mandate. On 14th October 1957 it vacated the contempt judgment against Dr. Uphaus and directed the New Hampshire supreme court to reconsider the case in the light of the Sweezy decision. However, the state court again

upheld the Uphaus conviction. Dr. Uphaus then appealed again to the Supreme Court. It was on this second appeal that the Supreme Court acted on 8th June last, upholding the conviction by a 5 to 4 decision.

Justice Clark, who wrote the majority opinion said that "the nexus" between World Fellowship and the subversive activities disclosed by the record "furnished adequate justification for the investigation we here review." The investigation was undertaken in the interest of self-preservation. He added :

This governmental interest outweighs individual rights in an associational privacy which, however real in other circumstances, were here tenuous at best.

Dr. Uphaus had placed great reliance on the Supreme Court's decision in the case of *Pennsylvania v. Nelson*, 350 U. S. 497 (1956) — vide p. iv : 132 of the BULLETIN. In this case the Court threw out the conviction of Nelson under the Pennsylvania Seditious Act, ruling that anti-subversion statutes had totally pre-empted "the field of sedition ; that sedition "is in no sense a local enforcement problem ;" and that "a state statute is superseded regardless of whether it purports to supplement a federal law." Referring to the contention based on this judgment, Justice Clark said the Nelson ruling did not rob the states of the right to protect themselves ; such an interpretation — that the ruling knocks out state sedition laws — "sweeps too broad." He said :

(In the Nelson case) we said that the precise holding of the Court is that the Smith Act, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Seditious Act which proscribes the same conduct. The basis of Nelson thus rejects the notion that it stripped the states of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. The opinion made clear that a state could proceed with prosecutions for sedition against the state itself ; that it can legitimately investigate in this area follows.

Justice Brennan wrote a minority judgment for himself and Chief Justice Warren and Justices Black and Douglas. In this opinion he said that the record "not only fails to reveal any interest of the state sufficient to subordinate appellant's (Dr. Uphaus') constitutionally protected rights but affirmatively shows that the investigatory objective was the impermissible one of exposure for exposure's sake."

COMMENTS

Police Firing in Kerala

A.-I. C. L. C.'S DEMAND FOR A JUDICIAL INQUIRY
Mr. N. C. Chatterji, Working President of the All-India Civil Liberties Council, has written to the Chief Minister of Kerala urging upon him the desirability of

appointing a judicial commission to inquire into the firings that took place four times in the popular agitation in the State and that resulted reportedly in a heavy loss of life. The Chief Minister is not adamantly refusing an inquiry as did the Chief Minister of Bombay three years ago. In fact he told the Prime Minister of India who personally made the suggestion to him that he would grant a judicial inquiry on condition that the agitators on their part withdrew direct action against his Government.

This conditional acceptance did not satisfy Mr. Nehru, whose position was, like that of Mahatma Gandhi, that an inquiry should automatically be instituted into every case of police firing which had resulted in loss of life. It is a matter of much comfort that Mr. Nehru has now come to agree with this view, though he had given his support to Mr. Morarji Desai, Bombay's Chief Minister, in resisting a demand for inquiry into the far more serious police firings in Bombay — firings again for which an exceedingly strong prima facie case existed to show that they were excessive.

An earlier firing in Bombay State happens just now again to become a subject of debate. Mr. Justice Kotwal, who inquired into last year's police firing at Ahmedabad — and the present Chief Minister of Bombay deserves credit for ordering such a judicial inquiry — has in his report justifying the firing except at one place stated that one of the causes of disturbances was the Government's failure to hold an inquiry into the firing in August 1956. The Bombay Government has rejected this finding, though the present Chief Minister was not responsible for refusing an independent investigation then. Anyway such refusal was, as the "Statesman" says, "unwise"; "for, though the Government would like it to be supposed that it is so confident of the rightness of the earlier action that no inquiry was needed whereas its doubts about the shooting in August last year were such that it held an inquiry to be necessary, the public is likely to draw just the opposite conclusion: that the Government is ready to hold inquiries only when the outcome is expected to be favourable."

