

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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LIBEL ON HEADS OF FOREIGN STATES

CANADA DROPS SUCH A PROVISION

The All-India Civil Liberties Council's memorandum to the Press Commission, while condemning the three restrictions added by the Constitution Amendment Act of 1951 on freedom of speech and expression, had stated that while some countries made it a crime to libel the head of a foreign state, the law or Constitution of no country embodied such a sweeping restriction as that permitted by our Amendment Act, viz., any kind of restriction on the ground of "friendly relations with foreign states." As an exception in one small respect, the memorandum referred to sec. 135 of the Criminal Code of Canada, which ran as follows :

Every one who, without lawful justification, publishes a libel that tends to degrade, revile or expose to hatred and contempt in the estimation of the people of a foreign State any person who exercises sovereign authority over that State is guilty of an indictable offence and is liable to imprisonment for two years.

And the memorandum further stated that this provision in the Code was about to be eliminated in the general revision which the Code was undergoing. The A.-I. C. L. C. had no information at the time the memorandum was submitted whether the provision had in fact been deleted from the revised Code or whether it still formed part of it. We now learn that the provision has been struck out. The argument adduced in the memorandum against imposition of wide restrictions on the freedom of India's press thus gains additional weight.

It may be useful to reproduce here the criticism that was levelled in the A.-I. C. L. C.'s memorandum against the curbs imposed on freedom of the press under this head. The memorandum said :

In so far as two of the additional restrictions which the amendment of Art. 19 (2) permits the legislatures to impose on the right to freedom of expression were concerned, viz., restrictions (1) for the maintenance of "public order" and (2) for the prohibition of "incitement to violence," the Government of India could at least take cover behind the Patna High

Court's judgment in the Bharati case (A. I. R., 1951 Patna 12) though after the judgment was reversed by the Supreme Court, the ground was cut from under its feet. But in introducing the third head of additional restrictions, viz., "friendly relations with foreign States" no such excuse was available to the Government. The imposition of this restriction was denounced by the Opposition in Parliament as permitting adoption of legislation which might possibly suppress all criticism of Government's foreign policy. The restriction is so loosely worded as to justify such sweeping condemnation inasmuch as it is capable of being invoked to penalise advocacy of a foreign policy which may be even slightly unpalatable to the powers that be. Government disowned such an intention. The Law Minister explained that the object which the Government had in view in adopting this particular constitutional amendment was to enable it to pass legislation which would protect the heads of foreign States from attacks of a personal nature. But if this was the limited objective of the amendment, there was no reason why the amendment should not have been proposed in that narrower form. If this had been done, the opposition in Parliament and outside would have been very much less on this score. Government was invited by some members of Parliament to limit the scope of the amendment in this way so as to conform to the avowed intentions of the Government, but the Government refused to do so.

It must be admitted that there are countries like Canada which penalise "libels on heads of foreign States," though such countries are not many. [Then follows sec. 135 of Canada's Criminal Code, which is given above and which the memorandum stated would very likely be dropped. If this happens, the memorandum said, "the Criminal Code of Canada will cease to have any limitation imposed on discussion of international relations, as it should be, "]

The real reason for introducing "friendly relations with foreign States" as a justification for limiting the right to freedom of speech and the press appears

to be that the Indian Government has thought it politic and expedient to make common cause with the Arab-Asian bloc of reactionary countries like Egypt and Saudi Arabia, which are keen on imposing this restriction on freedom of information and opinion. The draft Convention on Freedom of Information originally contained sub-paragraph (j) in Art. 2 which would have restricted the flow of information, in so far as it concerned international relations. But on account of the strong opposition offered by countries like the United Kingdom and the United States of America in the committee on the draft Convention in January and February 1951, the sub-paragraph was deleted. India was among the countries which favoured retention of the sub-paragraph, the Indian delegation expressing the view of the Arab-Asian countries that the provision was "vital to a 'good-neighbour policy' and the promotion of international understanding." After the defeat of this proposal, Saudi Arabia and Egypt put forward a proposal to the effect that a Government should be free to impose a ban on information if its diffusion was considered by them to be "likely to undermine friendly relations between peoples and States." This proposal was also decisively defeated in the committee, India voting in its favour along with its sponsors. But the Arab-Asian group has not ceased its efforts to shape the Convention in a way

which is thought most unsatisfactory by democratic countries. Every now and then it puts forward variants of the same reactionary proposal. Every time the proposal meets with the opposition of advanced nations and every time India ranges itself with the group of backward countries. The latest form which the proposal, now moved by Egypt, has taken is that the right to freedom of expression in the draft Convention should be liable to be restricted "for the maintenance of peace and good relations between States." It will be seen that this proposed restriction is almost the same as that which has already been introduced in the Indian Constitution. Fortunately, the Egyptian amendment was defeated, which must have caused great chagrin to India. One wonders whether a necessary consequence of the much vaunted aloofness of India from the Anglo-American bloc in international relations is that it should so tie itself in with the Arab-Asian bloc as to feel constrained to give its indiscriminating support to every proposal, however reactionary, that the bloc may make itself responsible for. If this is so, all one can say is that India is reduced, in the field of civil rights, to giving up the company of progressive nations in favour of an alliance with a group of countries which have not yet been able to shake themselves free from their age-long anti-democratic traditions.

SEARCHLIGHT ON AGGRESSION AGAINST HUNGARY

WHAT MADE INDIA ABSTAIN?

One is curious to know what exactly was India's attitude to the resolution adopted by the U. N. General Assembly on 10th January authorizing the Secretary-General to appoint a five-nation committee to collect data on the Hungarian situation and report its findings to the Assembly at the current session. It is known that India abstained from voting, breaking away on this issue from Burma, Ceylon and Indonesia, with which nations it was working as a team so far as Hungary was concerned. But what were the motives which inspired its abstention is not known and it would be well if an authoritative explanation was forthcoming which would place the Indian public in possession of the reasons on which its neutral vote was based.

This new committee is intended to take over the main responsibility for inquiry from the Secretary-General's former investigating committee which included Mr. Arthur Lall, permanent Indian representative at the U. N. This became necessary because the latter committee had expressed its inability to gather any worthwhile facts. It had reported that since the Soviet-imposed Kadar Government would not let U. N. observers into Hungary, "what we have looked at is the available and generally

known material which does not put us in a position to add anything significant to what is common knowledge about the situation in Hungary" and that therefore it might be better to suspend investigations "for the present." The "Economist" rightly blames the committee for throwing in its hand in this way.

The committee since appointed is to take testimony from refugees who have fled from Hungary and also to carry out direct observation in Hungary if possible. India on a former occasion had taken the position that since no permission had been obtained from the Hungarian Government to send observers into Hungary for an on-the-spot inquiry, no observers should be sent to any other countries for gathering information about the Hungarian situation, and that though Austria had agreed to admit U. N. observers for the purpose, the U. N. should not send them there. Does India mean then that Hungary's refusal to let in observers should be an absolute bar on the United Nations making an attempt in other ways to find out the truth concerning Soviet intervention in that country and that the investigation should not merely be suspended "for the present" as Mr. Lall reported, but abandoned altogether?

One should not be surprised if that is exactly what India wants. For, in speaking on the resolution passed in the General Assembly on 10th December condemning Soviet intervention, the Indian Government practically wanted to write on a clean slate, going back on all the previous U. N. resolutions. Mr. Menon said on the occasion that the issue was no longer one "of eliciting a large number of facts and passing judgments on them." India's position now seems to be this, that an attempt should be made to persuade the Soviet Government to withdraw its troops, without blaming it directly or indirectly for the annihilation of Hungarian freedom of which it is guilty, and that if the attempt fails, the U. N. should do nothing further about it.

