

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Office : Servants of India Society, Poona

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

No. 92-93

May-June 1957

As in previous years the present is a double issue for May-June, and the next issue will be published in July.

FREEDOM FROM ARBITRARY ARREST AND DETENTION WHAT DOES "ARBITRARY" CONNOTE ?

Being thoroughly dissatisfied with the way in which some of the most important human rights and fundamental freedoms were dealt with in the draft Covenant on Human Rights, the United States proposed, it would be recalled (vide p. iv : 126), that a four-nation committee to be appointed by the Human Rights Commission should prepare studies of specific rights with a view to ascertaining how those rights were being observed in individual States and how a better realization of the rights throughout the world could be secured. It was hoped that when facts about violations of human rights were elicited from official records, those nations which were indifferent to these rights would by force of the opinion of the world community be compelled to stop the violations that were taking place and that the studies would thus be a practical contribution towards wider observance of the human rights to which all nations were morally committed. The twelfth session of the Commission adopted this proposal and selected " freedom from arbitrary arrest, detention and exile " set forth in Art. 9 of the Universal Declaration of Human Rights as its first subject of study since this right was " one of the basic rights of man. " The committee appointed by the Commission to study this subject has started work and submitted a preliminary report, in which for want of time not much progress has been reported but which at least shows that its study, when completed, will be thorough and on right lines.

The committee naturally came up against the question as to how to interpret the qualifying word " arbitrary " in the draft Article of the Covenant on Human Rights relating to Freedom of Person ; which begins grandly thus :

No one shall be subjected to arbitrary arrest or detention.

If the word " arbitrary " had a precise meaning in law, nothing more would have been required, but because the meaning is so inexact, the Article in the next paragraph went on to specify the circumstances in which

alone an individual could justly be deprived of his liberty (" no person shall be deprived of his liberty save in the case of ... "). But this method of specifying the exceptions was later given up and a blanket provision was made as follows :

No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

This second paragraph forms the hard core of the Article ; it is on the lines of Art. 21 of our own Constitution (which purports to forbid deprivation of personal liberty " except according to procedure established by law ") and was in fact so amended on the motion of India. Many nations objected to this form, saying that it was no safeguard if personal freedom could be curtailed merely by passing a law authorizing the executive so to curtail it. This would place, the critics said, the right to Freedom of Person at the mercy of the legislature, and the right cannot be said to be secure unless legislative infringements thereof become impossible. All progressive nations thought that the Article in its present form would serve no useful purpose, just as we in this country are all agreed in thinking that Art. 21 of our own Constitution serves no useful purpose.

While entrusting the subject of " freedom from arbitrary arrest and detention " to a committee, the Human Rights Commission paid some attention to this question of interpreting the word " arbitrary " but could not come to any conclusion. Most countries however agreed that it would not do to equate " arbitrary " with " contrary to national legislation, " for such definition would cover arrests which might be apparently legal but really arbitrary and unjustified. To get over the difficulty Australia made the following proposal :

The word " arbitrary " would be understood to mean arrest or detention :

(a) on grounds or in accordance with procedures other than those established by law [the words at present retained in the Article], or

(b) under the provision of a law, the basic purpose of which is incompatible with respect for the right of liberty or security of person.

This proposal, which clearly brings out the notion of "a lawless law," was not accepted by the Commission. But the committee in its report has said that it has taken note of the suggested definition and may possibly base its study thereupon. Its hands are not tied by the utterly unsatisfactory Article in the Covenant, but it is free to use its own criteria of unjust deprivation of liberty in preparing its study. In any case the committee will pay attention not only to the constitutional provisions in every country in respect of the safeguarding of personal liberty but also to the laws enacted and machinery set up for its preservation. It says:

The committee expects that, so far as "arrest" and "detention" are concerned, the study may essentially deal with the conditions under which a person may be deprived of his liberty, the procedure governing the same, and the procedural safeguards, or remedies, against such deprivation wherever it may be considered "arbitrary." To put it differently, the study on "arrest" and "detention" may largely be a study of adjective or procedural laws rather than of substantive laws. . . . The committee will be particularly interested in such rules and practices as contribute significantly to the protection and enhancement of the dignity, liberty and security of the human person.

FREEDOM OF NAVIGATION THROUGH THE GULF OF AQABA INDIA'S ATTITUDE AT THE U. N. GENERAL ASSEMBLY SCORED

While all Western and several Eastern powers supported Israel's claim for free and innocent passage through the Strait of Tiran and up and down the Gulf of Aqaba, India at the U. N. General Assembly denied this claim on the ground that these were territorial waters and that the littoral Arab States had the right to block passage of Israel's shipping through them. India's view was in direct opposition to that expressed by the Secretary-General of the United Nations in his report of 16th January that "the international significance of the Gulf of Aqaba may be considered to justify the right of innocent passage through the Strait of Tiran and the gulf in accordance with recognized rules of international law," and Mr. Aneurin Bevan, speaking for the Opposition in Parliament on 14th March, upheld this right in unequivocal terms. Warning Egypt that she was now expected to "behave herself," he said it would be "unforgivable" if there were now (i. e., after Israel's withdrawal of her troops from Egypt) to be interference with Israel's vessels and in fact suggested that other countries should send civil shipping to the Gulf of Aqaba as quickly as possible to assert the right of maritime nations to passage in the gulf, as in fact later the United States did. The position which India chose to take up and which she expressed vigorously several times can only be attributed to her desire to back up Egypt's contentions, however devoid of merit they might be. Yet it would be well to see what the law of the sea is in such matters, particularly because we are asked never to queer the pitch in so far as any rate as India's foreign policy is concerned.

* * *

Strait of Tiran

On a purely nationalistic interpretation of law the Strait of Tiran could be regarded by Egypt as being within her territorial waters. The strait is only three miles wide, lying between the Egyptian coast of Sinai and the Saudi islands of Tiran and Sanafir which Saudi Arabia

obligingly turned over to Egypt and which Egypt lost no time in fortifying so that she could block this entrance to the Gulf of Aqaba to Israel's shipping by mounting two 6-inch and four 3-inch guns high on a crag at the western side of the channel. Egypt claims the strait as her territorial water. "Territorial waters" are the off-shore waters over which the coastal States claim territorial jurisdiction. The amount of water territory that a nation could claim was based originally on the distance it could command with shore cannon. Hence, the widely accepted three-inch limit dating from the range of nineteenth century cannon. There is no uniformity in international law as to the bounds of authority of coastal countries. Both Egypt and Saudi Arabia claim jurisdiction over all waters within six miles from their coastline. The Strait of Tiran, being less than six miles wide, is claimed by Egypt as her territorial water.

However, straits connecting the high seas are regarded in international law as international waterways. It is a firmly established principle that straits, even when entirely territorial water, must in peace-time be open to ships of all nations if the straits link international waters, provided only that the ships are on "innocent passage," i. e., provided that the ships are not on a mission prejudicial to the security of the State through whose waters they sail. On this principle the peculiar situation of the Strait of Tiran gives this Egyptian territorial water an international character since it is the sole avenue linking two international bodies of water, viz., the Red Sea and the Gulf of Aqaba. The right of "innocent passage" through straits like the Strait of Tiran was reaffirmed in 1949 by a ruling of the International Court of Justice in the so-called Corfu Channel case. The Court ruled that British warships has the right of innocent passage through the Corfu Channel between Albania and the Island of Corfu, though the channel, only a mile and a half wide at

its narrowest point, is narrow enough to rank as territorial water under any definition of the term. The Court said :

In the opinion of the Court, general by recognized and in accordance with international custom, States in time of peace have a right to send their warships [and *a fortiori* freighters] through straits used for international navigation between two parts of high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention there is no right for a coastal State to prohibit such passage through straits in time of the peace.

On the strength of this decision the International Law Commission of the United Nations, which has drafted a codification of the law of the sea, states that coastal States "may not interfere with the innocent passage of warships through straits normally used for international navigation between two parts of the high seas." In defining "innocent passage" this commission says that "passage is innocent so long as the ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State."

Thus what determines the international character of a strait is not whether it is narrow enough to form territorial water of a State, but whether it is in the route of navigation between two bodies of "high seas." The Dardanelles is one such, and the Soviet Union will be the first to defend the principle of unobstructed navigation through narrow waterways to the high seas in order to be assured of free passage into and out of the Black Sea. The Kiel Canal and the Suez Canal are other instances of straits that link the oceans of the world through narrow passageways.

