

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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CENSORSHIP INVOLVED IN THE HORROR COMICS ACT

"BURNING THE HOUSE TO ROAST THE PIG"

The danger of a narrow censorship which is implicit in enactments like our Horror Comics Law was pointed up recently in a spirited judgment of the United States Supreme Court, delivered by Justice Frankfurter and concurred in by all other Justices. The Horror Comics Act was passed by our Parliament almost without giving any thought to the grave implications as to the dangerous censorship it would necessarily set up threatening the vital freedom of thought and expression. The legislation is intended to protect children and young persons of tender age from the influences which harmful publications are likely to exert on their morals. The harmfulness of publications is to be judged by Cockburn's test in the *Hicklin* case of 1868, viz., "the tendency to deprave and corrupt those who are open to such immoral influences, and into whose hands a publication of this sort may fall." The application of such a test as to the harmful effect a publication might possibly produce upon pathological minds (and this is the test that is applicable in India) cannot but lead to a severe abridgment of a basic constitutional right. In a famous American case of 1945 (vide p. iv:31 of the BULLETIN), Justice Qua rejected the test, saying:

A book placed in general circulation is not to be condemned merely because it might have an unfortunate effect upon some few members of the community who might be peculiarly susceptible.... The fundamental right of the public to read is not to be trimmed down to the point where a few prurient persons can find nothing upon which their hypersensitive imaginations may dwell.

The only way to keep out of harm's way under such an enactment is to desist from publishing a book which might potentially have an injurious effect upon morbid minds and this involves censorship not only of juvenile reading, but also of adult reading. For there can be no book meant for adults which may not fall into the hands of young persons who are abnormal in the sense that they are highly susceptible to influences of a delinquent type. The evils

flowing from such an all-embracing censorship can be minimized in several ways but in adopting the Horror Comics Act Parliament paid no heed to them. It did not even consider whether the problem of juvenile delinquency resulting from crime comics was so pressing in this country as to call for a measure like the one condemned elsewhere; it did not limit the scope of the measure as the British Parliament did; nor did it introduce any of the many safeguards which are available in its British counterpart. It therefore behooves us to ponder deeply the unanimous opinion of the U. S. Supreme Court which voided a similar measure in a case which we report below.

In this case the Supreme Court struck down a section of the Penal Code of Michigan that made it a misdemeanour for anyone to sell any book, magazine, pamphlet or similar publication "containing obscene, lewd or lascivious" material "tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." Under this section a book dealer, Alfred E. Butler, was arrested for selling a copy of a book entitled "The Devil Rides Outside" to a police officer. The trial judge held that the book could have a possible immoral influence on youngsters. He therefore convicted Butler and fined him \$100. The Supreme Court on 25th February reversed the conviction, ruling that the general public could not be deprived of a rugged literary diet solely because it might be harmful to youth.

"The Devil Rides Outside," written in 1954 by Mr. John Howard Griffin, is a story of a young American's visit to a Benedictine monastery in France to study Gregorian chants. As a result of his observation of the monks he aspires to resemble them, particularly in the virtue of chastity although he is obsessed by sex and indulges in several sordid amours. The "New York Times" describes the book as "a serious book that had received serious critical appraisal," and yet the

Michigan court found that it came within the mischief of the law because it was not a book fit for children to read.

The philosophy underlying this finding was dismissed by the Supreme Court. Justice Frankfurter said:

It is clear on the record that appellant was convicted because Michigan made it an offence for him to make available to the general reading public a book that the trial judge found to have a potentially deleterious influence upon youth. The state insists that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare.

Surely, this is to burn the house to roast the pig.

The incidence of this enactment is to reduce the adult population of Michigan to reading only what is fit for children. It thereby curtails one of those liberties of the individual that history has attested as the indispensable conditions for the maintenance and progress of a free society.

The American Civil Liberties Union hailed the decision as "an important victory against censorship."