When United Nations circles were thinking of which five nations the new committee should be composed, it was reported that "the Indian delegation has asked its Government for instructions on the resolution and the possibility of India's accepting membership on the committee." What were the Government of India's instructions, one wonders. Did it forbid the Indian delegation to have anything to do with the committee on the ground that the context in which India herself had proposed that Hungary, "without prejudice to its sovereign rights," should admit U. N. observers (though only for the purpose of finding out whether mass deportations were taking place), had now radically altered? And did it say that India could not be a member of the committee? It seems very unlikely that if India were agreeable, the U. N. Secretary-General would not have offered her a seat on the new committee as he had done on the old. The one place meant for an Asian-African country on the committee had to be given ultimately to Ceylon, which unlike India voted for the appointment of the committee. Was not the substitution of Ceylon for India due to the latter's unwillingness to serve on a committee, whose findings might be adverse to the Soviet? India's attitude toward the Hungarian problem has all along been so ambiguous and equivocal that the Indian public would desire to have a clarification of the position which the Government took in regard to this particular resolution.

The Reign of Terror in Hungary

The policy statement issued by the Kadar Government on 6th January, which some people had fondly hoped would go some way to meet the demands of the revolutionaries, proved in fact to be a reversion to Stalinism. All hope then that non-Communist parties would be included in a new coalition government were dashed to the ground. For these parties had insisted on free elections, full freedom of the press and radio, freedom of activity for non-Communists, abolition of martial law and the summary courts operating thereunder, stopping of deportations and returning those already deported to

Hungary, complete dissolution of Hungarian secret police and at least the starting of negotiations about withdrawal of Russian troops. The statement on the other hand made "dictatorship of the proletariat" its starting point, thus ruling out all possibility of freedom being accorded to non-Communist elements, and as for withdrawal of Soviet forces, that could be settled according to the friendly and brotherly relations between Budapest and Moscow, these relations themselves being founded, it was declared, on "proletarian internationalism," which is a euphemism for Soviet domination. Although the statement contemplated the holding of talks with non-Communist parties with a view to the formation of an all-party government, there is little wonder that such talks would not even be started.

As a consequence, instead of the regime being liberalized even to a small extent, it became even more repressive. Kadar stated on 10th January, as he had done often enough before, that "law and order had been restored in our country and there is peace." But in fact there is no sign of peace. The only supporters Kadar has are the security police. The people in Budapest say in regard to the Kadar Government's authority: "The influence of our Government extends from the Parliament building (where Kadar sits protected by a ring of Russian arms) to the No. 2 tram line." (The No. 2 tram runs just behind the Parliament building.) Strikes and demonstrations continue in protest against the arrest of members of Workers' Councils and mass dismissals. Even school children of 8 to 11 years hold demonstrations and "the police who have learned to take even extreme youth seriously since the revolt" arrest even such small children. Strikes have resulted in a serious reduction in production in a large number of plants, and "in order to safeguard our future" the Government has extended the power given to military courts earlier during the uprising so as to make it applicable to those who try to cause strikes.

Hitherto, only persons accused of such offences as murder, man-slaughter, arson, robbery, looting and unlawful possession of arms or munitions could be tried by summary courts. But on 13th January the Government issued a new decree making strikes, demonstrations and virtually every effective form of resistance by Hungarian workers a crime to be tried by summary procedure and subject to the death penalty. The decree makes it a crime to damage plants, declared indispensable by the Government, and all agricultural, industrial, mining or commercial establishments in which more than 100 workers are employed are considered indispensable. Illegal intrusion, loitering or any other action that interferes with work in such plants or incites other persons to commit damage fall within the scope of the decree. The special courts set up to try such cases would normally pass only the death sentence on "enemy elements" but could impose a minimum penalty of 15 years' imprisonment. There

would be no appeal. The courts can try cases without written indictment.

There has been a fresh wave of arrests. One report says that the number of arrests is 17,000. The scope of the purge of Communist "unreliables" is widening to embrace cultural and intellectual revolutionaries. The Writers' Union and the Journalists' Association have been dissolved. Among the latest to be seized in countrywide police swoops are the writers, Gyula Hay and Zoltan Zelk. Hay, a former zealous party propagandist, held Communist Kossuth Prize but deviated to champion the cause of intellectual and political liberalism.

General Malety, who was appointed Defence Minister by Imre Nagy and who was Nagy's chief lieutenant in the bid to break with the Kremlin, has been sentenced to death after a secret trial. Twelve hours

before Russian tanks moved into Budapest he was seized, it will be remembered, with the other Hungarian delegates whom the Russians had summoned for "peace talks" and detained nobody knew where. Maybe, Nagy himself will meet with the same fate. One indication of it is that in the Kadar Government's statement on the "new programme" for Hungary, which received a final polishing while Khrushchev was in Budapest, Nagy was accused of "treason," whereas previously he had been accused only of weakness.

In spite of the fact that the Kadar regime is using all the tricks of police terror that the Communist arsenal affords, the Hungarian people are still unbowed. They are "united as never before in their thousand years of history," says an Associated Press correspondent, "in one massive hatred against the Russians and Communism. It is a peril that international Communism must reckon with."

POLAND'S POST-REVOLUTION ELECTION

PROGRESS TOWARDS DEMOCRATIZATION

During the October revolution Gomulka had promised that the people would soon have free elections, and the general expectation was, as we said in the November 1956 issue, at p. iv:197, that "under the pressure of public opinion Gomulka will adopt a modified system of election in which the Opposition parties will have some chance." There is little doubt that Gomulka wanted the first general elections held on 20th January to be as free as possible consistently with the retention of the Communist structure of the State. With this end in view he got the Sejm, the Parliament of Poland, to adopt a new electoral law on 24th October last, which made a significant change in the Stalinist law of 1952. Even under the latter law elections were ostensibly free, the franchise being universal, equal and direct and the ballot being secret. But the single list system of the Stalin regime, under which the ruling party put the names of the candidates selected by it on the only ticket placed before the electorate, offered the voters no choice at all, and the election generally resulted in 95 to 98 per cent. votes being cast for the Communist Party in control.

The new law effected a change both in the letter and the spirit of this system. The most noteworthy change it made was that whereas formerly the voters were given a list of candidates corresponding to the number of deputies to be elected, the list now included 720 names of candidates for 459 seats to be filled. In a district, where e. g. six seats were to be filled, there might be as many as nine candidates. The candidates were nominated by electoral commissions at three levels — the local commission of the area, the commission of the district, and the commission of the State at the top — in consultation with the

legally recognized groups such as political, trade union, co-operative and other vocational organizations. The names selected were still placed on a single list, but there being more candidates on the list of each constituency than the number of deputies to be elected, it gave the voters some freedom to choose from among the candidates whose names were placed on the ballot. The names of the Communist-sponsored candidates were put at the top of the list, and the names of the other additional candidates offered were put at the bottom. A voter may scratch out from the list the name of any candidate he dislikes, and no candidate may be elected if he fails to get an absolute majority of the valid votes cast. Thus if a sufficient number of voters score out the name of any one of the six preferred candidates, he would be rejected in favour of the seventh, eighth or ninth name placed on the ballot. If no names are crossed off, the six preferred candidates, whose names come first on the list, are automatically elected.

This modified system of election was devised for the purpose of giving some real freedom of choice to the elector. But it was a very limited freedom—very far from the complete freedom which the voter enjoys under a democracy. The chief vice of the single list was retained even in this system, for only the three parties pledged to support the Communist structure of the State—Communists, Peasants and Democrats (the Communist Party was the dominating party and the other two satellite parties) together forming the National Front—were recognized, it being illegal to form any other parties. Besides, opponents of Communism were not eligible to participate in the elections; Opposition parties which are

frankly Communist were not permitted, only independents not opposed to Communism in principle being allowed to contest the elections if selected by the electoral commissions. The real freedom the new system promised consisted in the choice of candidates professing loyalty to communistic principles. In the Stalinist period even genuine Communists had not this freedom, for the candidates were chosen not so much for their personal ability or integrity as for their servility to the U. S. S. R. and their party militancy. The Sejm elected in 1952 was thoroughly discredited as a body of rubber stamps. When the new scheme was announced, the Communists proclaimed that, hereafter, "we don't want to vote; we want to elect." This slogan is new in Communist countries, and the Polish Communists resolved that the next Parliament must take active part in Poland's political life and exercise control over the administrative apparatus of state. But so far as other political groups were concerned, they had not much chance, for, as Mr. Jan Rarsky, a war-time courier for the Polish underground, has stated, though some apparently non-Communist candidates did find place on the single list put before the electorate, "the fact is that every one of them had to get government approval direct or indirect."