Gulf of Aqaba

If straits joining high seas or parts of high seas are themselves treated as international waterways in international law, are the Red Sea and the Gulf of Aqaba which the Strait of Tiran joins "high seas"? There can be no doubt that the Red Sea is such a sea in which freedom of navigation is uncontested. But can the Gulf of Aqaba be also so regarded? The gulf is the Red Sea's easterly arm stretching northward 100 miles between Saudi Arabia on the east and the Egyptian Sinai Peninsula on the west towards the two ports at the northern end — Eilat in Israel and Aqaba in Jordan. It must therefore be considered part of high seas or an international seaway. A possible objection was thus stated and answered in "The Times" by its special correspondent :

It has occasionally been argued that the Gulf of Aqaba is not part of the open sea, but that by reason of its virtually land-locked position it must be treated as something in the nature of a private preserve of the littoral State. At a time when the whole area was subject to Turkish sovereignty, this argument might have been tenable. This is no longer the case. The gulf is now enclosed by the

shores of four independent States — Egypt, Israel, Jordan and Saudi Arabia.

Each of these nations forming the coastline of the gulf can claim territorial waters to given points from their shore-lines. But because the gulf is from 10 to 17 miles wide—wider than the territorial claims—and because it is common to four nations it ranks as international water or "high seas." Oppenheim in his "International Law" says :

All gulfs and bays enclosed by the land of more than one littoral State, however narrow their entrance may be, are non-territorial.

* * *

Belligerent Rights

Thus it is clear that Israel's claim, that her vessels and those of all other States trading with her have a right to navigate freely through the Strait of Tiran and up the Gulf of Aqaba to the port of Eilat, is fully justified. The only question that now remains for consideration is whether this position is affected by Egypt's self-proclaimed "state of war" with Israel and her claim to belligerent rights thereunder. The Egyptian maintenance of a state of war is indeed the crux of the matter. Until Egypt ends the state of war and renounces its claims to belligerent rights there can be no peace in the Middle East. The claim, however, is ruled out not only by the U. N. Charter which bars the use or threat of force in settling international disputes, but also by the armistice agreement of 24th February 1949. The special correspondent of "The Times" puts the case thus :

Normally, it is true, an armistice agreement does not operate to terminate the legal state of war. It is also arguable that an armistice does not even put an end to the rights of the belligerents to visit and search neutral vessels or to seize contraband and to enforce a blockade. The armistice merely ends hostilities between the armed forces of the belligerents. In all the circumstances of the dispute between Egypt and Israel, however, it seems probable that the armistice agreement did something more than this. It was declared to be an "indispensable step towards the liquidation of armed conflict" and was expressly made in pursuance of certain Security Council resolutions which called upon the parties to establish an armistice. It was, in fact, intended by the Security Council that the armistice should put an entire end to the conflict between the parties and should prohibit acts which might give rise to further fighting. Accordingly, it seems correct to construe the armistice agreement as amounting to a prohibition of the exercise of belligerent rights at sea.

The armistice in this situation must be regarded as operating to deprive Egypt of any continued right to blockade Israel or to interfere with foreign vessels bound for Israel. The U. N. Secretary-General interprets the armistice as a virtual non-aggression pact and it was because of this that in his report of 25th January he called for assurances that the parties to the armistice agreement

"will not assert any belligerent rights" (including, of course, such rights in the Gulf of Aqaba and the Strait of Tiran).

* * *

Security Council Resolution 1951

But any lingering doubt on this point will be dispelled by the resolution adopted by the Security Council on 1st September 1951, which in terms denied Egypt any belligerent blockade rights. The text of the resolution runs (in part):

The Security Council,

Considering that since the armistice regime, which has been in existence for nearly two and half years, is of a permanent character, neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search, and seizure for any legitimate purpose of self-defence;

Notes that the Egyptian Government have not complied with the earnest plea of the Chief of Staff made to the Egyptian delegate on 12 June 1951, that they desist from the present practice of interfering with the passage through the Suez Canal of goods destined for Israel;

Finds that the maintenance of the practice mentioned (in the preceding paragraph) above is inconsistent with the objectives of a peaceful settlement between the parties and the establishment of a permanent peace in Palestine set forth in the armistice agreement;

Finds further that such practice is an abuse of the exercise of the right of visit, search, and seizure;

Further finds that the practice cannot in the prevailing circumstances be justified on the ground that it is necessary for self-defence;

And further noting that the restrictions on the passage of goods through the Suez Canal to Israel ports are denying to nations at no time connected with the conflict in Palestine valuable supplies required for their economic reconstruction, and that these restrictions together with sanctions applied by Egypt to certain ships which have visited Israel ports represent unjustified interference with rights of nations to navigate the seas and to trade freely with one another, including the Arab States and Israel;

Calls upon Egypt to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and to the observance of international conventions in force.

This resolution relates to the Suez Canal but, based as it is on the armistice agreement, applies equally to the Gulf of Aqaba. It negatives Egypt's claim to exercise belligerent rights in the gulf and thus to bar Israeli vessels or Israel-bound vessels from passage into and out of the gulf. This is the juridical status of the gulf.

Israel's Stake in the Gulf

For Israel freedom of navigation in the gulf is a matter of supreme importance. Already deprived of the use of the Suez Canal, she would be cut off from all maritime traffic if this other avenue too were to be closed, and it is impossible for her economy to be sustained under this double blockade. One of Israel's objectives in sending her army into Egypt was at least to break the blockade of the gulf and it is impossible to expect that she would allow it to be reimposed. She has been developing her port of Eilat, which is 300 miles from the Mediterranean and building a major road and a network of oil pipelines from the port to the Mediterranean as an alternate route. The first link of the planned 185-mile oil pipeline stretching north from Eilat across the Negev desert to Beersheba is already complete and the final link to the Mediterranean will be completed some two months hence. This would of course be no adequate substitute for the Suez route immediately, but it will at least supply Israel's own needs of oil and later it will go a long way to break the monopoly and therefore the potential stranglehold which Egypt has on all maritime traffic from the Red Sea to the Mediterranean through the Suez Canal. Israeli statesmen hope that a day will come when trade through the gulf will open Pacific and Indian Ocean ports to Israeli commerce. As they see it, Israel's chemical industry will be able to supply Far East countries with needed fertilizers. Potash from the Dead Sea would go as far as Japan and a new prosperous era would begin for Israel which has been struggling under the Egyptian blockade of the Suez Canal somehow to keep her head above water. The gulf can become a new link between the Eastern and the Western world.

Egypt's Former Pledge

Egypt and Saudi Arabia have both announced their determination to prevent Israeli shipping from passing through the Strait of Tiran and the Gulf of Aqaba, claiming that they are territorial waters and have no international character. Apart from the fact that this claim is unsustainable under the law of the sea, both countries have conveniently forgotten their former pledges to give free passage to ships of all countries including Israel.

When in 1950 Saudi Arabia put the islands of Tiran and Sanafir commanding the mouth of the gulf at the disposal of Egypt, apparently for blockading purposes, the United States was alarmed and wrote to the Egyptian Government inquiring about its intentions. Egypt on 28th January 1950 replied that she had no intention of interfering in any way with peaceful shipping. She said:

It goes without saying that this passage [through the Gulf of Aqaba] will remain free as in the past in conformity with international practice and with the recognized principle of the law of nations.

But soon afterwards Egypt used the gun emplacements at Sharm el Sheikh to prevent Israel-bound vessels from

entering the gulf and to prevent Israeli vessels from leaving.

So much about Egypt's assurances. Saudi Arabia too has given similar assurances. The present King Saud's father issued a decree on 28th May 1949, which stated, "in reliance on God Almighty," that while the territorial waters of Saudi Arabia which comprehended the Strait of Tiran are under its sovereignty, nevertheless they are also—

Subject to the provisions of international law as to the innocent passage of vessels of other nations through the coastal sea.

Saudi Arabia's present declaration that she will "protect" the Strait of Tiran and the Gulf of Aqaba against Israeli shipping by force is obviously made under Egyptian pressure, but neither Egypt nor Saudi Arabia can bar Israel from use of these waters without violating international law and, what is more, without going back upon their earlier promises to keep the waters open for all nations.

TESTIMONIAL COMPULSION

TWO U. S. A. CASES

The boundaries of the Fifth Amendment's guarantee against self-incrimination is now the liveliest issue before the U. S. A.'s Federal judiciary. Two important cases involving compulsion of testimony were decided last month by the judiciary at a lower level, and when these cases will go up to the Supreme Court, as they are likely to, we shall have the tribunal's judgment as to the limits within which compelled testimony is permissible.

One of these cases concerns Mr. Marcus Singer, professor of zoology at Cornell University, who testified in 1953 before the House Un-American Activities Committee that he had been a member of a Communist Party group while teaching at Harvard University. He told the committee that the group, which was "an innocent assembly of intellectuals," had discussed Marxism but had neither done nor said anything subversive. He was asked whether certain persons had attended meetings of the group in which he had participated. Professor Singer however declined to answer, invoking the Fifth Amendment which protects a witness from giving testimony that might incriminate him. He asserted that an answer might have subjected him to prosecution under a provision of the Smith Act which penalizes any person who participates in an organization that advocates overthrow of the Government by unconstitutional means, for nine of these persons were "hard-core Communists" and one was under indictment for conspiring forcibly to overthrow the government of Massachusetts. He was thereupon prosecuted for contempt of Congress and convicted of the offence. The conviction was upheld on 18th April by the Federal Court of Appeals by a vote of 2 to 1.