The proper course for Governments is to have all cases of police firings inquired into, without raising any objection or stipulating any condition such as the Chief Minister of Kerala did. The latter should have expressed his willingness to hold a judicial inquiry, though he might have asked for reasonable delay in its commencement till the disturbances had abated. The "Statesman," in our opinion, correctly states the Government's duty on occasions when firing is resorted to. It says:

Admittedly when there is continuing disorder so that the police may be called upon to fire over and over again—there was another instance in Trivendrum on Friday (3rd July)—an inquiry cannot readily be arranged: the atmosphere is unsuitable and police morale may be affected. But it should be a rule for all Governments that, when calm returns, judicial

inquiries will be held into all cases of police firing. This is fair not only to the public but to the police themselves.

Nehru's Outburst Against the Judiciary

A.-I. C. L. C.'S PROTEST

At a press conference held on 10th June the Prime Minister of India characterized the finding made by the Vivian Bose Board of Inquiry into the notorious Mundhra deal as "fantastic" and went the length of saying that "the person who suggests it is lacking in intelligence." What is worse, Mr. Nehru made this atrocious statement with full consciousness of the fact that the object of his attack was Mr. Vivian Bose, for he said that "even if he is a high judge, I would say the same."

Promptly, on 12th June, Mr. N. C. Chatterji issued a statement roundly condemning Mr. Nehru for what amounts to a castigation of the Judiciary by the Executive. He said in part:

Judges have to discharge unpleasant duties and the finding was made by an important Commission on one of the most vulnerable deals in recent times sponsored by the public sector in dubious circumstances in favour of a person who had made some contribution to the funds of a political party. The deal had been condemned by the Chief Justice of the Bombay High Court and the bona fides of the main actors were naturally in issue and as such the findings or conclusions had to be given by the Board presided over by an experienced and conscientious Judge who enjoys a great reputation for integrity and independence.

If responsible men occupying the highest position in the Executive branch of the administration are permitted to indulge in intemperate denunciation of the Chairmen or members of the judicial or quasi-judicial tribunals, then we shall permit deplorable standards of public administration and public behaviour which will shake the foundation of the Rule of Law so essential for the working of a democratic set-up.

To condemn or castigate the Judiciary is the hallmark of despotism. The Prime Minister invites a person who occupied the position of a Judge of the Supreme Court to conduct a public inquiry and instructs one of the leading counsel of the Union of India to appear before him, and when the learned Judge's conclusions go against his former colleague or his party, then he calls the Judge "a person lacking in intelligence" and he describes his conclusions as "fantastic."

To attempt to whitewash in this manner persons in authority who were found blameworthy in a public inquiry by a former Chief Justice of the Bombay High Court and by a former Judge of the Supreme Court of India is to undermine respect for law and administration. Such an attack on the Judiciary is, to say the least, unfair, as Judges cannot hit back or defend themselves.

The Rule of Law will be a mere empty formula, unless a vigorous and independent Judiciary is allowed to function in this country, which should be not merely irremovable by the executive, but which should not be allowed to be deflected or influenced by direct or indirect pressure of the Executive.

Safeguard against Third Degree Practices

A Pakistani case of police violence reported on the next page of this issue reminds us of what the Supreme Court of the United States said in *McNabb v. United States*, 318 U. S. 332 (1943), viz., that the procedural requirement that the police must with reasonable promptness show legal cause for detaining arrested persons "checks resort to those reprehensible practices known as the third degree which, though universally rejected as indefensible, still find their way into use." The evidentiary rule that the Supreme Court evolved in this case that all confessions extracted from prisoners not arraigned "without unnecessary delay" would be held inadmissible affords a powerful sanction against police coercion.

The "New York Times" was prompted by a bill for enacting a change in this rule to make the following editorial remarks in its issue of 8th June under the caption "Without Unnecessary Delay."

Prolonged and secret detention by the police, with no opportunity for the prisoner to consult with family or counsel, is a hall-mark of the totalitarian state. The practice remains, for example, one of the dark features of the Soviet system of justice.