As the election campaign proceeded, it became clear that Gomulka and his followers would meet with opposition. The October revolution was not merely a revolt against Russian domination; it was also a revolution within the Communist Party, smashing the Stalinist leaders. Gomulka, who had been imprisoned in 1951, was the only national Communist leader who could re-establish the Party membership's confidence in the leadership and the Party itself. But now Muscovists in the party began to raise their head once again; there was an internal struggle between the anti-Stalinists and those who held power prior to the revolution. Anti-Semitic leaders designed to undermine the Gomulka faction also began to appear. But the substantial measure of independence from Soviet Russia which Gomulka had won would, it appeared, enable him to reassert his position against the Stalinist section. What caused more worry to Gomulka was the rise of a strong anti-Communist trend in the campaign speeches. For there were many among his supporters who looked upon the October revolution as only the first stage in total liberation from Moscow control. Not content with the democratization of the Communist Party, the broad masses of workers and peasants demanded democratization of all public life of the country. To many of them Moscow and Communism were both abhorrent. But at the time of the revolution, when Russian leaders descended upon Warsaw to keep the Polish Communists in order, they were prepared to pay even the price of Communism if they could thus free themselves from Russian domination which had brought them national humiliation, political oppression and economic misery. Now, however, they thought of pushing the process of liberalization further,

particularly because Gomulka had agreed to the presence of Soviet troops on the soil of Poland.

It was evident early in the campaign that many Poles planned to use the limited freedom of choice that the new electoral law allowed and later the anti-Communist tide rose so high as to threaten that the Communist Party would be engulfed in the elections. Gomulka then ordered the electoral commissions to remove from the approved list any candidates who "are weak of character and have shown lack of responsibility." But, even more important, he issued a public appeal, some ten days prior to the date of the election, to avert defeat of the Communists by not exercising the freedom given by law but by voting solidly for the preferred candidates in the list. He appealed to the voters not to score out any name from the list so that the candidates whose names were placed at the top of the list might be returned. "Don's cross out," was the slogan drummed at the public in the newspapers, on the radio through street loud-speakers, in posters and at innumerable election meetings. Addressing the people on the radio, Gomulka said: "To cross out Communist candidates is to cross out the independence of our country, to cross out Poland from the map of European states." The people were thus told that the defeat of Communists would not only bring Stalinism back to Poland but even Soviet intervention. In fact, the voters were reminded in the last electioneering days of the fate which had overtaken Hungary when she strayed away from Communism. The appeal was very effective, for very few names of preferred candidates appear to have been scored out. The basic issue before the electorate was changed from one of Communism versus anti-Communism into one of a more liberal programme versus old-style Stalinism. The outcome of the election was completely satisfactory to the Communists and it is no wonder that Khrushchev blessed it. One will not have the heart to blame the Poles for not sticking out for the full measure of liberalization they aspired for when such a cruel dilemma faced them. But the Polish workers are not likely in the long run to drop their idea of true political and social democracy and of an independent Poland free of foreign troops, although at the moment they have to be content with Gomulka's national Communism. For the present all that the election proved was that Gomulka had tremendous personal prestige with the Polish people; the election had in fact become a plebiscite for or against Gomulka, and the voters voted for him, not for the Communist Party of which he is chief. As the "Swiss Review of World Affairs" puts it: "To save its life Poland has accepted the Communist yoke. . . . The only remaining hope is that the Polish people, by way of the narrow margin of independence Poland achieved last October, may be able to gradually slip out from under the Soviet grasp and move closer again to the free West" and be a truly democratic state.

COMMENTS

The Kashmir Deadlock

On the eve of the Kashmir Constitution coming into effect, which declares that "Kashmir is and shall be an integral part of the Union of India," the Security Council, at Pakistan's request, passed (with U. S. S. R. abstaining) a resolution reminding the Government of India of the principle embodied in its former resolution to the effect that "the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations" and saying that the decision of the Constituent Assembly of Kashmir to accede to India "would not constitute a disposition of the State in accordance with the above principle." The Government of India is not going to pay heed to the resolution, and it can hardly be believed that the sponsors of the resolution hoped for anything else. They probably feel that they have done their duty by reminding Mr. Nehru of his commitment to hold a plebiscite. Perhaps, they also entertained a faint hope that even as Mr. Nehru was prepared in the interest of peace to partition Kashmir, letting Pakistan hold the tract which is under its occupation, he might in the interest of peace also agree to a plebiscite now, even though Pakistan had not withdrawn its troops from the area occupied by it, which was a pre-requisite to the holding of a plebiscite.

But although the resolution will have no practical effect, it has no doubt caused much embarrassment to the Government of India, since it has brought upon Mr. Nehru much pungent criticism, to the effect that he has defaulted on his undertaking, from independent organs of the British press like the "New Statesman and Nation," "Reynold's Weekly," the "Manchester Guardian," the "Daily Herald" and the "Daily Chronicle" — papers whose adverse comments no one would like to disregard. Nor are all the arguments urged by India's delegate at the Security Council against re-opening the question of plebiscite sound. Perhaps the least convincing is his contention that Kashmir having acceded to India and being accepted as part of India by the Indian Constitution could in no case now accede to Pakistan, for the reason that the Indian Constitution was a federal one and that once a State was part of India there was no legal way for it to change its affiliation. But this would mean that if such is constitutional law India's undertaking was never seriously meant.

Similarly, there is not much merit in the argument that a plebiscite at this stage would only result in putting a stop to the immense economic development that has taken place in Kashmir. There is no doubt that Kashmir has made remarkable progress in improving her economy, thanks to the large sums of money poured by India into

it, the like of which no depressed area in India proper has so far received, but apart from the fact that Pakistan may charge that the bounty was a kind of bribe offered to Kashmir in order that it may stick to India, the economic improvement effected will tell in favour of India in the plebiscite and need not be a bar thereto. Nor is there much merit in the argument that a plebiscite will excite religious animosities which should be avoided. That an appeal will be made to communal feelings if a plebiscite is held must be admitted, but one cannot rule out a plebiscite for that reason alone. Surely, if and when the Pakistan-occupied part of Kashmir comes under Indian control, India is not going either to suspend elections in that area or deprive the communal-minded people in the region of their right to vote, in order to keep out communal influence.

Again, the argument is not persuasive that the election of the constituent assembly of Kashmir is as good as a plebiscite and that the general elections now to be held will supply any remaining deficiencies. With the Opposition leaders in gaol for the very reason that they are opposed to Kashmir's accession to India, the elections become meaningless for the purpose which a plebiscite is intended to serve.

The "New Statesman" observes that Kashmir's decision to accede to India cannot be conclusive because it is "a decision by a Government which seized power by a coup d'etat, imprisoned nine members of the Assembly and has kept the former Kashmir Prime Minister in jail without trial for more than three years."

The "Manchester Guardian" says:

A free election means that Sheikh Abdullah must be free and entitled to take part — and he must be given reasonable time to prepare his campaign. His imprisonment without trial has been one of the worst features of India's record on Kashmir.

The reasons for it given by Mr. Krishna Menon to the Security Council were inadequate. He said that Sheikh Abdullah could not be tried because a trial might embarrass foreign Governments by bringing to light some of Sheikh Abdullah's transactions. Foreign Governments could take the risk, and Mr. Krishna Menon need not be so solicitous.

It is very much to be wished that India and Pakistan would by direct negotiations yet be able to reach an amicable solution of the problem which is eating into the vitals of both countries.

The Press Council Bill

A. I. N. E. C.'s CRITICISM

The All-India Newspaper Editors' Conference passed the following resolution on the Press Council Bill at a meeting of its standing committee:

The A. I. N. E. C. is firmly of the opinion that any Press Council to be set up in India should be based on the principle of self-regulation.

To conform with this essential principle, the following amendments to the Bill are necessary :

The Council should consist entirely of journalists and representatives of the managements of newspapers.