The gist of the majority opinion was that Professor Singer had already identified himself, in testimony freely given, with the Communist cause; that having voluntarily testified to Communist group membership that might be incriminating, he did not subject himself to "increased danger of prosecution" by giving the names of others in his group at the committee's demand, and that therefore his invocation of the Fifth Amendment did not establish his right to refuse. The Court said:

An admission that certain named persons, no matter who they were, attended the meetings could not have added to the self-incrimination which already was complete.

The opinion was based on the judgment in *Rogers v. United States* (1951) 340 U. S. 367. In this case Mrs. Rogers, treasurer of the Communist Party of Denver, testified to a grand jury that by virtue of her office she had been in possession of the Party's records which were sought as necessary to an investigation by the grand jury, and that she had turned them over to her successor when she gave up the office. When asked to disclose the name of the recipient, she refused, first on the ground that the disclosure would harm another person, and subsequently on the ground of the privilege against self-incrimination. The district judge imposed a sentence of four months for contempt. The Supreme Court affirmed. In regard to her first refusal, the Court pointed out that the privilege of silence exists solely for the protection of the person who asserts it and that it cannot be claimed to shield others. In regard to her second refusal, the Court ruled that this too was not justified because, after the disclosure she had already made, an answer could no further incriminate her. Where criminal facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details. "Disclosure of a fact waives the privilege as to details. . . . After petitioner's admission that she held the office of treasurer of the Communist Party of Denver, disclosure of acquaintance with her successor presents no more than an imaginary possibility of increasing the danger of prosecution."

Immunity Act, 1954

The second case concerns Mr. Harold Glasser and three others who refused to give certain testimony to the Senate Internal Security sub-committee. Mr. Glasser was asked for information concerning the activities of the late Harry Dexter White. The others were under question touching Communist infiltration of labour unions in Hawai. They all pleaded the Fifth Amendment

guarantee that a witness need not give testimony if he asserts that it might incriminate him. The committee still required them testify, pointing to the Compulsory Testimony Act of 1954 under which witnesses could be compelled to give testimony in inquiries affecting national security in exchange for a grant of immunity from prosecution in state and Federal courts that might develop from this testimony. However, they refused and were cited for contempt of Congress. They asked the Federal district judge to rule that the 1954 statute as affecting them was unconstitutional. The judge held the Act valid and directed the witnesses to obey the committee. The matter is now before the Court of Appeals.

The constitutionality of the Compulsory Testimony Act has already been upheld by the Supreme Court in the case of *Ullmann v. United States* (1956) 350 U.S. 422 (vide p. iv : 97 of the BULLETIN). This decision was based on that of *Brown v. Walker* (1896) 161 U.S. 591, in which the Court's holding was that "a statute which compelled testimony but secured the witness against a criminal prosecution which might be aided, directly or indirectly, by his disclosures did not violate the Fifth Amendment's privilege against self-incrimination." Because the immunity granted was inadequate, the Court had four years earlier in *Counselman v. Hitchcock* (1882) 142 U.S. 547 held the relevant statute unconstitutional, but when the immunity was broadened so as to make it co-extensive with the Fifth Amendment's guarantee the Court held the statute valid. It said: "While the constitutional provision in question (granting immunity from self-incrimination) is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are, therefore, of opinion that the witness was compellable to answer." Similarly in the *Ullmann* case the Court concluded: "Immunity displaces the danger. Once the reason for the privilege ceases, the privilege ceases."

But in the *Ullman* case only that part of the 1954 statute was in question which gives power to trial courts and grand juries to compel testimony on a grant of immunity, but in the instant case a different part of the statute was in question, namely, that which gives similar power to Congressional committees. This part of the law provides that, on a two-thirds vote of a full Congressional committee, one of its sub-committees can grant immunity in security cases and compel their testimony after obtaining an order from a Federal district judge in the locality of the hearing. The constitutional issue of the validity of the law could not be determined at this time. It must await a train of events—valid subpoena by the committee, refusal of a witness to testify on the self-incrimination plea, his indictment by a grand jury or a Senate trial for contempt, after which trial he could resort to habeas corpus. "I cannot forecast," the judge said, "that all these events will occur. And unless and until they do these cases are not ripe for the attack" on the constitutionality of the statute. The judge remarked that he was

guided by "the consistent refusal of the Supreme Court to decide constitutional questions in advance of the necessity to do so."

Apartheid in Church Services

Amended "Church Clause"

IN S. A. NATIVE LAWS AMENDMENT BILL

The Church Clause in South Africa's Native Laws Amendment Bill introducing apartheid in church service has now been amended. As originally drafted, the clause forbade all churches in the towns and cities to admit Africans to their services and functions without the prior approval of the Minister of Native Affairs. All the churches in the country except the Dutch Reformed Church condemned the Bill as an infringement of religious liberty and threatened to disobey its provisions. Thereupon the Government amended the clause so that churches would need to apply for permission to admit Africans to their services. But the Government still retained the right to issue notice to churches prohibiting Africans from attending their services. Under the amendment the Minister of Native Affairs would still have the right to debar people from corporate worship on grounds of colour and race; he (and the local authority) would still have power to forbid a non-European to attend a church where his presence was considered a nuisance. Only it would place the onus on non-whites instead of the churches to obtain permission to attend church services in white areas.

The Dutch Reformed Church, which was slightly agitated about the church clause as originally proposed, expressed itself to be "satisfied with the proposed legislation," as it was amended, and said in a statement that "the bill did not intend to interfere with freedom of the individual to worship in a church or at any other bonafide religious gathering so long as freedom was not misused to the disturbance of good order in the community." The amendment was in fact moved in order to assuage the feeling of disquiet in the Dutch Reformed Church and to this extent it may be said to have achieved its purpose.

But all the other churches have maintained their bitter opposition to the bill. They look upon the revised clause as essentially the same as the previous one. The amendment, they say, merely transfers criminal responsibility from the church leaders to the Africans who attend prohibited services. Such transfer of responsibility means, they point out, that while the Government was not prepared to put white archbishops in gaol, it was prepared to put "defenceless" Africans in gaol. They are as determined as before themselves to defy the bill and advise their flocks to do so. The Bishop of Johannesburg, the Right Rev. Ambrose Reeves, declared:

All I can say is that, if this amended clause is used either by the present Minister or any of his successors to interfere in any way with the freedom of worship which, as a church, we have enjoyed in South Africa

for 150 years, we shall be unable to obey and will counsel our clergy and our people to do likewise.

In saying this I recognize that it is a grave matter to disobey the laws of the land and a still more serious thing to advise others to do so. But we have fully weighed the probable consequences of our actions and believe that we must face whatever suffering may be involved rather than to submit to such interference in the life of the church.

The Rev. W. Illsley, President of the Methodist Conference, said :

The only answer the church can give is that given long ago by three Hebrew youths: "We will not serve thy gods, nor worship the golden image (of apartheid) which thou hast set up.

The Roman Catholic bishops, after a conference in Pretoria, issued a statement which said that their concern over the bill had not been abated by the amendment.

But the bill does not affect merely religious worship; it is all-embracing. It provides that without the approval of the Minister of Native Affairs no person may conduct a church, school, hospital, club, institution or place of entertainment in an urban area outside a native location if it is to be attended by Natives. As the "Economist" has put it :

(This bill is) a blanket stifling of free discussion between the races. . . . The threat hanging over all mixed gatherings may cripple the few remaining liberal organizations in South Africa. The Institute of Race Relations (a multi-racial organization whose aim is to foster better race relations in South Africa) may be debarred from using the hall it has just built in Johannesburg for inter-racial conferences, while the Liberal Party, led by Mr. Alan Paton, is wondering whether it can continue to exist. Black and white South African may soon find it impossible to meet as equals at all ; in the words of Dr. Verwood (the Minister of Native Affairs), " There can be contact between Natives and others as individuals, but this contact must be the same as that between a ward and a guardian. "

Separate Universities Bill

The other measure of the Union Government of South Africa intended to minimise contact between the races is that of the Separate Universities Bill. It now drops the provisions for the transfer to the Government of the University College of Fort Hare and the Medical School for non-Europeans at Natal University and only provides that the Universities of Witwatersrand and Cape Town shall debar black or coloured students from their portals and that the new non-European Colleges will be under the control of the Minister of Native Affairs, who has the power to regulate the admission of students and appoint the teaching and administrative staff. A member of the Labour Party

criticised the bill as interfering radically with what universities might teach, saying that the Government was organizing the universities in the service of white supremacy. This charge was admitted by a Nationalist speaker, who said: "If South African universities were to be allowed to teach doctrines of complete equality, it would inevitably lead to non-European domination and, as conditions existed in the world to-day, to complete Communist domination." A strong protest against the bill has been voiced by nineteen Vice-Chancellors of British universities and Principals of university colleges. They say in a letter to the " Manchester Guardian " :

Both white and non-white students will suffer in consequence of the restrictions to be enforced on these universities (of Cape Town and Witwatersrand). It is a serious matter that university institutions should be arbitrarily dealt with by the Government of the day through legislative processes. And no less serious objection must be taken to the manner in which the proposed university colleges for non-white students are to be organized and administered.