For many years Federal practice in this country has been a model for the prevention of such excessive prisoner detention. It has called, first, for the police to bring any prisoner before a judge for arraignment "without unnecessary delay." At arraignment the prisoner is informed of his right to counsel; probable cause of his arrest must be shown, and the arrest becomes public knowledge.

To enforce that requirement for prompt arraignment, the Supreme Court sixteen years ago [in the *McNabb* case] laid down the rule that any confession obtained by the police during improper detention of a prisoner could not be used in evidence against him.

This well-established and essential safeguard is now the subject of attack in Congress. The House is scheduled to vote this week on a bill providing that no confession by a Federal prisoner shall be excluded solely because of delay in his arraignment.

Agitation for the bill followed a unanimous Supreme Court decision in 1957 [in *Mallory v. United States*, 354 U. S. 449 (1957) reported on p. v: 82 of the BULLETIN] reversing the conviction of a District of Columbia rapist because a confession was obtained from him during a deliberate delay in arraignment.

But the bill is not a forthright measure to allow more time for police questioning. It is a back-door approach which leaves the requirement for prompt arraignment on the books but kills entirely the only workable enforcement method. It would allow the police to keep a man in secret detention for days without fear of effective sanctions.

Surely this is not a time for the Federal Government to retreat from a civilized system of criminal justice. The members of the House should remember the words of Justice Felix Frankfurter in his 1943 opinion establishing the rule now under attack: "The history of liberty has largely been the history of the observance of procedural safeguards."

FREEDOM OF MOVEMENT

Seizure of a Passport

HELD ILLEGAL BY BOMBAY HIGH COURT

Mr. L. C. Bhatia, a business man, wanted to go to Zurich with a view to negotiating with a Swiss firm to start the manufacture in India of some engineering goods. He was to be accompanied by his brother and wife. He bought tickets from TWA and had also obtained passports and the plane was to leave on the night of February 14 last.

At the time of the examination of their baggage at Santa Cruz airport, the Preventive Officer found seven saris, of which four were Banarasi brocade saris, two silk and one cotton. There was also a plastic model of the Taj Mahal valued at Rs. 120 and some artistic copperware worth Rs. 253.

These articles were seized by the Customs authorities who alleged that the baggage revealed a large quantity of expensive brocade and curios which could not be classified as the petitioner's bona fide baggage. The party was not allowed to emplane and a statement alleged to have been made by Mr. Bhatia was recorded by the Preventive Officer. Mr. Bhatia's passport was also taken away. Eventually, Mr. Bhatia filed a petition in the Bombay High Court for return of the articles and the passport.

In directing the issue of writ against the respondents, the Assistant Collector of Customs and the Regional Passport Officer, Mr. Justice Shelat observed, on 23rd June, that the petition illustrated how considerable harassment was caused to a citizen through the unthinking overzealousness of a Preventive Officer of the Customs. His Lordship said the petitioner had asked for reasons for the seizure of his articles under sec. 181 of the Sea Customs Act, but they were not given.

The petitioner was also not permitted to see his advocate before his statement was recorded by the Preventive Officer, and no copy of his statement was furnished to the petitioner. This was both unfair and unreasonable. The Preventive Officer's treatment of the petitioner was worse than that given to an accused in a criminal case.

His Lordship held that the Customs authorities were not entitled to seize the articles. Seven saris could not by any rule of common sense or reason be, he said, an unreasonable quantity, much less could they be said to be for commercial purposes or for sale. The articles were bona fide personal baggage within the meaning of the Export Baggage Rules, His Lordship said.

Regarding the passport His Lordship said that it was a document which enabled a person to establish his citizenship in certain cases. It also enabled a person who had gone abroad to make his re-entry into India. Personal liberty guaranteed by the Constitution included freedom of movement, and prima facie a citizen was entitled to a passport unless there was a statutory provision disabling him from obtaining it.

Holding that the detention of the articles and the passport was illegal, His Lordship directed the respondents to return them to the petitioner.