From this it follows that it is necessary to omit sub clauses (d) and (e) of clause 4 of the Bill.

The chairman may be an exception to the above principles in that in order to secure the greatest measure of authority and impartiality, a person of standing at least comparable to a High Court Judge, may be appointed.

The A. I. N. E. C. finds section 14 completely out of keeping with the conception of the Council as a self-regulating body and calls for its exclusion from the Bill.

It is found objectionable on these scores : Compulsory extraction of information, the summoning and enforcing the attendance of persons and examining them on oath, and requiring the discovery and production of documents.

In view of the experimental nature of the introduction of the Council, its term of life in the first instance should be limited to three years, at the end of which Parliament should review its working in consultation with the Press.

The Dual Standard

APPLIED TO "COLONIALISM"

The criticism is now widespread that the Afro-Asian countries apply a double standard in judging of the Anglo-French and Russian actions in the crises of the Middle East and Eastern Europe. While the former is sternly denounced as an act of imperialism, the very worst act of imperialism that the Soviet Union is guilty of in Hungary does not receive condemnation, particularly from India.

While such comment is general in the matter of foreign invasion, a similar sentiment is expressed by Major Woodrow Wyatt, a radical member of the British Parliament well known in India as an aide of the Cripps Mission, viz., that a dual standard is applied by these countries in their approach to "colonialism." This criticism gains in weight because it proceeds from Mr. Wyatt, who is the last person to defend colonialism in any quarter of the world.

He gives three instances to prove his point. He says that "when Britain seeks to retain power in an island like Cyprus, saying that she needs it for a base, there is a general uproar" against it "as a manifestation of reactionary colonialism," but that there is no such uproar when the Russians refuse to surrender the Kurile Islands, which are indisputably Japanese territory, to Japan. The Russians' excuse is that they need the islands for defence purposes. Yet "nobody seems to mind that even in Asia," though Japan is an Asian country.

The second instance he gives is what the Communist Government of China is doing in Burma. Mr. Wyatt says :

By the most blatant pressure imaginable, the Chinese Communists are now forcing Burma to cede to them a number of villages which traditionally have always been a part of Burma.

The Burmese Government don't like it, but it seems they must lump it.

Why? Because they are a little country with a tremendously powerful neighbour, and because India and the rest of the world has not taken any interest in the issue.

They have had no one to back them up. So perforce they must do as the Chinese tell them.

In Burma today, there is considerable alarm at this Chinese imperialism. Many people there feel that it augurs ill for the future.

But the Burmese Government must get along with its ruthless giant of a neighbour as best it can.

And Mr. Wyatt's third instance is that of Tibet. He says :

When Tibet was swallowed up by the Chinese Communists, no one raised a murmur in India or, generally speaking, in the rest of the world.

India did not like to point out the brazen colonialism involved in the action, because China is India's powerful neighbour as well as Burma's.

And yet the British had left Tibet without military occupation and with its own government all the time that Britain ruled in New Delhi. It is true that there were one or two punitive expeditions into Tibet, but there was no attempt to take away the freedom of the people.

Now Tibet has been swallowed and turned—to the utmost disgust of the Tibetans—into a Communist puppet state.

Thus, while in the Asian-African bloc of countries "furious rage is reserved for Britain, or America, or France if they do anything which can be represented as of an imperialist nature," a "calm tolerance greets similar actions by the Russians or Chinese" in the same quarters. Mr. Wyatt concludes :

Can the British be blamed if it seems to them that in these matters there is one rule for the West and another for the Communist countries ?

If any of us are going into the "condemnation of others" business—and India has been pretty active in the field—then we must condemn impartially. Otherwise, the world will be inclined to think us hypocritical.

Right of Exodus

The fact that after the recent revolution broke out in Hungary mass deportations of young Hungarians likely to take part in the revolution took place and that these were followed by mass migrations, which the Russian troops used every possible device to stop, has prompted a Columbia University professor to suggest that among the human rights to be incorporated in the U. N. Convention on Human Rights a "neglected" but "vital" right — the right to migrate — be included. He says:

In the last analysis the elementary right to go away when conditions become unbearable defines the ultimate difference between freedom and servitude.

Where an individual is so unhappy with the government which rules him that he is willing to make the countless economic and emotional sacrifices involved in abandoning his country of origin, then it should be his most precious right as a free individual to leave. In fact until the rise of the modern police states, this was a right taken for granted. Anyone who was not wanted by the police for the commission of an actual crime could always choose voluntary exile and the choice to become an exile was not in itself viewed as a crime.

When the individual does not have the right to go away, no matter how injured he may feel himself to be, and no matter how much he may detest the government under which he is forced to live, then he is in fact a prisoner, whether so titled or not. One has only to see the barbed-wire fences, the mine fields, the machine-gun towers which line the perimeter of the Iron Curtain countries to realize the literal truth of this designation.

Acceptance of the right of exodus would put some limits on the absolute power of dictatorial governments over their own citizens.

The fear of provoking such a mass exodus (as in Hungary) would place some limits on the degree of misery into which a dictatorial government would be prepared to drive its own citizens. To oppose such a convention it would be necessary for the Communists virtually to admit to the world that they are holding their own populations as prisoners. Can they afford to make such a public admission? Can we even be sure that in the long run they would not be forced by the pressure of world public opinion to grant, at least in some degree, this precious human right which they have for so long despised and flouted?

IMMUNITY FROM SELF-CRIMINATION

Scope of the Right Defined

By the Allahabad High Court

Mr. Justice James of the Allahabad High Court had occasion in his judgment of 21st January to define the

extent of the protection of Art. 20 (3) of the Constitution, which lays down that "no person accused of any offence shall be compelled to be a witness against himself." His Lordship was dealing with a revision application in a case in which the district magistrate of Kanpur had passed an order directing Subedar, the applicant, to give evidence in the preliminary inquiry in a complaint filed against him and three others by Dhanna for alleged cheating and some other offences.

When the magistrate decided to make a preliminary enquiry under sec. 202, Cr. P. C., the complainant got them summoned as his witnesses in order to satisfy the magistrate that there was just ground for issuing process against them. Three of the accused duly appeared and were examined as witnesses. But Subedar did not respond, and consequently Dhanna got a warrant issued against him. When he appeared in execution of the warrant he claimed the privilege of Art. 20 (3) of the Constitution and contended that he could not be compelled to give evidence against himself. The magistrate held that Subedar could not claim the privilege so long as he was not summoned as an accused person and further that there were certain rulings which permitted an accused person to be examined as a witness under sec. 202, Cr. P. C. Accordingly he overruled Subedar's contention and directed him to testify. Subedar filed a revision before the sessions judge and having failed there he came up in revision to the High Court.

Doctrine Founded on Presumption of Innocence

Mr. Justice James said in his judgment that the doctrine of immunity from self-crimination was founded on the presumption of innocence which characterised the English system of criminal justice, and a fundamental principle of that system of justice (which differed from the inquisitorial procedure obtaining in France and some other continental countries) was that it was for the prosecution to prove the guilt of the accused and that the latter need not make any statement if he did not want to. The English Criminal Evidence Act of 1898 provided that although the accused was competent to be a witness on his own behalf, he could not be compelled to give evidence against himself, and that if he did give evidence in his defence, the prosecution might comment upon such evidence but must not comment upon his omission to do so. In England the protection extended to witnesses also. The Fifth Amendment to the Constitution of the United States of America adopted the same principle by laying down that no person should be compelled in any criminal case to be a witness against himself. Indeed, in the United States judicial interpretation had enlarged the scope of the privilege, though it must be stated that to some extent this had been done with the aid of the Fourth Amendment, which guaranteed the right of privacy, the like of which was not provided for in England or in India.

His Lordship said that the doctrine of protection against self-crimination had also to a substantial extent been recognized in the Anglo-Indian administration of criminal justice by incorporation into various statutory provisions, but definite form to it was given for the first time by Art. 20 (3) of the Constitution, though the rule laid down by the latter was narrower than the Anglo-American rule, since the privilege had been kept confined to persons "accused of any offence," an "offence" being defined by sec. 3(28) of the General Clauses Act as meaning "any act or omission made punishable by any law for the time being in force." Witnesses in India had been left untouched by the Constitution and continued to be governed by sec. 132 and other provisions of the Evidence Act.