Parliamentary Privilege and Public Comment

"Contempt should be Determined by the Courts"

Arising out of the case of Mr. Junor, Editor of the "Sunday Express," who in January last was found guilty by the Committee of Privileges of the British House of Commons of a serious contempt in "reflecting upon all members of the House, and so upon the House itself," for an article in which he had suggested that M. P.'s and "politicians" had allowed themselves to be unduly favoured over supplementary petrol, a discussion has started in England as to the proper relation between parliamentary privilege and the right of the Press and of individuals freely to criticize the actions of their representatives in Parliament. And to this discussion the "Times" of London has made a very useful contribution in a recent article.

Parliamentary privilege is the obverse of the freedom of members to speak and vote in Parliament without restraint, and this freedom is guaranteed by the Bill of Rights which provides that debates in Parliament are not to be impeached or questioned in any court or place outside Parliament. The "true basis of privilege" is thus, says the "Times," what was stated by the Attorney General in 1947:

The real test is that nothing ought to be done which is calculated to put a member in such fear of consequences if he speaks or acts in a particular way that he will refrain from speaking or acting in that way,

But recent decisions on breaches of privilege do not always satisfy this test. Indeed, "a forceful pamphlet on parliamentary reform might be thought to reflect upon the working of either House in such a way as to lower it in the public eye." The party accused of contempt of the House has no remedy even if he keeps well within the limits of the test, and if he questions the privilege which he is supposed to have violated it becomes an aggravation of his offence. That accounts for the "unfailingly obsequious attitude" of latter-day offenders charged with breaches of privilege,

The "Times" puts forward the suggestion that the course proposed by Junius in 1771 might be considered for adoption, viz., that "a libel tending to asperse or vilify the House of Commons or any of their members may be as severely punished in the Court of King's Bench as a libel upon the King." In this way, Junius said, insults to the dignity of the House would be punished, and by a recourse to the law courts there would be no violation of "the first principle of natural justice." Taking up the suggestion, the "Times" writes:

An intention to bring into hatred or contempt Her Majesty, the Government and Constitution, or either House of Parliament certainly appears to be seditious in common law. . . . There seems nothing to prevent the House from presenting an address to Her Majesty requesting that the Attorney General be directed to prosecute a seditious libel in the criminal courts.

The advantage of following this course would be, first, that writing which "cannot be shown to amount to a contempt for this purpose" will escape punishment as it ought to and, secondly, where it is punished it will be punished under conditions in which the normal protection for accused persons in the courts will be available, viz., public hearings, legal representation, and the right to cross-examine. The "Times" says:

The House of Commons is not, in law, a court and is not, in practice, adapted to the exercise of functions of a judicial nature. A recognition of this fact led in 1868 to the transfer from the House to the courts of jurisdiction over disputed elections. Could not this course be followed in matters of privilege? The basis of the rules which relate to breach of privilege is clear enough — whether an alleged breach tends to obstruct the functioning of the House. This is a question with which the courts could well cope. Would it not be well for the dignity of Parliament if affronts to its authority were either clearly seen to be assessed in accordance with judicial standards or ignored as unworthy of notice?

SOVIET INTERVENTION IN HUNGARY

SPECIAL TRIBUNALS SET UP BY THE HUNGARIAN PUPPET REGIME VIEW OF THE INTERNATIONAL COMMISSION OF JURISTS

The International Commission of Jurists on 13th March gave testimony before the United Nations' fact-finding committee on Hungary, making out that Soviet intervention in Hungary in October and November of last year and the special courts instituted subsequently by the Government of János Kadar for the trial of suspected rebels were in violation of international law. The President of the Commission, Sir Hartley Shawcross, has written in the "Times" of London an article summarizing the view put forward by the International Commission of Jurists in its representations.