THIRD DEGREE PRACTICES IN PAKISTAN

Use of Violence and Torture by Police

CENSURE BY THE LAHORE HIGH COURT

A case came recently before the West Punjab High Court in which the Court found that the third degree methods were employed by a police head constable against a twenty-year-old girl apparently for the purpose of obtaining information about alleged theft but really for that of gratifying his lust.

Mr. Justice Shaikh Mahomad Shafi on 10th June dismissed the appeal preferred by Ghulam Ali, head constable at Chakwal in Jhelum District, against his conviction by a Jhelum court of having used violence on Miss Khurshid. The charge against the head constable and two other constables was that they kept Khurshid Begam in illegal confinement in order to induce her to confess that she had committed a theft and with a view to extracting such a confession they had used violence on her. The court convicted the head constable and sentenced him to five years' imprisonment and a fine of Rs. 500 and acquitted the other two constables.

It is said that the head constable and the other two constables were asked to investigate a theft reported at the police thana. They arrested Khurshid Begam and her mother and three other persons. They confined the first two in one room and the others in another room. They let off Khurshid's mother and the three persons but kept Khurshid in custody for three days. Khurshid's mother said that she had met her daughter while the so-called investigation was going on and the girl had complained to her that the constables not only beat her mercilessly but had violated her.

The High Court Judge, in dismissing the appeal, said :

I am convinced that the miscreants used objectionable methods in extorting from Khurshid Begam the desired statement. The girl was young and the head constable kept the girl in confinement for four days not for obtaining information about theft but for satisfying his illicit desire. It is to be noted that the criminals are not being prosecuted for this crime.

It is said that when this unlucky girl was released she jumped into a tank on her way home and thus killed herself.

NOTES

Right to Confront Accusers

Possessed by Employees in Defence Plants

An aeronautical engineer, Mr. William L. Greene, employed in the Engineering and Research Corporation of Riverdale, was ordered by the Navy to be dismissed as a security risk because he was doing classified work in the company. The statement of charges supplied to him after a year of requests alleged that Mr. Greene had agreed with his former wife's "wild theories" and associated with certain suspect persons. At a hearing Mr. Greene admitted the associations but said they had been made through his wife. He denied agreeing with her views and said their differences over politics had led to their divorce in 1947. The Government produced no witnesses at the hearing. The hearing and review boards upheld the denial of clearance. The Court of Appeals agreed with Mr. Greene that he had been injured. But it rejected his suit challenging the constitutionality of the Government's industrial security programme on the ground that his injury was of the kind not curable in the courts. It said that security was a matter for the political branches of government.

On 29th June, the last day of the Supreme Court's 1958-59 term, the Court by a vote of 8 to 1 voided the Government's action, holding that neither Congress nor the President had authorized a security programme in which suspects were denied the right to confront and cross-examine their accusers. The security programme struck down in the case covers three million defence plant workers. Chief Justice Warren, who wrote the Court's prevailing opinion, said :

Certain principles have remained relatively immutable in our jurisprudence.

One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact

might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy.

We have formalized these protections in the requirements of confrontation and cross-examination.

It is expected that because of this decision, from which Justice Clark alone dissented, that both the industrial security programme and the security programme for Government employees will undergo modifications which will include some concessions to the principle of confrontation. In the instant case Mr. Green was denied an opportunity to inspect non-secret confidential information and to confront and cross-examine even non-professional, non-undercover informants. Perhaps what the Government will do if it continues to feel that some informants must be kept secret is narrowly to define the occasions for such secrecy. Anyway, as the "New York Times" says, "confrontation should be the rule, not the exception."

S. Africa Farm Labour Scheme

CONTRACTS OF LABOUR THEREUNDER INVALID

Because of a ruling of the Supreme Court, South Africa's controversial farm labour scheme has been shelved, at least temporarily.

An African found in a town without a pass, or falling under suspicion of certain offences of similar character can, under the strict letter of the urban areas laws, be fined or imprisoned and repatriated. The farm labour scheme was devised five years ago, under which Africans from native reserves, detected by the police in cities to be without passes, were given the option of volunteering for farm work. Criminal proceedings against them were dropped if they offered to work on whites farms. The object of the scheme was avowed to be twofold: to prevent prosecution and repatriation of Africans illegally in cities and to relieve the chronic labour scarcity on eastern Transvaal farms.