His Lordship said that the exact extent of the privilege against self-crimination had been the subject-matter of some controversy, and it was being increasingly felt that the doctrine on which it was based should undergo curtailment rather than extension.

Testimonial Compulsion in the Instant Case

His Lordship said that, in the instant case, it was undeniable that Subedar was being "compelled to be a witness." In the words of Their Lordships of the Supreme Court in *M. P. Sharma v. Satish Chandra* (A.I.R., 1954 S. C. 300), the word "witness" must be understood in its natural sense, i. e., as referring to a person who furnished evidence. Indeed, every positive volitional act which furnished evidence was testimony, and testimonial compulsion connoted coercion which procured the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Subedar had neither submitted nor remained silent; on the contrary, he had refused to testify. Yet he was being coerced to give evidence. When he did not respond to the original summons, a warrant of arrest was issued against him. If he disobeyed the magistrate's order, he was in danger of being proceeded against for contempt or of other jeopardy. Thus the magistrate's order had an element of sanction behind it, and entailed penalty or forfeiture. Consequently, it amounted to testimonial compulsion of Subedar.

His Lordship said that it could also not be denied that Subedar was being compelled to give evidence "against himself." The object of the complainant Dhanna in insisting upon his examination was to secure evidence from him for supporting the case set up by him (the complainant). The magistrate's order was avowedly directed at determining whether Subedar's deposition would justify issuing process against him as an accused person. Therefore, whatever he stated before the magistrate was likely to be used against him to his detriment.

"Accused of an Offence"

Finally—and this was the question round which controversy mostly centred—was Subedar to be deemed to be a person "accused of an offence"? The courts below thought that he did not become one until such time as summons was issued to him "as an accused." His Lordship said that their view was erroneous. In the case of *M. P. Sharma v. Satish Chandra*, Their Lordships of the Supreme Court had before them the case of certain persons against whom a first information report had been recorded as accused therein, and they declared that the guarantee under Art. 20(3) was available to them. Subedar, since he had been named as an accused in Dhanna's complaint, could not obviously stand on a different footing. It followed that the protection of Art. 20(3) became available to a person as soon as he was named as an accused person either in a first information report made under sec. 154, Cr. P. C., or in a complaint instituted against him in court.

His Lordship said that all the conditions laid down by Art. 20(3) of the Constitution were thus found satisfied so that, despite the restricted character of the right, Subedar could not be compelled by the magistrate to testify before him in the preliminary enquiry under sec. 202, Cr. P. C. which he was making into the complaint—Dhanna must establish his case independently of the accused.

Accused as Witness

His Lordship said that it was perhaps worth pointing out that in India an accused could not ever give evidence on behalf of the prosecution. Until a short time ago he could not appear as a witness in his own defence, for sec. 342(4), Cr. P. C., laid down that no oath should be administered to him, while in view of secs. 5 and 6 of the Indian Oaths Act no witness could be examined without oath or affirmation. The position, however, had undergone a change since the recent enactment of sec. 342 A, Cr. P. C., which enabled an accused person to be a competent witness on his own behalf. But the conditions laid down therein were that he could not be called as a witness except on his own written request and that he might give evidence only "after" the charge against him had been made. A person was also entitled by virtue of sec. 340(2), Cr. P. C., to offer himself as a witness in proceedings under sec. 107, or under chaps. 10, 11, 12 or 36, or under sec. 552 of the Code, but it should be borne in mind that none of these provisions related to a trial for an offence, so that the person concerned in it was not "accused of any offence." The magistrate's order against Subedar could not, therefore, be even remotely supported either by this new provision (both because there was no written request by him—on the contrary, he refused to give evidence—and because the case was still in the pre-trial stage) or by sec. 340(2).

Statements of Co-Accused

His Lordship also mentioned that despite the fact that the three co-accused of Subedar willingly gave their statements, the magistrate acted contrary to law in examining them. In their case there was of course no violation of Art. 20 (3), because that conferred merely a privilege and it was well settled that a privilege could be waived; it might be waived by voluntarily answering questions, or by voluntarily taking stand in the witness box, or by failure to claim the privilege. Therefore, by voluntarily appearing before the magistrate, Subedar's co-accused should be deemed to have waived the privilege. Nevertheless, under the terms of sec. 342 A, Cr. P. C., they could not be examined as witnesses for the complainant, because there was no written request by them to do so; because no charge had been made against them; and because in any event they could appear only as witnesses for the defence and never for the prosecution. Whatever statements had been obtained from them could not be used.

The revision was accordingly allowed.

CRIMINAL PROCEDURE CODE, SEC. 417

Appeals Against Acquittals

by the State and by Private Persons

DIFFERENCE NOT VIOLATIVE OF ART. 14

One Mr. Abdul Ali of Koil, Aligarh, applied to the Allahabad High Court for permission to file an appeal against an order of acquittal. The order of acquittal was dated 22nd August 1956, and the application was barred by time, the period of limitation for filing an application for special leave under sub-sec. (4) of sec. 417, Cr. P. C., being 60 days.

Counsel for the complainant-applicant urged that the provisions of sub-secs. (3) and (4) of 417, Cr. P. C., were unconstitutional inasmuch as they violated the principles of equality before law enunciated by Art. 14 of the Constitution. The Article reads: "The State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India."

It was pointed out that sec. 417, Cr. P. C., made different provisions for appeals against acquittals, according as whether the appellant was the State or a private complainant. Sub-sec. (1) provided for appeals by the State Government against orders of acquittal. Under sec. 157 of the Limitation Act the period of limitation for such appeals was six months from the date of the order of acquittal. On the other hand, under sub-sec. (4) of sec. 417, Cr. P. C., the period of limitation for an application for special leave was only 60 days from the date of the order of acquittal. Counsel, therefore, contended that

those provisions involved unconstitutional discrimination as against private complainants. The various sub-secs. of sec. 417 Cr. P. C. clearly made out different provisions for appeals by the State Government and appeals by a private complainant.

Mr. Justice Oak on 15th January dismissed the application for leave, holding that the various provisions of sec. 417 about appeals against acquittals by the State Government and by private persons could be justified on the principle of reasonable classification and did not offend against Art. 14 of the Constitution, which enunciates the principle of equality before law. His Lordship said that in criminal law the State was on a special footing. Although sub-sec. (1) of 417, Cr. P. C., enabled the State Government to file appeals against orders of acquittal, in practice the State Government filed appeals in only a small percentage of cases of acquittal. It was expected that a State Government would file such an appeal only when it was expedient in public interest. On the other hand, there was danger of frivolous appeals by private complainants against orders of acquittal. The State represented society as a whole. On the other hand, a private complainant was mainly concerned with his personal interest. Very often a private complainant was actuated by feelings of revenge. A State Government was expected to file appeals in the interest of society as a whole. There was no such obligation on a private complainant. For this reason the Legislature had given more latitude to the State Government for filing appeals against acquittals.

His Lordship said the recent amendment of the Code had permitted appeals by private complainants to a limited extent. The Legislature must have been aware that there was danger of courts being flooded by appeals by private complainants in frivolous cases. In order to stop such frivolous appeals the Legislature had laid down that a private complainant must obtain special leave from a High Court for filing an appeal against an acquittal.

SEDITION

Red Shirt Leader Convicted

Khan Abdul Ghaffar Khan, arrested in June last, was tried in the West Pakistan High Court for making objectionable speeches at various places in the North-West Frontier Province under secs. 123-A (sedition), 124-A (abolition of sovereignty) and 153-A (creation of hatred) of the Pakistan Penal Code, and on 24th January Mr. Justice Shabir Ahmed convicted him of all the three offences and sentenced him to imprisonment till the rising of the court and to a fine of Rs. 14,000.