That the intervention of Soviet armies to crush the Hungarian people's struggle for independence would appear to all to be illegal is obvious but for two facts, which may seem at first sight to lend some justification for the intervention. They are: (1) that the "legally constituted Government" of Hungary asked for such intervention, and (2) that a provision in the Warsaw Pact of 1955, a defence alliance of the Communist countries, permitted it. In regard to the first, it is well known that the Hungarian Government whose consent was obtained for the use of Russian armies was that of a regime which the Soviet Union had imposed on Hungary after the intervention and was not that of the Government then legally in power. "The final suppression of the Hungarian rising," says the former Attorney General of Britain, "was effected by and with the aid of Soviet forces against the will of the then lawful Government. The Nagy Government called upon those forces to go out, not to come in." Anyhow, it is clear that the intervention was against the will of the Hungarian people, and this fact stamps the intervention as illegal. Sir Hartley says, it is an exploded notion that "sovereignty is in some sense the proprietary right of those who exercise it, to be protected by them by any means to which they choose to resort." "Sovereignty nowadays is regarded as the expression of national will: it is for the people of a State and for no others to decide by whom within that State sovereign powers shall be wielded."

If it be true that the Soviet troops intervened in Hungary at the request, not of the then lawful Government in control, but of a Government which was imposed upon the people of Hungary by the intervening Power, then the provision in the Warsaw Pact permitting intervention ceases to have any force. Incidentally it may be stated that in the recent agreement signed by the Soviet Union with East Germany a clause has been introduced on the lines of the Warsaw Pact which allows Soviet troops in Germany to "take measures to eliminate" a "threat to their security" in consultation with the East German Government, Commenting on this clause

which defines the status of Soviet troops in the satellite countries, the "Manchester Guardian" aptly remarks: "Russia needed no such clause to use her tanks in Hungary. She produced, and again could produce elsewhere, a so-called Government that asked her to intervene. But in the shaky State of East German feeling, they (the Soviet leaders) may think it expedient to show that any new rising (i. e., after the rising of 1953) will be promptly crushed." Anyway, any action by way of military intervention which the Warsaw Pact may be held to permit is predicated on the governing words of its preamble, which states that its main purpose is to promote "respect for the independence and sovereignty of States and non-interference in their internal affairs."

Sir Hartley points out that by the very definition which Soviet Russia submitted for adoption by the United Nations she has proclaimed herself an aggressor. The Soviet Union proposed on 25th August 1953 that the following acts, inter alia, may not be used as a justification for intervention: "any revolutionary or counter-revolutionary movement, civil war, disorders or strikes . . . and the establishment or maintenance in any State of any political, economic or social system," and the U. N. General Assembly, following this definition of "aggression" put forward by Russia itself, adopted resolutions condemning Soviet "interventions . . . against the Hungarian population which are in violation of the accepted standards of international law, justice and morality." This view of law was, it is true, propounded by the Soviet Union because it thought that it would help it in pursuing its expansionist policies. Sir Hartley says: "In 1953 the Soviet rulers were no doubt of the view that where armed rebellions occurred they would be Communist. No outside Power was to intervene to prevent their success. It had not then been realized that ultimately the human spirit would reassert itself in its unconquerable yearning to be free. But for the lawyer what is sauce for the goose is sauce for the gander." Let Soviet action be judged by its own criterion! Sir Hartley Shawcross says: "It is well established in international law that intervention by a Foreign Power is inadmissible, even if it takes place at the request of a Government engaged in suppressing an armed insurrection or in pursuance of a treaty which is alleged to provide some justification," and in support of this he cites Hyde's "International Law," in which the author says:

Nor is the situation legally altered by reason of the fact that intervention occurs in pursuance of a treaty of guarantee, or that such action is in response to an invitation from either party to the conflict. Foreign interference, howsoever invoked, is necessarily directed against a portion of the population of a

State and is thus a denial of its right to engage in or suppress a revolution or of employing its own resources to retain or acquire control over the Government of its own country.

The Judicial Processes of the Kadar Government

If Russia's intervention in the Hungarian revolution was in gross violation of international law, so also were the judicial processes of the Kadar Government since established in power by the intervention. These latter have been thus described by Sir Hartley Shawcross:

The Kadar Government has passed a series of laws providing for summary procedures not only in the ordinary Courts but also in Military Courts and before so-called Special Tribunals in which lay members selected by the executive may overrule professional Judges. These procedures appear to violate the normally accepted principles of fair trial. It is possible for a suspect to be arrested and brought forth-with before some tribunal without any prior notification of the charges preferred against him and with no time to prepare a defence or obtain witnesses.