However, the complaint was that many of the natives thus drafted for farm work did not voluntarily agree to work on farms. It has been found that some Africans legally in Johannesburg but caught without passes, have been threatened with long terms of imprisonment unless they agreed to be recruited for farm work. There have been complaints also of ill-treatment of these semi-compulsory labourers.

Recently a test case came up before the South African Supreme Court on a writ of habeas corpus. At the end of April the wife of one James Musa, who had been found in Johannesburg without a pass complained that he had been missing from home since October and she did not know what had become of him. He was produced before the Court, and Mr. Justice de Wet ruled on 9th June that Musa was a free man, since contracts of service under the farm labour scheme were unenforceable. In the course of the evidence affidavits were put in alleging great

brutality to Musa, but the judge did not find it necessary to determine whether cruelty was practised on him.

Because of this ruling and bitter criticism by the Opposition in Parliament, Mr. Nel, the Minister for Bantu Development, has suspended the scheme, appointing a commission to look into it. And the temporary suspension, it is hoped, will give the Minister time, as the "Times" says, "to work out a solution which will avoid perpetuating the anomaly of a status half slave and half free."

Freedom to Travel Abroad

WORTHY LOSES IN APPEALS COURT

Mr. William Worthy, a newsman, was granted in 1955 a passport stamped, as are all U.S. passports issued in recent years, "Not valid for travel in those portions of China . . . under Communist control." The following year Mr. Worthy, in defiance of this restriction, spent forty-one days in Communist China as a correspondent for the "New York Post" and some other papers. In 1957 the State Department refused to renew his passport because of his "wilful disregard of United States foreign policy."

Mr. Worthy took the issue to the federal courts. His argument was that the right to travel could be abridged "only when there are overriding considerations of public safety" created by the "gravest imminent danger," such as actual armed hostilities in the country, which must be factually proved.

On 9th June a three-judge Court of Appeals at Washington unanimously upheld the department's right to restrict travel abroad. The court held that passport control was based on foreign policy considerations which were traditionally beyond judicial inquiry. If the Executive branch foresaw the possibility of diplomatic or military clashes with a foreign government because of Americans' travel there, the foreign affairs power included the power to prevent such travel. Chief Justice Prettyman said:

We think the designation of certain areas of the world as forbidden to American travellers falls within the power to conduct foreign affairs. The bare determination that certain areas outside this hemisphere are trouble-spots or danger-zones is a phase of foreign affairs. The grounds upon which the President would make such a designation are foreign considerations, foreign affairs and foreign policy. . . . Indeed, the restriction is in and of itself a foreign policy . . . at least an instrument.

History establishes that either the behaviour or the predicament of an individual citizen in a foreign country can bring into clash the powers of his own Government and those of the foreign power. . . . A blustering inquisitor can throw the whole international neighbourhood into turmoil.

Chief Judge Prettyman observed: if "we had the information" on which the Executive bases foreign policy decisions, including travel restrictions on news reporters,

we might reach "different ones." But, he concluded, the Constitution has "wisely placed that burden" on the President; and the President's delegation to the Secretary of State of his undoubted power to designate restricted geographical travel areas for American citizens "is complete."

Sexual Attack on a Negro Girl

A SOUTHERN JURY FINDS THE WHITE RAPISTS GUILTY

An all-white jury in Tallahassee, Florida, unanimously held four white youths guilty of raping a Negro girl on 14th June, and that such a verdict was given in a Southern state is regarded as a great event.

A nineteen-year-old college girl, who cannot be identified under Florida law, was abducted by these youths from her Negro escort "at the point of a shotgun and a dangerous knife" while she was going in a car and then she was led into a thickly wooded area, where the youths raped the girl seven times.