In his 92-page judgment, Mr. Justice Shabir Ahmed observed that considering the Red Shirt leader's speeches in the light of the circumstances such as when and where they were made and the audience who were addressed,

"it appears to me that there is no escape from the conclusion that they advocated abolition of the sovereignty of Pakistan over a part of its territory." His Lordship said :

Each of the three speeches under examination is a mixture of what is an offence with what is not an offence — the advocating of abolition of sovereignty of Pakistan over the tracts which are inhabited by Pathans, with the reasons why these tracts should have been merged with other provinces to form a province of West Pakistan — but the intention of the accused clearly was to impress on his Pathan listeners that their remaining within Pakistan was to their detriment.

The judgment said, that the demand of the accused was for a separate independent State was clear from the fact that the Pathans were being told that the Pakistan Government had in the last eight years subjected them to "atrocities to which even the infidel British Government had not subjected them." His Lordship continued :

I fail to understand how the accused can claim that his intention was only to demand an autonomous province within Pakistan for the Pathans if the Pakistan Government has been as cruel to and as unmindful of the interests of the Pathans as the accused reported it to be. It is true that the accused said that the Pathans were brothers of the Punjabis, but it is clear that what he intended was that there should be a partition between these brothers, just as there is a partition between brothers who are children of the same parents and that each one should have his own property, with which the other is not concerned.

I am prepared to concede that the speeches of the accused did not disclose that he wanted the people of the area which formerly formed the N.-W. F. P. to join any neighbouring foreign country, but his words make it clear that he wanted that tract and in fact all tracts inhabited by Pathans to be entirely independent of Pakistan.

About the speeches and writings of the accused before the formation of Pakistan and the political views held by him then, the Judge observed : "I am of the opinion that the political views which the accused held before the partition of British India are just as irrelevant for the purpose of the present cases as his pre-partition speeches and writings, because those views were held at a time when Pakistan had not materialised."

It would be unjudicial, he said, to assume that all those Muslims who opposed the creation of Pakistan were actuated by anti-Muslim motives of a permanent character, but opposing the creation of Pakistan was not the same thing as trying to harm it after it had been placed on the map. The views that the accused ventilated in the speeches and writings before the creation of Pakistan had no relevancy in the present case against him, the Judge said.

INDUSTRIAL DISPUTES ACT

Supreme Court Upholds Validity

PUNJAB APPEALS DISMISSED

The Constitution Bench of the Supreme Court, consisting of the Chief Justice, Mr. Justice Bhagwati, Mr. Justice Aiyar, Mr. Justice Sinha and Mr. Justice S. K. Das, on 10th January upheld the constitutionality of the Industrial Disputes Act 1947, which was challenged by the Niemala Textile Finishing Mills and other concerns in Punjab on the ground that its provisions were discriminatory and offended Art. 14 of the Constitution.

Several industrial disputes having arisen between the appellants and their workmen, the Government of Punjab referred them for adjudication to an industrial tribunal. The appellants contested the validity of the references and petitioned the High Court of Punjab to quash the proceedings, but failing to obtain relief they filed appeals in the Supreme Court and also petitions under Art. 32 of the Constitution challenging the validity of the Industrial Disputes Act.

The appellants challenged the validity of sec. 10 of the Act (which empowers the Government to refer industrial disputes to any one of the authorities created under the Act) and also the other provisions on the grounds that the powers vested in the Government were unfettered and unguided and hence they enabled discrimination among citizens who might be equally placed in all respects. This discriminatory character of the Act, they said, was revealed by the following features of the legislation :

1. The Act gave the Government an unguided power to refer or not to refer a dispute for settlement or adjudication.
2. The Government could send a dispute for disposal arbitrarily to a board of conciliation or a court of inquiry or an industrial tribunal.
3. The power to extend the duration of an award given to the Government was not circumscribed by any principles.
4. The discriminatory provisions were inextricably interwoven with the whole Act, and therefore the entire Act was ultra vires.

Mr. Justice Bhagwati, who delivered the judgment of the Court, said after surveying the provisions of the Act

The basic idea underlying all the provisions of the Act is the settlement of industrial disputes and the promotion of industrial peace so that production might not be interrupted and the community at large may be benefited. This is the end which has to be kept in view by the appropriate Government when exercising the discretion which is vested in it in the matter of carrying out the various provisions contained in the Act.

The Court held that the discretion vested in the Government under sec. 10 and the other provisions "is not an unfettered or an uncontrolled discretion, nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself." Consequently the provisions of the Act were not discriminatory and the Industrial Disputes Act was a valid piece of legislation. The appeals and petitions were accordingly dismissed.

RIGHTS OF GOVERNMENT SERVANTS

Compulsory Retirement Order

HELD INVALID BY ANDHRA HIGH COURT

Mr. S. Kameswara Rao, who was recruited as inspector of police in 1927, had a departmental inquiry made into his conduct while he was serving as deputy superintendent of police at Guntur. The special officer appointed to conduct the inquiry held him guilty of all the charges made against him and recommended to the Madras Government in 1948 that he should be removed from service. Accordingly, after hearing his objections and consulting the State Public Service Commission, the Madras Government passed an order on 19th October 1948 that he should compulsorily retire from service. The appeal to the Governor against the order was rejected. Then in 1953 Mr. Kameswara Rao brought suit. The subordinate judge who heard the suit held that reasonable opportunity was not given to the plaintiff to defend himself before the special officer and cross-examine some prosecution witnesses and that material evidence was shut out, causing grave prejudice to the plaintiff, and decreed against the State Government.

The Government appealed against the decree. The appeal came before a bench of the Andhra High Court consisting of Mr. Justice Umamaheswaram and Mr. Justice Bhimasankaram. There was a difference of opinion between the Judges, the former holding that the order of compulsory retirement was invalid, since no fair and reasonable opportunity was given to Mr. Kameswara Rao, as required by Rule 15 of the Madras Civil Service (Classification, Control and Appeal) Rules, and the latter holding that there was no violation of the Rule. The appeal therefore came for hearing before Mr. Justice Manohar Prasad, who agreed with the view of Mr. Justice Umamaheswaram and, on 18th January, held the order for compulsory retirement invalid. His Lordship observed that the objection of the application for adjournment and the offence upon cross-examination by the accused officer about the assistance of a lawyer in spite of his illness would amount to a denial of fair opportunity to substantiate his defence. It was unjust to say, remarked His Lordship, that the officer was not prepared to give any explanation or that he was avoiding it, as was contended

on behalf of the State. He further said that the officer was denied an opportunity to examine an important witness. "There was no doubt that the closure of the defence was abrupt."

It was contended on behalf of the State Government that even if the provisions of Rule 15 (1) (b) of the Madras Civil Service Rules were not followed, the accused officer could have no legal grievance as he held office at the pleasure of the Crown and his services could be terminated without assigning any reason. Rejecting this contention, His Lordship said :

It is a well established principle of law that, except where it is otherwise provided by a statute, officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services could be terminated without assigning any reason. But restrictions that have been imposed on the unfettered right of the Government to dismiss its servants at its pleasure by sec. 240 of the Government of India Act or by Art. 311 of the Constitution, are that no servant could be dismissed or removed from service without giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The term "reasonable opportunity" has not been defined in the Constitution or in the General Clauses Act. The words have a legal meaning. It cannot be left to the vagaries of each individual. It must, therefore, mean "reasonable" according to the rules of natural justice, which are rules of law.

Two of the principles generally applicable to all departmental enquires are : (1) A person must be told clearly and specifically of the offences with which he is charged; and (2) He must not be condemned unheard, although strict rules of the law of evidence are not applicable to such an inquiry.

The contention on behalf of the appellant (the State) is that the rules have no statutory force and that the Government is entitled to act in violation of those rules. A similar contention was raised previously and was negatived by Umamaheswaram J. in *T. Ramayya Suri v. State of Madras (now Andhra)*. The Judge held that the rules framed under sec 241 of the Government of India Act have statutory force and are binding on the State Government, and the State Government is not entitled to act in violation of those rules.

I have, therefore, no hesitation, on the facts of the case discussed above, to come to the conclusion that the order of compulsory retirement was invalid as the respondent was not given a fair and reasonable opportunity as required by Rule 15 of the M. C. S. Rules, which are statutory rules binding on the Government.