The legal definition of some capital offences is vague in the extreme. It is an offence punishable summarily "to associate against the democratic Staté order," whatever that may mean. The Prosecutor is responsible for an oral presentation of the case and for summoning of witnesses. The normal penalty is death and provision is made in some cases for the sentence to be carried out within two hours of its pronouncement thus precluding any possibility of appeal or exercise of clemency.

Sir Hartley says: "The extent to which this procedure has been utilized cannot be precisely ascertained owing to the secrecy, itself a sinister feature, in which these trials have been carried out." Hungary's Minister of Justice informed the International Commission of Jurists on 2nd February that the number of such trials was small, perhaps about 20. "To some it is of concern if even 20 persons are unjustly condemned of capital crimes," but the Minister himself in a speech to Judges in Budapest on 15th February admitted that up to that date 254 persons had been tried under the summary procedure. "More recent information suggests that arrests and prosecutions are continuing in considerable numbers."

[See the new Deportation Decree on a later page.]

Sir Hartley then proceeds to answer a question which many may be prompted to ask: The trials are no doubt contrary to "canons of ordinary justice and morality," but are they also contrary to "the rules of international law"? How does international law come in here? The answer is: International law extends beyond the initial

act of intervention to the conduct of the regime set up after the illegal intervention. Sir Hartley has thus developed his case:

International law is immediately concerned with the internal administration of justice in a country where the rights of the population to fair trial are protected by specific international treaty. That is the case here. The Peace Treaty concluded in 1947 between the allied and associated Powers and Hungary, to which the Soviet Union was a party, requires Hungary "to take all measures necessary to secure to all persons under its jurisdiction the enjoyment of human rights and of the fundamental freedoms." No doubt there may be disagreement as to the precise scope of these somewhat vague phrases, but in 1950 the International Court in an advisory opinion held them to constitute a binding legal obligation.

In considering what that obligation is, recourse may be had to the familiar practice of interpreting the language used in the light of "the general principles of law recognized by civilized nations," a source of law specifically recognized by Article 38 of the Statute of the Court. Whatever room there might be for argument as to the limits of the expression "human rights and fundamental freedoms," it can hardly be doubted that those words as thus interpreted would include such elementary rights as to have adequate written notice of any charge preferred, and not to be tried without proper opportunity of preparing defence and calling evidence, rights which are manifestly lacking in the summary procedures introduced by the Kadar Government.

Sir Hartley then refers to the Geneva Conventions of 1948, saying that "any lack of precision in the legal obligations arising under the Peace Treaty of 1947 is overcome by the more explicit language of the Geneva Conventions of 1948," to which both Hungary and the Soviet Union were parties:

Convention Number IV contains provisions which are intended to protect civilian populations not only in the case of international wars but in internal conflicts as well. Article 3, which includes internal conflicts, specifically prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

But the Soviet intervention in Hungary, illegal as it was, gives the conflict in some respects the status of an international one and in an international conflict further safeguards are laid down. Thus the death penalty is prohibited except in cases of espionage, serious sabotage, or murder (Article 68); no death penalty is to be carried out within six months of sentence (Article 75) — this to allow

opportunity for appeal or clemency; written notice is to be given to the accused of the charges preferred (Article 71); the accused is to have the right to prepare his defence and to be assisted by counsel.

Even if it were argued that the provisions applying to international conflict were inapt to the case of a conflict such as that which has occurred in Hungary — an argument which would come ill from those who had procured or taken part in the Soviet intervention — it could hardly be doubted that those specific rights which are set out here are really a particular enumeration of the general judicial guarantees recognized nowadays by all civilized peoples and enjoined upon the signatories to the 1948 Conventions even in the case of wholly internal conflicts.

Thus the conclusion of the International Commission of Jurists is that the Soviet action in Hungary and the measures taken by the Government imposed on the Hungarian people by the Soviet Union violate international law, the Warsaw Pact of 1955, the Hungarian Peace Treaty of 1947 and the Geneva Conventions of 1948, regardless of whether the Hungarian rebellion is considered an internal or international dispute.