The state attorney made an impassioned plea for equality of justice regardless of race. The judge in his charge to the jury also asked the panel to "disregard race, creed or colour" in its deliberations and, referring to the defence counsel's argument that the girl had not resisted, showing that she had willingly submitted to the advances of the youths, the judge said that even though the rape victim had made no resistance, a guilty verdict would be warranted if the victim had been "overpowered by fear induced by the men."

The jury returned a verdict of guilty but at the same time recommended mercy, which means that the maximum penalty of death could not be awarded.

Although the verdict is hailed, the general comment is that the death penalty would have been imposed if the defendants had been Negroes charged with raping a white woman. In the state of Florida no white man has yet been executed for raping a Negro, while a total of thirty-seven Negroes have died in the electric chair for the crime since 1925.

On 22nd June the judge awarded life sentences to the criminals; they were the maximum sentences that could be imposed under the jury's recommendation of mercy. The judge told the youths they were lucky to have escaped the electric chair.

Although the death penalty was not imposed, a unanimous conviction by a white jury is regarded by Negro leaders as progress towards equal treatment for the two races in the courts. The President of the Tallahassee chapter of the National Association for the Advancement of Coloured Peoples said: "We are definitely on our way towards eliminating the double standard of justice."

A White Rapist Sentenced to Death

Another case of a white man raping a black woman occurred a few days later at Beaufort in South California. Private Davis, serving as an electrician at a marine air

station, was alleged to have dragged a Negro woman into bushes and attacked her. An all-white jury returned a verdict of guilty and this time without the recommendation of mercy. This made the death sentence mandatory and the judge sentenced the accused to die in the electric chair. Two hours after the sentence was passed, the judge heard another case of a Negro raping a white woman. The jury convicted the Negro and the judge similarly passed a sentence of death. The judge said that the verdicts handed "should establish beyond all doubt that any person, regardless of race, colour or creed, can get justice in South California." Private Davis is the first white man to be sentenced to die for rape of a Negro in the United States.

Integration of Schools in Little Rock

It will be recalled that the federal district court ordered Mr. Faubus, Governor of Arkansas, in September 1957 to cease his interference with the integration plan submitted by the Little Rock school board and first approved by the federal courts in 1956. The Governor, however, with legislative backing, kept four high schools closed to prevent continuation of integration.

The legislation which served Mr. Faubus as a pretext for closing the schools was held invalid on 18th June by a three-judge federal court. It declared that the law which enabled the Governor to close the schools was unconstitutional. It held that the school-closing law clearly violated the due process and equal protection clauses of the Fourteenth Amendment of the Constitution. It also invalidated a companion law under which public school funds could be transferred to other schools where the displaced pupils would go. The court held that this law was dependent on the school-closing law and was likewise unconstitutional.

The court reminded the school board that it was under a "continuing mandate" to integrate the schools, and it enjoined Governor Faubus, the school board and other public officials from "engaging in any acts which will impede, thwart, delay or frustrate execution of the approved plan for the gradual integration of all schools in the Little Rock district."

Protection against Libel Action GIVEN TO GOVERNMENT EMPLOYEES

In a case decided on 29th June the Supreme Court's ruling in effect extended from Cabinet officials to subordinates several levels below the doctrine that they were immune from libel suits for statements, even if defamatory, made in the course of their duty.

The case arose from a public statement made by the head of a department to the effect that notice of suspension had been served upon two officials of the department who "were responsible for the plan which allowed 53 of the agency's 2,681 employees to take their accumulated annual leave in cash." The officials named filed a suit

of libel against the agency head. The Court ruled by a 5 to 4 vote that Government officials were immune from libel actions for public statements on policies committed to their charge.

Justice Harlan, who spoke for the majority, said that a public statement by the head of an agency, announcing action he proposed to take, "in reference to the charges so widely disseminated to the public, was an appropriate exercise of the discretion which an officer of that rank must possess if the public service is to function effectively." He added:

It would be an unduly restrictive view of the scope of the duties of a policy-making executive official to hold that a public statement of an agency policy in respect to matters of wide public interest and concern is not action in the line of duty.

In finding that immunity should not be limited to Cabinet officers, Justice Harlan said:

The privilege is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government.