COMMENTS

India and the Israel-Egyptian Dispute

It is not only in regard to the issue of free navigation in the Gulf of Aqaba (which has been dealt with on an earlier page in this issue) that India sided unreservedly with Egypt, but in the whole of the Israel-Egyptian dispute she identified herself completely with Egypt's claims. India was foremost in her demand that Israel withdraw fully and promptly behind the armistice lines. In this she was at one with other nations like the United States, Canada and Great Britain, but unlike them she ignored the past grave provocations on the part of Egypt because of which Israel was moved to send her army into the Sinai Peninsula.

Egypt's constant violation of the armistice agreement, her refusal to negotiate with Israel for converting the armistice into a permanent peace settlement, her declared intention to "drive Israel into the sea," the Arab League's threat to expel any member State which would dare to open negotiations with Israel with expulsion and other sanctions, the subsequent boycott against Israel, the blockade of the Suez Canal and the Gulf of Aqaba which seriously hampered Israel's economic development by cutting her off from her natural markets, the Cairo-Moscow arms deal which turned Egypt into a funnel that freely supplied Israel's hostile neighbours with weapons, the border raids of the fedayun from the Gaza Strip—these provocations, all of them constituting breaches of the U.N. obligations, were such as to explain, though not to justify, Israel's invasion of Egypt. A radical Labour M. P., Mr. Denis Healy, who vigorously condemned Britain's and France's intervention in Egypt, in fact was led to exclaim that " no one who knows the provocation (on the part of Egypt) can administer a severe moral reproof to Israel

for her attack on Egypt, though the political argument against that attack remains as true as ever."

The United States, Canada and other Western powers fully realized the need for condemning Israel for taking the law into her own hands (though this action was in Israel's eyes the direct result of the impotence of the United Nations in redressing her just grievances) and getting her to move her forces behind the armistice lines. But they also realized that this would be but a one-sided application of the U. N. Charter unless at the same time Egypt was persuaded to stop her hostile actions against Israel. India, however, appeared to be wholly oblivious of Egypt's prior aggressive acts. To her all that seemed to be required was a mere restoration of the status quo ante. The U. N. Secretary-General himself in his first report stressed the need, while liquidating Israel's aggression, to create "more satisfactory conditions" than what such restoration would bring about. But India did not favour any such move. If a U. N. force was to be deployed, in India's view it was only for the purpose of seeing that the Israeli army left the Egyptian territory it had occupied. She would not agree to assign any broader functions to the U.N. force; it looked as if she would not mind if Egypt called for the withdrawal of the U. N. force immediately after Israeli forces had withdrawn, even if this resulted in Egypt's resumption of border raids and naval blockade against Israel. In all the discussions that took place in the U. N. General Assembly India merely echoed the view which Egypt herself had expressed. Such utter disregard of justice, it seems to us, was too high a price to pay for retaining the friendship of the Arab bloc of countries.

DETENTION FOR NON-PAYMENT OF TAX

Supreme Court Upholds Law

MADRAS HIGH COURT REVERSED

In March 1954 the Income-Tax Officer issued a certificate under sec. 46 (2) of the Income-Tax Act about the arrears of tax due from a businessman, Mr. Erinmal Ebrahim Hajee of Cannanore. The section authorizes the Collector to recover arrears of income-tax as land revenue on receipt of a certificate from an income-tax officer. The arrears amounted to Rs. 61,668 for the assessment years 1943-44 and 1945-46 to 1948-49. On inquiries it was found by the Collector of Malabar that Mr. Hajee had sold his properties and set up business at Tellichery in 1948 and was wilfully withholding payment of arrears of tax and was guilty of fraudulent conduct in evading payment of tax. The Collector therefore ordered on 1st June 1954 Mr. Hajee to be arrested under sec. 48 of the Madras Revenue Recovery Act, which provides that when arrears of revenue cannot be liquidated by the sale of property of the defaulter, the Collector can, if he has reason to believe that the defaulter is wilfully withholding payment of the arrears, cause the arrest and

imprisonment of the defaulter. Mr. Hajee was lodged in the Central Jail, Cannanore.

On appeal the Madras High Court considered the arrest illegal and ordered the release of the businessman. It was held by the High Court that sec. 46 (2) of the Income-Tax Act, read with sec. 48 of the Madras Act, was ultra vires the Constitution as it offended Art. 14 of the Constitution (Equality before law). The High Court was of the opinion that sec. 48 of the Madras Act offended Art. 21 (Protection of life and personal liberty) of the Constitution and that to the extent that the section afforded no opportunity to the arrested person to appear before the Collector by himself or through a legal practitioner of his choice and to urge before him any defence open to him and did not provide for the production of the arrested person within 24 hours before a Magistrate, it offended Art. 22 (2).

The Collector of Malabar preferred an appeal to the Supreme Court under Art. 132 against the decision of the High Court, urging that the case involved a substantial question of law regarding interpretation of the Constitution. It was argued before the Supreme Court on behalf of the businessman that sec. 46 (2) of the Income-Tax Act and sec. 48 of the Madras Act merely authorized the Collector to recover the amount of arrears of the income-tax but it did not give him any authority to arrest the respondent. It was submitted that the act of arrest was not a mode of recovery of arrears of tax, but it was a punishment for failure to pay and that the provisions contravened Arts. 14, 19, 21 and 22 of the Constitution. The Constitution Bench of the Supreme Court decided the case on 18th April.

Mr. Justice Imam, who delivered the judgment, disagreed with this interpretation and said that sec. 5 of the Madras Act clearly set out the mode of recovery of arrears of revenue either by the sale of moveable or immoveable property of the defaulter or by execution against his person in the manner provided by the Act. Sec. 48 provided that when arrears could not be liquidated by the sale of the property of the defaulter the Collector could lawfully cause the arrest and imprisonment of the defaulter if he had reason to believe that the defaulter was wilfully withholding payment of the arrears or had been guilty of fraudulent conduct in order to evade payment of tax. This section, read with sec. 5, made it abundantly clear that the arrest of the defaulter was one of the modes by which the arrears of revenue could be recovered, if the said arrears could not be liquidated by the sale of the defaulter's property. There was not any suggestion in the entire section that the arrest was by way of punishment for mere default.

His Lordship further said that there was nothing in sec. 48 of the Madras Act which required the Collector to give the defaulter an opportunity to be heard before arresting him. The only thing necessary was that the Collector must have some material upon which he based

his belief and could look into that material in appropriate cases in order to find out if the conditions laid down in the section had been fulfilled or not.

Dealing with the applicability of Art. 19 of the Constitution, Mr. Justice Imam said that it had been held by a majority of the Judges of the Supreme Court in Gopalan's case that the right to "move freely throughout the territory of India," referred to in Art. 19 (1) (d) of the Constitution, was but one of the many attributes included in the concept of the right to "personal liberty" and when a person was lawfully deprived of his personal liberty without offending Art. 21, he could not claim to exercise any of the rights guaranteed by Art. 19 (1), for those rights could be exercised only by a free man.

The arrest of the respondent, His Lordship said, could not be regarded as an arrest or detention within the meaning of Art. 22 of the Constitution. In the present case, the arrest was not in connection with any allegation or accusation of any actual or suspected apprehended commission of any offence of a criminal or quasi-criminal nature. It was really an arrest of a civil debtor in the process or the mode prescribed by law for recovery of arrears of land revenue.

His Lordship said that an earlier judgment in Purshottam Govindji Halai's case this Court had held that there was no violation of Art. 21 where a person had been arrested under sec. 13 of the Bombay Land Revenue Act, in pursuance of a warrant of arrest issued for recovery of the demand certified under sec. 46 (2) of the Income-Tax Act, which did not offend Art. 14, inasmuch as such arrest was under a procedure established by law—that is to say, sec. 13 of the said Act constituted a procedure established by law. The grounds stated in that case for declaring that sec. 46 (2) of the Income-Tax Act was not ultra vires of the Constitution were equally applicable to the present case. In the opinion of the Court, His Lordship concluded, neither sec. 48 of the Madras Act nor sec. 46 (2) of the Income-Tax Act violated Arts. 14, 19, 21 and 22 of the Constitution. The appeal was allowed.

DELEGATION OF POWERS

Madras Motor Vehicles Act.