Banishment Decree in Hungary

A new decree issued by the Hungarian Minister of the Interior — published in the official Gazette but not in the newspapers — announces that Hungarians regarded as "dangerous to the State and public security, or to co-existence in a socialist society, or to whom objection could be taken from the standpoint of important State interest, or who are considered harmful in the economic sense," may be banished from their homes for a period of up to two years. The place of exile may be chosen by the deportee himself, but he must move there within 15 days.

As an alternative, victims may be put under police supervision at home. Deportees may be ordered to remain indoors at certain times of the day. Visits to public places, and telephone calls, may be forbidden. Though this is not stated, the decree might apply to the Budapest area only.

Now that deportations of Hungarians to the U. S. S. R. have been curtailed by force of world opinion, it would seem that Mr. Kadar is attempting to rid himself of those opponents who remain in the Budapest area by means of deportations which are strongly reminiscent of those carried out in Hungary in 1951.

Deportations of 1951

Between May 21 and June 15, 1951, some 24,000 persons were deported from Budapest, and 10,000 from places in the provinces. The victims were mostly members of the professional classes, and private traders whose businesses were being nationalized.

No reason was given for their deportation. They were roused during the night by police, and given a blue Interior Ministry slip which stated:

I prohibit you from the territory of Budapest (or . . .) in accordance with decrees 8130/1939 and 760/1939. Your new flat is to be found in . . . county . . . village in the house of . . ., one room.

If you have relatives in the area concerned who give their written consent to take care of you, you can give a petition to the council of the county of your new village. The present order cannot be changed, and your flat has to be offered to the authorities within 24 hours.

Only hand luggage could be taken, and many of the deportees were sent in cattle trucks to their new destination.

On arrival, some were given work at extremely low wages. The others were entirely dependent on those with whom they were billeted, and were given very little food. No account was taken of the victims' health, age, or ability to earn their own living in their new surroundings.

Tightening of the Screw

The Vienna correspondent of "The Times" writes:

After more than four months of power sustained by Soviet bayonets, the Kadar regime continues to be faced with a rebellious population held in check only by the use of more and more repression. The curfew is still maintained in Budapest; armed militia, in twos or even fours, still patrol the streets in danger from the isolated shots of midnight assailants, while Soviet troops guard the city's outer ring.

Arrests, interrogations with the old brutalities, trials and sometimes executions of "counter-revolutionary elements," or of those suspected of helping them, continue in most parts of the country. The death penalty has been introduced for "those agitating for mass strikes" and, indeed, is applicable to anyone found guilty of "deliberately preventing the smooth flow of production."

By a recent order all typewriters and duplicating machines in factories, offices and hostels have been placed in the charge of one person who in each case is held responsible that no subversive material is produced on them. Yet in spite of this, anti-Kadar pamphlets continue to be distributed, or their contents spread abroad by means of the chain letter.

Further Intensification of Repression

We may here narrate the later development in Hungary. The Ides of March have come and gone. A fresh outbreak of rising which the Kadar Government had feared on 15th March did not take place. But the Government had prepared for the worst. The "Economist" says: "Thousands of trouble-makers were arrested. The large concentration camp at Kistarosa, near Budapest, which

was closed down in 1953, has been re-opened. Soldiers, police, armed workers' guards patrolled Budapest, and stood about at street corners." But they had no work to do. However, 15th March, being the Hungarian National Day, had to be officially celebrated and it was celebrated by the police, the armed forces and the official press, at closely guarded ceremonies at which none of the Communist leaders dared to make a speech. The Hungarian people abstained, and "in the circumstances their abstention was the most effective demonstration they could give of their support for the ideals proclaimed by Kossuth 109 years ago."