The Chief Justice was among the dissenters and Justice Black voted with the majority, but his reasons were "not altogether the same."

Dismissal of a Government Employee Voided BY THE SUPREME COURT

An employee in the Interior Department working as a teacher in an island in the Pacific, Mr. William Vincent Vitarelli by name, was dismissed by the department in 1954 under the security programme of the Government. Mr. Vitarelli had a position in the department outside the civil service, and as such he could have been dismissed for no reason whatever, but the department elected to remove him as a security risk, charging that Mr. Vitarelli had had communist associations. The charges were all denied by Mr. Vitarelli. He had a hearing, but the Government, as in most such cases, produced no witnesses. He therefore sued for reinstatement on the ground that, in *Cole v. Young*, 351 U. S. 536 (reported at iv: 530 of the BULLETIN), the Supreme Court had decided that the security programme covered only sensitive jobs, i. e., jobs affected with national security, and he had had a non-sensitive position.

At that point the Interior Department expunged the security proceedings against him. It issued in 1956 a new discharge order, dated back to 1954, giving no reason for the ouster. The Government argued that wiping out the security proceedings against him also wiped out his rights under departmental security procedures. The lower courts accepted this argument.

However, the Supreme Court disagreed (1st June). All the nine Justices were unanimous in holding, in respect of the 1954 dismissal, that the Interior Department, once having invoked its security regulations

against Mr. Vitarelli, was bound to abide by them. The question was whether the hearing given Mr. Vitarelli was up to the department's own requirements for procedural fairness in security proceedings. Justice Harlan, who wrote the Court's opinion, pointed out that in three respects it was not. First, he said, the department's regulations required the charges to be as specific as security considerations permitted, so that a security risk could prepare his defence. But when Mr. Vitarelli got to the hearing, he was questioned "in great detail concerning his association with and knowledge of various persons and organizations nowhere mentioned in the statement of charges." Second, Mr. Vitarelli should have been able to cross-examine non-confidential informants named by the department itself, whereas in fact no witnesses were produced. And, third, the regulations required that "reasonable restrictions be imposed as to relevancy, competency and materiality of matters considered," whereas in this case Mr. Vitarelli was subjected to "a wide-ranging inquisition into [his] educational, social and political beliefs." These three conditions were "indispensable" for the purpose of assuring "a meaningful, fair, decent and dignified hearing" to a security risk and these were lacking in the instant case. Justice Harlan said, "Scrupulous observance of departmental procedural safeguards is clearly of particular importance" in security cases where judicial standards might be lacking.

Mr. Vitarelli's 1956 discharge on non-security grounds was also held invalid by the Court but by a vote of 5 to 4, Justice Frankfurter being among the dissenters. In the result the Court upset the dismissal order and ruled that the employee was entitled to re-instatement and back pay.

Right to Counsel

Two private detectives, Bluestein and Percudani, who were witnesses in a New York investigation of ambulance chasing, were asked some questions by a judge, which the witnesses refused to answer unless accompanied by counsel. Consequently they were held in contempt and sentenced to thirty days in prison. Later they appealed to the Supreme Court, and the Court on 15th June affirmed the sentences in a 5 to 4 ruling.

Justice Harlan, speaking for the majority, said that the ambulance-chasing inquiry was a preliminary one, like a grand jury investigation. Witnesses before grand juries traditionally have no right to bring counsel with them. Justice Harlan noted also that the Court had twice in recent years refused to extend the constitutional right to counsel to the investigatory stage of a case. In one of these rulings the Court held that a man, called before a state fire marshal for questioning about a fire he was suspected of setting, had no constitutional right to counsel. In the other the Court refused to lay down a rule that a suspect being questioned by the police must be allowed counsel on his demand.

Justice Black dissented, Chief Justice Warren and Justices Douglas and Brennan joining. He wrote:

In upholding such secret investigations the Court once again retreats from what I conceive to be its highest duty—that of maintaining unimpaired the rights and liberties guaranteed by the Fourteenth Amendment and the Bill of Rights.