Not a Proper Inquiry

Dr. K. Subba Rao, appointed in 1950 to be Senior T. B. Officer at Dabirpura, Hyderabad, was transferred in 1954 to Vikarabad. The officer applied for leave but was told that his application could be considered only after he had taken charge of his new job. When he went to Vikarabad to take charge, he was told that the charge could not be handed over to him. The Hyderabad Government then issued a notification placing him under suspension, pending inquiry into his conduct. The inquiry officer held him guilty of disobedience. Thereafter he was given a show cause notice and, after hearing his objections, the Government removed him from service.

The officer filed a writ petition, and a division bench of the Andhra High Court consisting of the Chief Justice and Mr. Justice Ansari on 20th January allowed the petition and quashed the order of the Government. Their Lordships said that the petitioner alleged that the inquiry officer could not possibly be expected to conduct the inquiry with an open mind or to reach impartial conclusions as he had previously expressed a strong view that the petitioner should be removed from service. These allegations were not denied by the Government. Therefore, it was clear that the petitioner was compelled to submit to an inquiry by an officer who, according to the petitioner, in league with others was responsible for taking action against him.

The Judges observed that it was a fundamental principle of natural justice that the officer selected to make an inquiry should be a person with an open mind and not one who was either biased or who had prejudged the issue. If these principles were not followed by the Government in selecting an inquiry officer the inquiry would be a "farce" and would not, in any sense of the term, be said to give a reasonable opportunity to the person concerned to defend himself.

By selecting the Deputy Secretary against whom the petitioner had made grave allegations and by insisting on the inquiry being made by him in spite of the petitioner's protest, the Government deprived the petitioner of the only safeguard afforded to him by the Constitution. The refusal of the inquiry officer to allow an advocate to defend the petitioner's case and the disallowance of certain relevant questions to be put to witnesses deprived the petitioner of an opportunity to defend himself. While the petitioner was trying to prove that the inquiry was a cloak for carrying out a "preconceived and pre-arranged plan" among the officers concerned, the inquiry officer was anxious that nothing which happened behind the scenes should come to light. What was more, the Government finally removed him from service on the ground that he was not temperamentally capable of working harmoniously with seniors, colleagues and juniors.

Their Lordships said, incompatibility of temperament was not one of the charges levelled against the petitioner,

but the Government notification gave that as one of the reasons for his removal.

RIGHT OF PEACEABLE ASSEMBLY

The Railways Act, sec. 120

NO NUISANCE WAS COMMITTED

Mr. Jai Narain Paliwal and five others, belonging to the Socialist Party, who made a demonstration in the nature of satyagraha on 15th June, 1954, at Kaimganj station, were convicted by a magistrate of committing a nuisance under sec. 120 of the Railways Act and fined. It appears that the accused served a notice on the higher authorities of the railway of their intention to make such a demonstration, being convinced that bribery was rampant among the staff and that in spite of their attention having been drawn to this fact, the authorities were unmindful of it. Accordingly they formed a group of demonstrators to vindicate their grievance, and held a demonstration in front of the parcel and booking office and raised slogans against the railway administration. The charge against them was that they used abusive language and caused obstruction to work.

The magistrate, who convicted the accused, came to the conclusion that there was no obstruction in the working of the railway. All the work was carried on normally. It was quite likely that the railway staff might have assembled to see the tamasha, but from that it did not follow that there was obstruction. The magistrate held that the applicants never used filthy language while offering satyagraha or making a demonstration against bribery on the platform of Kaimganj station. He, however, considered that their act amounted to a nuisance and fined them.

The sessions judge of Farrukhabad made a reference to the Allahabad High Court, and in doing so said that according to the findings of the magistrate, the accused only assembled at the railway station and gave a peaceful demonstration against bribery. Under Art. 19 of the Constitution there was guarantee of freedom of speech and expression to the citizens. Under clause (b) they could assemble peacefully and without arms. So their assemblage at the railway station, where anyone could come and go, subject to the rules and regulations of the railway, and subject to the expression being in a peaceful manner against taking of bribes, could not be regarded as nuisance. He was most surprised how the magistrate in the end thought that this amounted to a nuisance. Perhaps he thought that the expression against bribery made at a public place by these demonstrators against the railway staff must have annoyed them. Criticism of Government or of its officers no doubt would never be palatable and if there was a demonstration, peaceful in all aspects, against an evil and it was considered to be a nuisance, he thought there could

not be a greater misuse of the word. On the facts found by the magistrate, no offence was committed by the applicants and they were wrongly convicted.

The sessions judge further said that so long as a demonstration was peaceful and it had not led to violence, the demonstration was never unlawful and the expressions made by the demonstrators, unless they were foul and filthy which resulted in clashes, would be treated as within the right of freedom of expression. In his opinion, there was not so much the question of the provisions of sec. 120 (b) of the Railways Act being ultra vires as the question of its misapplication by the magistrate. There were no circumstances in which it could be held that the applicants committed a nuisance. If the word "nuisance" was given so much latitude, then everything would amount to nuisance and even a little shout which might be jarring to the ears of the railway officials might be regarded as a nuisance. The facts found by the magistrate did not warrant the conviction of the applicants. He, therefore, recommended to the High Court that their conviction be set aside.

Mr. Justice Oak on 23rd January accepted the reference. Agreeing with the sessions judge, he said the mere fact that a peaceful demonstration was likely to annoy the railway staff was not sufficient to make the demonstration a nuisance as contemplated by cl. (b) of sec. 120 of the Railways Act. He set aside the conviction of the accused and ordered that if the fine had already been paid it should be refunded.

REORGANIZATION OF STATES

Disintegration of Hyderabad

PLEA AGAINST IT DISALLOWED

A Division Bench of the Hyderabad High Court, consisting of Chief Justice Mr. K. Subba Rao and Mr. Justice P. J. Reddi, on 30th January dismissed a writ petition challenging the validity of the States Reorganization Act and the disintegration of Hyderabad State.

The petitioner, Mr. C. Sri Kishen, had filed the petition under Art. 226 of the Constitution. The Government of Andhra Pradesh and the State's Chief Minister were respondents.

The petitioner had argued that Arts. 2, 3 and 4 of the Constitution had made provisions for changing the boundaries of States and alteration in the territory, but did not contemplate the wiping out of a State.

Their Lordships observed that they were not concerned with the actions of powerful political personalities who brought about the Act, however instrumental they might be in getting the Act passed, or with the conflicting political views about the expediency of the reorganization of States.

There was nothing in Art. 3 to preclude Parliament from cutting away the entire area from a State to form a new State, or to increase the area of another State. To state the problem correctly, Their Lordships said, Parliament, by adding Telangana in Andhra and by renaming it Andhra Pradesh, had acted strictly according to clauses (b) [increasing the area of any State], (c) [diminishing the area of any State] and (e) [altering the name of any State] of Art. 3 [relating to formation of new States and alteration of areas, boundaries and names of existing States] of the Constitution.

Their Lordships observed that they did not agree with the petitioners' contention that the Constitution gave inviolable guarantee for the continuance of Hyderabad. There was no express provision in the Constitution guaranteeing the continued existence of the State.

Art. 358 of the Constitution provided for the amendment of the Constitution in the manner prescribed thereunder and did exempt Art. 1 or the first schedule. It was also very clear that the Article recognizing the existence of a State could be amended and deleted in the manner prescribed.

Referring to the Government pleader's contention that the petition was not maintainable under Art. 226 of the Constitution inasmuch as no legal or property rights of the petitioner were injured by the reorganization of the State, Their Lordships observed that "in cases where Acts were passed by Parliament or Legislatures in excess of constitutional powers reshaping the map of India, we find it difficult to say that a citizen of India who lived his lifetime as a permanent citizen of one of the States abolished has no personal interest to maintain an application."

But as the present application had been dismissed on merits "we do not propose to express our final opinion on this." Their Lordships therefore dismissed the petition with costs.