The future policy of the Kadar regime was outlined at the Kremlin on 27th March at a Soviet-Hungarian "friendship" meeting, when Kadar paid a visit to Moscow. At this meeting Kadar declared that "the Soviet military units in Hungary have never offended Hungarian sovereignty or national independence; on the contrary." Having thus praised the Soviet Union for crushing the "counter-revolution" of October and November last, he said that the experience of the Communists in Hungary was that they had been too lenient with their opponents in the past, and that the "punitive side" of his dictatorship of the proletariat would have to be strengthened. "As a result of our experiences," he said, "we are paying particular attention to Lenin's teachings on the State and the dictatorship of the proletariat. We are strengthening the dictatorship of the proletariat."

What this reference to Lenin means has been brought out by Mr. Jules Menken. He says:

Among Lenin's teachings are his complaint, in 1921, that "there are too few executions (the occasion was a theft of food stocks during a famine year) and his insistence, in 1922 (when the first Soviet Criminal Code was drawn up), that courts "must not do away with terror. They must supply the grounds for it, and legalize it in principle."

And Kadar declared explicitly that "the historical experiences we have gained at a heavy price, today warn us to strengthen also the repressive aspect of the dictatorship of the proletariat." Thus a new terror of suffering and bloodshed is being prepared for the Hungarian people.

At this meeting both Kadar and the Soviet Premier Bulganin roundly attacked Imre Nagy. They accused him of treasonable activities. Marshal Bulganin charged that Nagy had supported anti-Communist activities even before the revolt last October and had organized "terror" against the Communists during the height of the revolt. These outspoken accusations raised the question whether a public trial (such as one that takes place in the Soviet Union) for these alleged treasonable activities might not be in the offing for Nagy.

COMMENTS

"Working Journalists" and Press Freedom A WATCH-DOG OR LAP DOG?

We have often felt latterly that our Press which protested so strongly against amendment of Art. 19 (2) of the Constitution which imposed such sweeping limitations on the freedom of the Press and against restrictive legislation like the Press Act has almost lost interest in the liberty of the Press, and that its interest is now centred on improving the living conditions of journalists, and because it thinks that such improvement can come about only with the Government's help, it appears to have become unconsciously less critical of governmental restrictions on the freedom of the Press. We are therefore glad to find this sentiment echoed in the "Report from India" in the current bulletin of the International Press Institute. The "Report" says:

The truth of the matter is that the Indian Press has ceased to be the force it used to be because it has lost its sense of mission. Newspapers to-day constitute an industry and journalists are more interested in improving their working conditions — better pay, fewer working hours, provision for bonus and provident funds — than in promoting the freedom of the Press.

Through industrial tribunals which are quasi-judicial and quasi-administrative bodies and by packing the Press Council which is to be constituted soon, the Government, if it is so inclined, can turn the Press from a watchdog into a lap dog to be caressed and kicked without having recourse to any special legislation.

A Communist Government in Kerala

The Communist party, having won 60 seats on its own ticket in the general election and having received the support of 5 independents in a legislature of 126 members, has been able to form its own Government and to put a stop to the President's rule in Kerala State. The Party has vowed to work in accordance with the provisions of the Constitution, and the Central Government, relying on this assurance, has promised to give it unstinted support and not to discriminate against it because of its peculiar political ideology.

This is a development which all will welcome. It is a novel experience in many ways. This is the first time that the Communist Party has come into power in India; and, as Mr. Bevan has said, this is the first time in history that a Communist Government pledged to parliamentary democracy has come into existence. The experiment will therefore be watched with profound interest everywhere. For, so far as the tenets of Communism go, they are opposed to parliamentarianism. Lenin laid down these tenets in the following words:

Communism repudiates parliamentarianism as the form (of the governments) of the future; it repudiates the possibility of winning over the Parliaments; its aim is to destroy parliamentarianism. Therefore it is only possible to speak of utilizing the bourgeois State organizations with the object of destroying them.

It is to be seen whether the local Communist Party organization gets over this dogma and administers the State scrupulously within the framework of the Constitution.