DELEGATION OF POWER UNDER SEC. 44-A "BAD"

The Motor Transport Officer, Vellore, in exercise of the power conferred by a Government Order dated 14th February 1953 under sec. 44-A of the Motor Vehicle (Madras Amendment) Act, extended in 1953 and 1954 the routes on which the buses of two bus operators, Messrs. Krishnaswami Mudaliar and Kumaraswami Mudaliar, were authorized to ply. Mr. Pachaia Pillai, a third operator, who felt aggrieved by these extensions, moved the Madras Government to revise the orders of the R. T. O. But his petition was dismissed. Thereupon he filed two writ petitions in the Madras High Court to quash the orders. Mr. Justice N. Rajagopala Iyengar

allowed the petitions and quashed the orders of the R. T. O. holding that the R. T. O. had no jurisdiction to extend the scope of the permits in the manner he had done on the ground that the delegation of powers made to him was bad.

The G. O. of 14th February 1953 empowers the R. T. O.'s and the Secretary, Road Traffic Board, Madras, "to exercise the powers and discharge the functions of the State Transport Authority under sec. 44-A, 51-A 56-A of the Motor Vehicles Act." Sec. 44-A was introduced by the Madras Act 22 (Amending Act) of 1948. It empowers the State Government, notwithstanding anything contained in the Act, to authorize the Transport Commissioner or any officer "subordinate" to him to exercise and discharge the powers and functions of any authority set up under the Act.

Both Mr. Krishnaswami Mudaliar and Kumaraswami Mudaliar preferred writ appeals against the order of Mr. Justice Rajagopala Iyengar. When the appeals came up for hearing before a division bench, the Court took the view that the earlier decision of the High Court on the question of delegation of powers to the R. T. O. required reconsideration and so referred the appeals to a full bench. The full bench consisting of Justice P. V. Balakrishna Ayyar, Basheer Ahmed Sayeed and K. Ramaswami Gounder on 15th April last held that, in the absence of any rules framed under the Act making the R. T. O. "subordinate" to the Transport Commissioner, the delegation of powers made to the R. T. O. to vary the conditions of a bus permit was bad. Mr. Justice Balakrishna Ayyar delivered the judgment of the full bench. The question which the bench had to decide was as to what the word "subordinate" in sec. 44-A meant. Of the three views put forward before the Court, viz., administrative subordination, functional subordination and statutory subordination, the Court was inclined to accept the last, which, said Mr. Justice Balakrishna Ayyar, "sought to avoid the anomaly that has now occurred of a person in the position of a Secretary of a body being empowered to vary the conditions of a permit granted by that body." Referring to sec. 113-A of the Central Act of 1942 empowering State Governments to set up a Motor Vehicles Department and to frame rules to determine "subordination" of the various officers in that department, His Lordship said:

It was admitted before us that no rules have been framed under the Act making the R. T. O. "subordinate" to the Transport Commissioner, as required by the Act. It follows that under the statute he has yet to become a "subordinate" of the Transport Commissioner. The delegation of powers made to him by the G. O. dated 14th February 1953 is bad. It means the appeals fail and they are dismissed.

Mr. Justice Basheer Ahmed Sayeed, while concurring with the main judgment, added that it only remained for the Government to withdraw the G. O. in question and frame rules in the manner prescribed, determining

the subordinate officers under sec. 133-A of the Act, and thereby resolve the difficulties that had arisen.

SALES TAX ACTS

Levy on Exported Goods Quashed by the Bombay High Court

Messrs. Daulatram Rameshwari, a firm registered under the Bombay Sales Tax Act, dealt in cotton and castor oil. The Sales Tax Officer issued a demand notice for payment of the general sales tax with regard to the sale of certain quantities of cotton and castor oil to Messrs. Godimetta China Appalaraju for export in 1954-55. They challenged the notice in a writ petition in the Bombay High Court claiming exemption from the sales tax. Mr. Justice K. T. Desai dismissed the petition, whereupon an appeal was preferred, and in allowing the appeal the Chief Justice and Mr. Justice S. T. Desai ruled on 10th April that the sale of goods for exports outside India, effected after the goods had crossed the customs barrier, would fall within the exemption provided in Art. 286 of the Constitution and that such a sale could not be subjected to a sales tax under a law passed by a State.

Their Lordships said that the contracts showed that the goods were sold by the appellants to the exporters f. o. b., and the exporters were to make payment against presentation of bills of lading.

Two important and salient facts emerged from this : one was that the delivery of the goods was not obtained by the exporters till after the goods had crossed the customs barrier and the price was not received by the sellers till they sent the goods across the customs barrier, because it was not disputed that the bill of lading could only be prepared after the customs duty on the goods had been paid and the goods had passed the customs barrier.

There was no doubt that the appellants had agreed to sell the goods in question to the exporters so that the exporters should export them under their licence. In Their Lordships' opinion the property in the goods passed to the exporters only after the goods had crossed the customs barrier.

Their Lordships said that one test which was almost infallible was to consider whether the exporter could have diverted the goods which he had purchased to any purpose other than the purpose of export.

Could he have resold the goods within the State or could he have utilised these goods for his own domestic purpose? The answer must obviously be in the negative.

Inasmuch as the exporter only got delivery of the goods by means of the documents of title after they had crossed the customs barrier, it was impossible to suggest that he could have made any other use of these goods than to export them outside India.

Their Lordships referred to the Export Trade Control Rules which provided that the goods for the export of which a licence was granted must be the property of the licensee at the time of export.

Relying upon these rules it was contended before Their Lordships that only an owner of the goods could obtain a licence and only an owner could export the goods under the licence and therefore the property in the goods had passed to the exporters before the goods crossed the customs barrier.

Their Lordships rejected this contention and said that all that the export rules required was that the exporter who obtained the necessary licence should be the owner of the property at the time of export.

But these rules did not deal with the niceties of the time at which property in the goods passed.

Therefore, said Their Lordships, although it might be true for the purpose of export control order that the goods at the time of the export were the property of the exporter, it might be equally true for the purpose of deciding the question under Art. 286 that the goods became the property of the exporter only after they crossed the customs barrier.

Their Lordships therefore held that the sale in question which was sought to be taxed was a sale exempted under Art. 286 of the Constitution and therefore it could not be brought to charge.

The result was that Their Lordships directed the respondent sales tax officer not to enforce the demand notice for payment of general sales tax with regard to the sale of cotton of the value of Rs. 2,68,553-3-0 and also with regard to the sale of castor oil of the value of Rs. 6,47,509-1-6, both these sales being covered by the f. o. b. contracts.

Sales within and without a State

SUPREME COURT'S JUDGMENT

The appeal by Mr. A. V. Fernandez against the State of Kerala, challenging the mode of computation of the net turnover for purposes of charging sales tax under the Travancore-Cochin General Sales Tax Act was dismissed on 2nd April by the Supreme Court.

The business of the appellant for the purposes of the appeal consisted in the purchase of copra, the manufacture of coconut oil and cake and the sale of these commodities partly to purchasers within the State and partly outside the State. The controversy between the parties arose out of the method of computing the taxable turnover of the appellant for purposes of sales tax.

The appellant contended that he was entitled to deduct from his total turnover the whole of the price of copra which he had purchased for extracting oil and only the balance was taxable. The sales tax authorities on the other hand took the stand that the appellant was entitled to deduct only that part of the total purchase price of copra which represented the amount allocated for the manufacture of products sold inside the State and he was not entitled to any deduction in respect of copra purchased for extraction of oil to be sold outside the State.

The Supreme Court examined the relevant statutory provisions and rules and held that "the amount for which the oil is sold in inter-State trade or commerce would not be lawfully included in the turnover of the dealer and if the amount for which the oil is sold cannot thus be included in his turnover, no occasion would arise for the deduction of the value of the coconut or copra or ground nut or kernel purchased and converted by the dealer into such oil and cake." The mode of calculation adopted by the sales tax authorities was upheld.

INDIAN PENAL CODE, SEC. 295-A

Consistent with Art. 19 (1) (a)

RULING OF THE SUPREME COURT

On 6th April the Constitution Bench of the Supreme Court held that sec. 295-A of the Indian Penal Code providing penalty for outraging religious beliefs did not infringe the fundamental right to freedom of speech and expression guaranteed under Art. 19 (1) (a) of the Constitution.

The ruling was given by the Court while dismissing a petition by Mr. Ramji Lal Modi, editor, printer and publisher of a monthly magazine "Gaurakshak," praying for quashing his conviction under sec. 295-A of the I.P.C. on the ground that the section was ultra vires and void inasmuch as it interfered with his right to freedom of speech and expression guaranteed by the Constitution.

The petitioner was convicted by the sessions court of Kanpur and sentenced to 18 months' rigorous imprisonment and a fine of Rs. 2,000 for publishing an article in "Gaurakshak" in November 1952. On appeal the Allahabad High Court held that the article was published with the deliberate and malicious intention of outraging the religious feelings of Muslims and that the petitioner was guilty under sec. 295-A. The High Court, however, reduced the sentence of imprisonment to 12 months and the fine from Rs. 2,000 to Rs. 250 only.