NOTES

Attempt to Circumvent Supreme Court

FOILED BY A FEDERAL DISTRICT JUDGE

Among the plans made by Southern states of the U. S. A. to preserve racial segregation in public schools in the face of the Supreme Court decision that it must go is Virginia's Pupil Placement Act, passed by a session of the state's legislature last September, which empowers an appointive three-man board with jurisdiction over the entire state to re-assign pupils to different schools. The assignment would be made, in theory, not on the basis of race or colour (which it was felt would make the law invulnerable to the Supreme Court's authority), but on

the basis of health, learning aptitude and "the sociological, psychological and like intangible social-scientific factors which will prevent as nearly as possible a condition of social-economic class consciousness among the pupils." Some of the language dealing with the scientific factors was apparently taken from the Supreme Court decision striking down school segregation. The hope of the framers of the law was that by emphasizing the factors to which the Supreme Court had itself adverted in its decision they would succeed in circumventing the decision. The hope has, however, not materialized.

Suits were brought by Negroes in a federal court calling for desegregation of schools in two towns, the school boards of which asked that the suits be dismissed on the ground that the plaintiffs might first seek administrative remedies against the pupil placement programme before going to the federal courts. Judge Hoffman, a federal district judge, on 11th January rejected these motions to dismiss suits. He said in his judgment:

The pupil placement programme enacted by Virginia is directly in the teeth of the language of the Supreme Court which declared the fundamental principle that racial discrimination in public education is unconstitutional.

Referring to the declared view of the Governor, at whose instigation the pupil placement law was adopted, viz., "I do not believe we can operate an efficient system of public schools in Virginia on an integrated basis," the Judge said:

Manifestly, the Governor of Virginia has suggested that there shall be no integration of races in the public schools of Virginia, irrespective of how slight it may be.

The question remains: has Virginia now enacted a constitutional act which is non-discriminatory in nature and not in violation of the Fourteenth Amendment?

In compliance with my oath of office and my duty to determine matters from a legalistic view-point, I must answer in the negative.

It is my firm conviction that Virginia's new law is unconstitutional.

Following the Supreme Court's ruling of November last against bus segregation in Montgomery (see p. iv : 202 of the BULLETIN), a federal district judge ruled on 3rd January that the bus segregation laws of the town of Miami in Florida state and of the state itself were unconstitutional. A private company of Miami operates buses under a franchise which specifies that separate but equal facilities must be provided for white and Negro passengers, and the buses carry signs specifying that Negroes shall take seats in the rear.

Four Negroes, who were forced to move from the front to the rear of Miami buses, complained that their rights under the Fourteenth Amendment had been violated thereby. The bus company and the Miami commissioners were named as defendants. These asked for dismissal of the case. The judge dropped the bus company from the list of defendants, saying that it had merely carried out state and city requirements, and refused to dismiss the case against the commissioners. Citing the Supreme Court's decision in the Montgomery case, the judge said: "I have no hesitation in saying that these segregation laws (pertaining to buses) are unconstitutional and hence unenforceable."

Right of Congress to Question "Beliefs"

UPHELD BY THE COURT OF APPEALS

On 3rd January the federal Court of Appeals upheld the convictions of Mr. Harry Sacher, a New York lawyer, and Mr. Lloyd Barenblatt, a former instructor at Vassar College, on a charge of contempt of Congress based on their refusal to answer questions of Congressional committees regarding Communist party membership and associations. Judge Bastian, who wrote the appellate opinion, ruled that Congress may inquire into the "beliefs and associations" of a witness when "a subject upon which Congress may legislate" is under investigation.

An appeal is going to be filed against the ruling in each case to the Supreme Court. The Supreme Court's decision in the Barenblatt case is awaited with particular interest, as in this case Mr. Barenblatt's lawyers had contended that the Tenth Amendment to the Constitution deprived Congress of authority to legislate in the field of education. This amendment provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"—a provision which is regarded as a bulwark of advocates of states' rights and relied upon in challenging the Supreme Court's decision that racial segregation in the public schools is unconstitutional.

Judge Bastian ruled that teachers did not have "greater immunity from inquiry into their activities than do labour leaders and screen writers, when those activities relate to matters which are a legitimate concern of Congress." The Congressional committee's right to question labour leaders and screen writers has been upheld by the courts.

Inhibitions for S. African Natives

A proposal was made in the Political Committee of the U. N. General Assembly to revive the commission of inquiry into the segregation policy of the Government of

the Union of South Africa. In speaking on this proposal, Mr. Kamaruddin Ahmed, Pakistan's delegate, made very effective use of an article in the "U. S. News and World Report" reciting thirteen things which South African Negroes are by law prohibited from doing, thus showing how far racial discrimination in that country goes. The article says, the Natives cannot—

- (1) move from the reserved areas without permission;
- (2) own property off the reservations;
- (3) hold public office;
- (4) belong to a union or strike;
- (5) attend the same schools as whites;
- (6) buy or drink liquor;
- (7) marry whites;
- (8) sit with whites in buses;
- (9) travel on the same railway car;
- (10) use 'Whites Only' benches in stations, parks and public gardens;
- (11) patronise the same theatres, hotels or restaurants;
- (12) travel without identity cards;
- and (13) hold skilled jobs.

South Africa's Repressive Legislation

In commenting on the mass treason trial now proceeding in South Africa, we referred in the last issue, at p. iv : 222, to the all-embracing definition of a "communist" in the Suppression of Communism Act, under which opponents, of racial segregation are being tried, though the general charge is that of high treason. This Act, besides the all too wide definition of communism it contains, gives the executive the most fantastic powers over individuals, without any real opportunity of a challenge in courts. The "Economist" has done a public service in mentioning other repressive laws in the Union Government's armoury. It says :

The Public Safety Act of 1953 conferred wide powers for the proclamation of a state of emergency where public disorder takes place or is deemed to be threatened, and gave the Minister absolute discretion over the destinies, actions, livelihood, property and liberty of any individual—without the right of appeal to the courts. Newspapers may be suspended and persons detained in gaol without charge and without trial. The Criminal Law Amendment Act of 1953 contains this draconian provision :

Any person who in any manner whatsoever advises, encourages, incites, commands, aids or procures any other person or persons in general or uses any language or does any act or thing calculated to cause any person or persons in general to commit an offence by way of protest against a law or in support of any campaign against any law, or in support of any campaign for the repeal or modification of any law or

the variation or limitation of the application, or administration of any law, shall be guilty of an offence.

There is also the old Riotous Assemblies Act, with its powers of banishment and banning; the Citizenship Act which makes the granting of citizenship and therefore the franchise to newcomers the absolute prerogative of a cabinet minister; the Group Areas Act which confers powers to uproot helpless individuals and groups; the Urban Areas Act which gives local authorities the power to banish any African for any reason; the Interdicts Act which prohibits an African from asking for the protection of the courts until it is too late to benefit him; and the Native Administration Act which gives fearful dictatorial rights over the liberties of the subject.

The U. S. Immigration Act

NATIVE-BORN CITIZEN WINS FIGHT FOR CITIZENSHIP

Mrs. Zaidee Jackson, a singer born in Georgia state, went to Rumania and after many unsuccessful attempts to come back to the native country returned to the U. S. A. in January of last year after several years' residence there. Then an order of exclusion was issued against her under sec. 349 of the Immigration and Nationality Act, which provides that "a person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state, if he has or acquires the nationality of such state." Mrs. Jackson, who had been married to a Rumanian citizen, had, according to the laws of that country, acquired Rumanian nationality, although she was registered with the American Legation in Bucharest as a United States citizen.

The American Civil Liberties Union filed an appeal against the exclusion order with the Board of Immigration Appeals. The Union pointed out that virtually all business in Rumania was government-owned or government-controlled and argued that if she accepted work as an entertainer in such an establishment she was compelled to do so, being involuntarily detained in Rumania by the U. S. Government's refusal to authorize her departure from that country and that, therefore, she did not expatriate herself under sec. 349.

The Board of Immigration Appeals saw the force of the contention and, sustaining the appeal, ordered Mrs. Jackson to be admitted as a U. S. citizen.