The experiment will be watched for another reason also. For the first time we have in India two different political parties in power at the Centre and in a State. This is not a rare phenomenon in other democratic countries. Such a phenomenon requires adjustment of mutual relations between the Central and Local Governments, which we in India have yet to learn. It is to be hoped that both the Indian and Kerala Governments will in their dealings with each other be guided by restraint, tolerance and understanding, which are necessary if the experiment is to succeed. Because of the need for these qualities one cannot but regret that the Central Government has already given the Kerala Government legitimate cause for complaint.

Even before the Government was formed, the Governor announced the appointment of an Anglo-Indian member to the legislature under Art. 333 of the Constitution, which provides for the nomination to the Legislative Assembly of a State one or more members of the Anglo-Indian community if in the opinion of the Governor the community needs such representation. What is contended is that both in regard to the need for appointing an Anglo-Indian member and the choice of the person who is to represent the community's interest, the Governor should be guided, under the provisions of Art. 163, by the opinion of the Council of Ministers, for though the Constitution requires the Governor to act in his discretion in certain cases, action under Art. 333 cannot be said to cover these cases. It is true that when the appointment was made a Ministry had not assumed office, but there was no reason to make the appointment just a few days before a Government was formed. Where the parties in the legislature are evenly balanced, the appointment of even one member by the Congress authorities without reference to the wishes of the Communist Party which was about to come into power can only give rise to suspicion, particularly, as the Party has said in its protest, "previously the Anglo-Indian nomination had been made only to increase the strength of the Congress Party when it was the ruling party in the State." Mr. Danial Latifi, a constitutional lawyer, wrote in the "Times of India," before the nomination had actually taken place:

The Governor representing the Union Government and observing his oath of office has an over-all res-

ponsibility to safeguard stable parliamentary government in the State. In these circumstances the Governor would assume a grave responsibility in nominating a person inimical to the elected majority in the legislature. Any resulting instability would lay the Governor open to the charge of attempting to frustrate the will of the electorate expressed through the ballot box and of obstructing the smooth working of the constitutional machinery.

The point here made is very well taken.

Police firings and the Gandhian Philosophy

Mr. V. G. Desai, a close student of Mahatma Gandhi's philosophy, attributes the severe reverses suffered by the Congress in the recent elections in the Bombay State (in the twelve Marathi-speaking districts the Congress was able to retain only 32 out of the total number of 135 seats in the Legislative Assembly, and the Samyukta Maharashtra Parishad could capture as many as 96 seats) largely to "the Bombay Government's method of dealing with outbreaks of mob violence." It would be remembered that, in controlling mass demonstrations against the formation of a bi-lingual State in Bombay, the Government ordered the police to fire and persistently refused to institute a judicial inquiry into the propriety of firing although serious loss of life and limb had resulted therefrom. Mr. Desai states in the official organ of the Bhoodan movement what Gandhiji would have liked the Government to do in such circumstances. The Mahatma was wedded to non-violence, and he had suggested, after the Congress assumed power in 1937 that the Congress Ministers should declare that "they would not employ the police and the military for the maintenance of internal order but rely on co-operation to isolate and sterilize the anti-social elements." In accordance with this teaching he advised Mr. Morarji Desai, the Home Minister, at a time when communal riots had broken out in Ahmedabad, "to meet the flames under the sole protection of God, not that of the police or the military." If necessary, he must "perish in the flames in the attempt to quell the riots as had been done by Ganesh Shankar Vidyarthi, the editor of 'Pratap,' who was killed in the Kanpur Hindu-Muslim riots of 1931 while engaged in the mission of peace." Of course no one in the Congress Governments is a believer in this doctrine of absolute non-violence preached by Gandhiji, but one would expect these Governments to follow the very sensible rule, practised in all free countries, of making an impartial inquiry into the use of force where it results in loss of life. There is no doubt that the Bombay Government's failure to hold such an inquiry rankled so much in the minds of Maharashtrians and Gujeratis and was one of the major causes of the Congress Party's sensational defeat in the elections.