It was contended on behalf of the petitioner before the Supreme Court that insulting the religion or the religious beliefs of a class of citizens might not lead to public disorder in all cases although it might do so in some cases. Therefore, where a law purported, as the impugned section did, to authorize the imposition of restrictions on the exercise of the fundamental right to freedom of speech and expression in language wide enough to cover restrictions both within and without the limitation of constitutionally permissible legislative action affecting such right, the court should not uphold it even in so far as it might be applied within the constitutionally permissible limits, as it was not severable.

The Chief Justice Mr. S. R. Das, who delivered the judgment, observed that the right to freedom of religion assured by the Constitution was expressly made subject to public order, morality and wealth. Therefore, it could not be predicted that freedom of religion could have no

bearing whatever on the maintenance of public order. His Lordship said :

Cl. (2) of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interest of" public order, which is much wider than "for the maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restrictions "in the interests of public order," although in some case those activities may not actually lead to a breach of public order.

Sec. 295-A, I.P.C., does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order, and the section which penalises such activities is well within the protection of cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19 (1) (a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution and consequently the question of severability does not arise.

EXCESS PROFITS TAX ACT

"Accruing Liability" within Rule 2

SUPREME COURT'S DECISION

In the appeal preferred by the Commissioner of Excess Profits, West Bengal, against the Ruby General Insurance Co. Ltd., the important question which arose for consideration was whether amounts shown by an insurance company as reserves for unexpired risks on pending policies were liable to be deducted from capital under rule 2 of schedule 2 of the Excess Profits Tax Act of 1940. The rule provides that—

Debts to be deducted from capital include such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax.

The Ruby Company issues policies of general insurance normally covering risks for one year, which frequently falls partly within the current accounting year and partly within the next year. In compiling its income accounts the company adopted the practice prevailing in other companies also—viz., to deduct from income 40 per cent. of the total premium received from general insurance as reserves for the unexpired risks on the outstanding policies and to include this amount of 40 per cent.

in computing the capital employed in the business during the year when assessment of E. P. T. was made.

A dispute arose between the company and the Commissioner, E. P. T., in regard to assessment of E. P. T. on its income from general insurance for the periods ending 31st December 1940 and 31st December 1941. The contention of the Commissioner was that the reserve of 40 per cent of the premium should be deducted from the capital as it was a debt in respect of an accruing liability. The effect of this deduction would be to reduce the amount of capital employed, thereby enhancing the proportion of profits earned and increasing the liability of the assessee.

The dispute was referred to a tribunal, which decided the question at issue against the company. But on appeal to the Calcutta High Court, the matter was decided in favour of the company. The Commissioner thereupon appealed to the Supreme Court. The question was whether the reserve of 40 per cent. was to be regarded as a sum in respect of accruing liability.

The Solicitor-General, who appeared on behalf of the appellant, urged that a contract of insurance was complete as soon as the policy was issued and from that time the risk began to be attached to it. Therefore, liability under a policy must be held to be accruing so long as the policy was in force because it could ripen into actual liability at any time during the life of the policy. He further urged that when the assessee showed a certain amount of the value of that liability, it was a sum in respect of an accruing liability and, therefore, it must be deducted under rule 2 of schedule 2 of the Act.

Mr. K. P. Khaitan, counsel for the respondent, on the other hand urged that a contract of insurance under the Indian Contract Act was merely a contingent contract and until the event specified in the policy happened, there was no enforceable liability and that, accordingly, unexpired risks in pending policies could not be treated as present liabilities.

The Court on 24th March upheld the view that the amounts shown by an insurance company as reserves for unexpired risks on pending policies can be included in computing the capital employed in the business for the purposes of calculating tax under the Excess Profits Tax Act.

Examining the nature of the reserve for unexpired liabilities the Court stated that the reserve was not like borrowed money or a debt and did not form a part of the real trading assets of the business. The reserve liability factually could not be said to have contributed to the running of the business or the earning of profits. It could not therefore be held to be an "accruing liability" within rule 2 of schedule 2 of the Act and hence it was not liable to be deducted under the Act. A contingent liability in respect of unexpired risk was not an "accruing liability."

The Court therefore ruled that the decision appealed from was correct and that the appeal must accordingly be dismissed. Mr. Justice Venkatarama Aiyar delivered the judgment.

AGRICULTURAL INCOME-TAX ACT

"Salami" Not Agricultural Income RULING OF THE SUPREME COURT

The amount received by a landlord as "salami" or a premium from a prospective lessee as a consideration for

transferring to him a right in the zamindari lands owned by him is not "agricultural income" under the Assam Agricultural Income Tax Act, 1939, according to the judgment of the Supreme Court delivered by Mr. Justice Kapur on 24th March.

Sindhurani Chaudhurani and other zamindars of Assam received payments by way of "salami" from their prospective tenants at the time when they entered into agreements to grant leases of land to them. The Income Tax authorities in Assam treated these receipts as agricultural income under the Act and assessed them to tax. The landowners contested this and after prolonged proceedings it was held by the High Court of Calcutta that these amounts were not agricultural income liable to tax.

In the meantime a separate High Court was created for the State of Assam and when a similar point was urged before that court, it took the view that such receipts were agricultural income and liable to tax. Both sets of judgments were under appeal before the Supreme Court, the first set by a member for the Board of Agricultural Income Tax, and the second by Sindhurani Chaudhurani and other landlords, and the Supreme Court disposed of the appeals by a common judgment.

Under the Assam Act "agricultural income" is defined to include rent or revenue from land and the question for decision before the Supreme Court was whether the amounts received as "salami" by the landowners are rent or revenue within the definition and therefore liable to tax.

The Court examined the facts and found that the "salami" was a charge made by the landlord on the tenant before granting him a lease of land and was not a recurring receipt. The payment was made by the prospective lessee anterior to the constitution of the relationship of landlord and tenant as the price of landlord agreeing to the parting of his rights in the agricultural holding in favour of the lessee. Therefore when a tenant paid "salami" he did so in order to get in return an estate in the land owned by the zamindar, and "salami" consequently was not rent.

The second question was whether the payment could be considered as "revenue." In this connexion the Court observed that both the parties had proceeded on the basis that it could not be called revenue within the meaning of the word in the definition of "agricultural income" as used in sec. 2 (1) (a) of the Act because it was a payment to the landlord by the tenant as a price for the transfer of a right in his land. The Court held that such a payment had all the characteristics of a capital payment and hence could not be included in income.

The appeals by the Income Tax authorities were accordingly dismissed and those by the landowners were allowed.

APPROVER'S EVIDENCE

Reliability and Corroboration:

TWO TESTS FOR APPROVER'S EVIDENCE

The Supreme Court by a judgment delivered on 13th April set aside the convictions for murder and the death sentences of Sarwan Singh and Harbans Singh on the

grounds that the evidence of the approver, which formed the basis of their convictions, failed to pass the preliminary test of reliability, which was necessary before such evidence could be acted upon.

The appellants were charged with murder on the allegation that they, together with Gurdial Singh and Banta Singh, who turned approver in the case, had intentionally caused the death of Gurdev Singh. The trial judge believed the evidence of the approver and also a confession by Sarwan Singh and on this basis he convicted all the accused and sentenced them to death. The Punjab High Court on appeal held that the evidence of the approver was unreliable and accordingly acquitted Gurdial Singh but upheld the conviction of the others.

The High Court supported the conviction of the appellants on the grounds that the evidence of the approver against them was corroborated in material particulars and further that the confession by Sarwan Singh had been made voluntarily. The Supreme Court, giving judgment, stated that normally it would not interfere with findings of fact, but in the present case the High Court had adopted an erroneous approach to the question of the proper appreciation of the evidence of an approver.

Mr. Justice Gajendragadkar stated that there was no doubt that the evidence of an approver required corroboration in material particulars before it could be made the basis of a conviction, but before considering the question of corroboration it was incumbent upon the court to consider whether the evidence was reliable. He stated that the appreciation of the evidence of an approver has to satisfy two tests. His evidence must show that he is a reliable witness. If this test is satisfied, the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration.

According to the Supreme Court in the present case the High Court had not considered the question of the reliability of this evidence which, in its view, was full of discrepancies and not worthy of credit. Consequently the convictions in so far as they were based on the approver's evidence must be set aside.

Regarding the confession by Sarwan Singh the Supreme Court held that the attendant circumstances indicated that it was not given voluntarily and in any case it was not true. It drew the attention of the Punjab High Court to its circulars regarding the recording of confessions and suggested that these should be suitably amended on the pattern of the Bombay and Madras High Courts to ensure that not only was the formality of law observed but also that the accused had real freedom to make or desist from making a confession.

In view of the involuntary nature of the confession in this case and the unreliability of the evidence of the approver, both the appellants were acquitted by the Supreme Court and the judgment of the High Court was set aside.

The appeal was heard by Mr. Justice Jagannadhass, Mr. Justice Sinha and Mr. Justice Gajendragadkar.

THIRD DEGREE METHODS

Strictures by the High Court

A sub-inspector of police, Jwala Singh, station officer of Srinagar in Hamirpur district, received information that the residents of Sijwaha village were harbouring a certain dacoit, Bhavani, and that some of them were also in possession of unlicensed arms. The police officers of the district happened to have met at Mahoba just about that time, and taking advantage of

this a police party of 40 men went to the village and arrested two men, Baura and his brother Pooran. Baura's house was searched for recovery of possible unlicensed arms, when he was said to have assaulted a police official. He was convicted of the offence and sentenced to two years in prison. Pooran was charged with firing a gun at the police party, and he was convicted of attempted murder and sentenced to three years' imprisonment for that offence and to one and half year's imprisonment under sec. 19 (f) of the Arms Act. On appeal Mr. Justice Chowdhury of the Allahabad High Court on 29th April set aside the convictions and sentences of both Baura and Pooran passed by the assistant sessions judge of Hamirpur.

With regard to Baura, His Lordship said the attempt to make an entry into his house was made in flagrant disregard of the relevant provisions of the Cr. P. Code. That being so, the sub-inspector and the members of his party could not be said to have been acting in the lawful discharge of their duties as police officers within the meaning of sec. 353, I. P. C. Baura's conviction under that section was thus wholly unsustainable.

As regards Pooran's possession of unlicensed arms, His Lordship held that the recovery of the gun from his possession was not proved. Although a large number of persons were present when search was made none of them were selected to witness the search, but the search was attested by two men who had been taken to the village from Srinagar. Not only were the provisions of sec. 103, Cr. P. C., deliberately transgressed, but the prosecution in the circumstances rendered the testimony of the two search witnesses highly suspicious.

In regard to the firing of a gun at the police party by Pooran, His Lordship said it was not possible to hold that he fired the shot in an attempt to commit the murder of anybody. The chances on the other hand were that he did so with a view to scaring away his pursuers. The cases thus disclosed "a flagrant disregard of the various procedures provided by law."

And on top of this Pooran and Baura were given a beating. In regard to this His Lordship said:

It is inconceivable that a police party consisting of as many as 40 men should have been reduced at any stage to the necessity of inflicting injuries with blunt weapons on Pooran and Baura. In fact, the circumstances of the case taken together would seem to lend support to the defence contention that they had been falsely implicated, because the police were unable to extract information from them about the whereabouts of the dacoit Bhavani by recourse to third degree methods and in order to cover up the treatment that had been meted out to the appellants.

POST OFFICES ACT

P. M. G.'s Power to Refuse

REGISTRATION OF NEWSPAPERS

Mr. Justice Mehrotra of the Allahabad High Court on 9th April allowed the writ petitions of eight Hindi and Urdu periodicals of Allahabad, whose application for renewal of registration as newspapers, which would have entitled them to use one pice postage for inland transmission, were refused by the Post-Master-General, U. P. His Lordship said it was inconceivable that a power should be given to the P. M. G. to take a different view regarding the contents of a periodical every time when the period of registration was about to expire.

His Lordship accordingly issued a writ of mandamus directing the P. M. G. to renew the registration numbers of the petitioners for, "Manorama," "Tilismi Jasoos," "Jasoosi Duniya" (published in Urdu), "Jasoosi Duniya" (published in Hindi), "Roohani Duniya" (published in Urdu), "Man Mohan," "Manohar Kahaniyan" and "Maya" in accordance with the provisions of rule 30 read with sec. 9 of the Post Offices Act.

The petitioner, Mitra Prakashan Ltd., is a private limited company incorporated under the Indian Companies Act with its registered office at Muthiganj, Allahabad. It had been publishing a Hindi periodical known as "Manorama" since 1926. It was a monthly magazine and successive numbers of it were published at intervals of not more than 31 days. It had a bona fide list of subscribers above 50. It had been registered since 1938 as a newspaper for transmission by inland post. Registered newspapers could be sent for a payment of one pice as postage in case the weight did not exceed ten tolas. In case the newspaper was not allowed to be registered and was sent as an unregistered magazine the postal charges would be about eight times higher. According to the petitioner, the postal authorities for the past 28 years had been considering the contents of "Manorama" as fulfilling the requirements of sec. 9 of the Act and the rules framed thereunder and it continued to be registered from year to year till 1955. In 1955 the P. M. G. cancelled the registration of "Maya" and "Manohar Kahaniyan" and threatened to cancel the registration of "Man Mohan." By a writ petition the petitioner challenged the action taken in respect of "Maya" and the other publications and by an order dated Oct. 21 1955 His Lordship had allowed the petitions.

Thereafter the periodicals continued to be treated as newspapers till the end of 1955. On November 5, 1955, an application for renewal of the registration was made for year 1956. As it was refused the petitioner filed another writ petition. The writ petition remained pending and on December 21, 1956, an application was made by the opposite parties that as the renewal was claimed for 1956, the writ petition had become infructuous as the period for which renewal could have been granted had already expired. No final orders could be passed on that application and in November, 1956, the petitioner again filed an application for renewal of registration. No orders were passed on that application. In the meantime the petition which had been filed in January, 1956, was disposed of on the ground that it had become infructuous and the present petition was filed on January 7, 1957, in respect of the application for renewal of registration for 1957.

His Lordship rejected the preliminary objection of the standing counsel that the present petition was premature. He said it was clear that even if it be held that from an examination of the periodical it appeared to the P. M. G. now that it did not consist "wholly or in great part of political or other news or of articles relating thereto, or to other current topics, with or without advertisements," he could not refuse the registration of a newspaper under rule 30, sub-rule (5). It was also plain that the P. M. G. might have to enter into an inquiry as regards the nature of the contents of the periodical when the first registration was granted, or when the renewal application was made after the expiry of the period of the first registration. But there was no such power given to the P. M. G. when the application for renewal had been made within time under rule 30 sub-rule (3). In this view of the matter it was not open to the P. M. G.

to refuse registration to the petitioner. It was inconceivable that a power should be given to the P. M. G. to take a different view regarding the contents of a periodical every time when the period of registration was about to expire. There was no power in the P. M. G. to refuse the renewal of registration on the ground that in his opinion the contents of the magazine did not satisfy the requirements of sec. 9 (2). All the writ petitions were, therefore, allowed by His Lordship.

RIGHTS OF GOVERNMENT SERVANTS

Reduction of Rank as a Penalty ORDER HELD VOID

Mr. Govinda Rao, who was serving as a head constable in the Andhra State, was put on a two-year probation as a sub-inspector of police. The period of probation expired without a half-yearly report being made either declaring his non-suitability for confirmation as sub-inspector or recommending his fitness for confirmation. But 12 days after the period of probation had actually expired on 30th June 1950, charges were framed against Mr. Govinda Rao by the District Superintendent of Police on the basis of notes of inspection of the police officers, and without asking him whether he would like to have an oral inquiry or a personal hearing, the D. S. P. sent a final report to the Deputy Inspector General of Police after merely perusing Mr. Govinda Rao's explanation. The D. I. G. in his turn perused the records and on the basis of them on 6th September 1950 ordered the termination of Mr. Govinda Rao's probation and reverted him to his appointment as head constable.

Mr. Govinda Rao filed a suit against the Government of Andhra against the D. I. G.'s order, and on 26th March the Subordinate Judge of Chittoor decreed the suit and quashed the order. The Court set aside the order on the ground that it was illegal under the provisions of Art. 311 (2) of the Constitution. The Judge said that it was clear that the plaintiff was not given an opportunity to put forward his defence either in oral inquiry or in personal hearing before the D. S. P. or the D. I. G. The only contention of the defendant in this matter was that it was not necessary to ask the plaintiff whether he wanted an oral inquiry or not.

The Judge observed that the D. I. G.'s order clearly amounted to reduction in the rank of the plaintiff as a penalty or punishment, which should not have happened after the period of probation had actually been completed. If the intention of the authorities was to reduce the probationer to his substantive rank as a penalty, then the procedure prescribed by the rules in such a case should have been faithfully and scrupulously observed. The Court held that the decision to revert the plaintiff as a head constable was taken only after consideration of the charges against him and the Court took the view that this reduction of the plaintiff's rank was inflicted as a punishment (which in the case of the plaintiff who must be deemed to have successfully completed his period of probation) violated Art. 311 (2) of the Constitution.

Dismissal of Police Officer Set Aside BY THE ALLAHABAD HIGH COURT

Mr. Mohammed Ibrahim, a sub-inspector of police posted as station officer of Rasulabad police station in the

district of Fatehpur, was placed under suspension and served with a charge-sheet under sec. 7 of the Police Act on 28th September 1951. The charge framed against him was that he was remiss in and unfit for the discharge of his duty in that he committed twelve specific acts of misconduct set out in the charge sheet. The superintendent of police held that four of these acts were satisfactorily proved and recommended Mr. Ibrahim's dismissal from service. The finding was accepted by the higher authorities and an order of dismissal passed on 17th July 1952. Appeals against the order to the State Government failed, and Mr. Ibrahim then filed a writ petition in the Allahabad High Court, and a single Judge dismissed the petition. Thereupon Mr. Ibrahim preferred a special appeal in the High Court, and on 2nd April last Chief Justice Mootham and Mr. Justice Srivastava set aside the judgment of the single Judge and quashed the order dismissing Mr. Ibrahim from service.

Their Lordships in their judgment remarked that there was no satisfactory evidence to support the finding against the appellant with regard to the acts alleged. They said they did not agree with the contention of the respondents that in an enquiry under sec. 7 of the Police Act the same degree of proof was not required as in the case of a trial by a criminal court. The procedure to be followed at a departmental trial was set out in para. 490 of the Police Regulations. They said that this paragraph contained a number of rules, the purpose of which was to ensure that the accused officer should have a fair and impartial trial. It was emphasized in this paragraph that the findings, whether oral or documentary, must be material to the charge and that hearsay evidence was inadmissible, and that the documents must be proved. In their opinion, the evidence which was produced at the trial in this case could in no way establish the charge framed against the appellant.

Their Lordships said that counsel had somewhat tentatively argued that although the evidence might not be sufficient to support the findings with regard to the specific acts of which the appellant had been found guilty, nevertheless the conduct of the appellant was sufficient to justify the finding by the authorities that he was unfit for the discharge of his duties. They thought that the answer to this contention was that the appellant was alleged to have committed certain specific acts, the commission of these acts being the basis for the charge of remissness in and unfitness for the discharge of his duty. When a charge was so framed, it was bound to fall unless the commission by the officer concerned of one or more of the specific acts was proved.

Their Lordships said that the High Court would not ordinarily interfere with matters of discipline in the police force. They had, however, come to the conclusion in the present case that the finding upon which the order of dismissal was based could not be supported.

The appeal was allowed and a writ was directed to issue quashing the order of dismissal.

ABOLITION OF GRANTS WITHOUT COMPENSATION

**Hyderabad Act's Section
HELD INVALID BY HIGH COURT**

Holding that sec. 3 (2) (b) of the Hyderabad
Abolition of Cash Grants Act 1953 pertaining to the

abolition of ordinary Mansab and certain other grants without payment of compensation was invalid under Art. 13 (2) of the Constitution as it was opposed to Art. 31, a division bench of the Andhra Pradesh High Court, consisting of Mr. Justice P. J. Reddy and Mr. Justice Ansari, on 19th April allowed three writ petitions filed on behalf of three cash grantees.

Their Lordships, however, dismissed two other petitions in which the grants were abolished after the payment of compensation.

The invalidated section provides for the abolition of all cash grants mentioned in the schedule of the Act from July 1954.

The cash grants made by rulers of Hyderabad State were hereditary but were subject to be tapered down with each succession, the heir being recognized by the State.

The grants were attachable in execution of decrees.

The grantees were subject to restrictions.

They had to obtain permission for travel outside the State and entry into profession and it was liable to be stopped in the event of a conviction.

The petitions against the abolition were filed on the ground that the provisions of the Act were discriminatory and confiscatory.

The Government's contention was that the petitioners were enjoying grants which were not "property" as provided in Art. 31 of the Constitution.

Their Lordships observed that this contention was unsustainable.

After considering several authorities, Their Lordships agreed with the view of a bench of the Hyderabad High Court which had held that the word "property" appearing in Art. 31 was not confined to immovable property alone and the elements "hereditability" and enjoyment of benefits without condition of any service were sufficient insignia of property.

NOTES

U. N. Chief Invited to Hungary!

The United Nations special committee appointed to report on the extent and results of Soviet intervention in Hungary has completed its investigation. It heard 111 witnesses in all. Not being free to go to Hungary and visit the scene of aggression, it was compelled to collect information from Hungarian refugees in New York, Geneva, Rome, Vienna and London. It has taken care however to rely on first-hand testimony in one quarter which is corroborated by such testimony in another quarter. It worked on the basis that the General Assembly's views as expressed in its resolutions on Hungary had still to be proved. The findings of the committee will be published this month in New York.

Not only did the Kadar Government not allow this fact-finding body to go to Budapest for an inquiry, but it did not allow any U. N. observers to go there. When Mr. Dag Hammarskjöld asked for permission to visit Budapest even if only to see to the distribution of relief organized under U. N. auspices, he was rudely snubbed, but now the Government has informed him that he would be allowed to go there! The invitation is due, certainly not to a change of heart on the part of the Government, but to the conviction that what had to be kept from the eyes of the world could not now, after such lapse of time, be made visible in any way. As the "New York Times" says:

The Budapest Government has swept its streets, it has buried the martyred dead who fought against Russian tyranny. The Budapest Government has washed its hands, although perhaps with no more success than that experienced by the late Lady Macbeth. The dead who fought for liberty cannot tell their stories to Mr. Hammarskjold. He would find only the living, who for prudential or other reasons have made their peace with the slave-drivers. Miss Anna Kathly, a Minister in the short-lived Nagy Government, believes that the Kadar administration would soon stage a show trial of the former Prime Minister Imre Nagy, and that it would be similar to the trial of Cardinal Mindszenty. She said in London: "The regime wishes to force Nagy to confess to collaboration with foreign secret services and to admit that in 1953, when he introduced the so-called liberalist and gradualist course, he was already acting as an agent of the Western powers. Details of these ridiculous charges are being carefully prepared by the Hungarian and Soviet secret police."

Deepening Repression in Hungary IMPLICATIONS OF THE DEPORTATION ORDER EXPLAINED

Mr. Bella Fabian, a member of the executive council of the Hungarian National Council, says in a statement issued by him that the "ruthless revenge campaign" on which the present Hungarian Government started out after Hungary's fight for freedom was crushed by Soviet tanks is "unprecedented even in the history of the last terror-filled decade." Explaining the deportation order of the Minister of the Interior, according to which persons who are politically or economically dangerous to the state or state security may be placed under police supervision and removed from their places of residence, he says:

In practice this means that the Communist regime has the right to confiscate the homes of any persons whom they distrust, practically putting them out into the street. If such persons fail to secure a permit to settle in some provincial village or township they may be deported by the police, under the pretext of vagrancy, to some remote place, as was done in Rakosi's times, causing the premature death of many an unfortunate deportee.

Moreover, this would also imply the loss of their jobs without the possibility of finding means of existence in villages. They will have to live from hand-outs by kind-hearted peasants or from selling the contents of gift packages from abroad.

In view of the fact that the U. N.'s five-nation fact-finding committee has completed its hearings on the Hungarian question and gathered information not only of the revolution itself and its crushing by Soviet massed force but of what is happening now in Hungary, Mr. Fabian suggests that "it is time that a resolution should be brought" in the U. N., but adds that such a resolution "would only be of value if the Soviets knew that if they failed to respect it sanctions would be applied." However, application of sanctions in the present conditions when a great many nations follow India's lead in pursuing a "non-alignment policy" cannot be anything more than wishful thinking.

Sparks of Freedom in Spain A NEW PARTY FORMED

The spirit which pushed first the Poles and then the Hungarians into their rebellions is observable in a manifesto announcing the formation of a new political party—the Democratic Social Action Party—in Spain, whose object is to overthrow Franco's totalitarian Falange. The new party's demands are:

- Immediate re-establishment of such basic freedoms as freedom of association, of expression, of action and of residence, and complete religious liberty;
- Clear-cut separation of the executive and legislative powers in government;
- Equal rights for all Spaniards;
- Open discussion by all political forces in Spain towards restoration of freedom;
- A democratic government after elections for a new Parliament;
- A national referendum to decide between restoration of the monarchy or some other form of government.

Statement about ownership and other particulars about the "Indian Civil Liberties Bulletin" magazine, as required under rule No. 8 of the Registration of Newspapers (Central) Rules, 1956.

FORM IV: (Rule No. 8)

1. *Place of Publication* : Servants of India Society, Poona 4.
2. *Periodicity of its Publication* : Monthly.
3. *Printer's Name* : K. G. Sharangpani.
Nationality : Indian.
Address : Aryabhushan Press,
915/1 Shivajinagar, Poona 4.
4. *Publisher's Name* : R. G. Kakade, Asstt. Secretary,
All-India Civil Liberties Council.
Nationality : Indian.
Address : Servants of India Society, Poona 4.
5. *Editor's Name* : R. G. Kakade, Asstt. Secretary,
All-India Civil Liberties Council.
Nationality : Indian.
Address : Servants of India Society, Poona 4.
6. *Names and addresses of individuals who own the newspaper and partners or shareholders holding more than one per cent. of the total capital* : Does not arise.

I R. G. Kakade hereby declare that the particulars given above are true to the best of my knowledge and belief.

(Sd.) R. G. Kakade

Signature of Publisher.

Date 10-5-1957