BOMBAY PRIZE COMPETITIONS ACT

Upheld by the Supreme Court

COMPETITIONS ARE "OF A GAMBLING NATURE"

The Constitution Bench of the Supreme Court on 9th April upheld in a unanimous judgment the validity of the Bombay Lotteries and Prize Competitions (Control and Tax) Act of 1948. The judgment was delivered in an appeal filed by the State of Bombay against the judgment of the Bombay High Court holding sec. 12-A of the Act to be void. The section was introduced in the amendment of the Act in 1952 enlarging the scope of the Act to cover prize competitions contained in a newspaper or a publication printed outside the State of Bombay and by sec. 12-A provision was made for the levy of a tax on such competitions.

The R. M. D. C. challenged the validity of the Bombay Act in so far as it applied to prize competitions printed and published outside the Bombay State. The trial judge held, inter alia, that the tax levied under sec. 12 and 12-A of the impugned Act was not a tax on entertainment, amusement, betting or gambling, but it was a tax on the trade or calling of the respondents and fell under entry 60 ["taxes on professions, trades, callings and employments"] and not under entry 62 ["taxes on luxuries, including taxes on entertainments, amusements, betting and gambling"] of the State List in the Seventh Schedule of the Constitution. A division bench of the High Court upheld this judgment but differed from the view of the trial judge that prize competitions were not a lottery, and it could not be said to be either betting or gambling inasmuch as it was a competition which required skill and knowledge. An appeal was filed in the Supreme Court against the High Court judgment.

The Supreme Court ruled that the prize competitions were of a gambling nature and could not be regarded as trade or commerce and therefore the R. M. D. C. could not claim any fundamental right under Art. 19 (1) (g) guaranteeing the right to carry on any occupation or trade in respect of such competitions, nor were they entitled to the protection of Art. 301 of the Constitution which guarantees freedom of trade, commerce and intercourse. Explaining why the Court had come to the conclusion that the prize competitions run by the R. M. D. C. partook of a gambling nature, Mr. S. R. Das, C. J. who delivered the opinion of the Court, said :

To start with, we find that the board of adjudicators pick up nine of the clues and select only those competitors whose answers correspond with the official solutions of those nine clues. Those nine clues may be from the top, may be from the bottom or may be selected at random. It is said that they are like

nine compulsory questions in a school examination, but then in a school examination the students are told which are the nine compulsory questions and they can take particular care with regard to those—but in this scheme there is no knowing which nine will be selected and those competitors whose answers do not accord with the official solution are being debarred from being considered for the first prize.

A competitor may have given correct answers to eight of the nine selected clues and may have given correct answers to the remaining eight so that he has sent in sixteen correct answers, but he will nevertheless not be considered for the first prize because his answers to the nine selected questions did not agree with the official solutions of those nine clues. This is a chance element to start with.

We have seen that the competing words, out of which one is to be selected, are in some cases equally apt. We are not satisfied that the word selected by the board is more apt word in many cases. The reasons given by them appear to us to be laboured and artificial and even arbitrary in some cases.

His Lordship observed that it was not necessary for the Court in deciding this case to attempt an exhaustive definition of the word "trade," "business," or "intercourse." He said :

We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. We are convinced and satisfied that the real purpose of Arts. 19 (1) (g) and 301 could not possibly have been to guarantee or declare the freedom of gambling.

Gambling activities from their very nature and in essence are extra-commercium, although the external forms, formalities and instruments of trade may be employed, and they are not protected either by Art. 19 (1) (g) or Art. 301 of our Constitution.

Referring to the view of the Bombay High Court that it was not open to the State, which had not thought fit to prohibit these prize competitions but had sought to make a profit out of them by levying a tax, to contend at the same time that it was illegal or was not a "trade" at all, His Lordship said :

The fact of issuing a licence or imposing a tax meant nothing except that the licensee shall be subject to no penalties under the law if he paid the tax. The fact that regulatory provisions have been enacted to control gambling by issuing licences and by imposing taxes does not in any way alter the nature of gambling, which is inherently vicious and pernicious.

Prize Competitions Act, 1955

Along with the Bombay State's appeal, the Court heard writ petitions filed on behalf of R. M. D. C., the

"Illustrated Weekly of India," "Filmfare" and other promoters of prize competitions challenging the validity of the Central Government's Prize Competitions Act of 1955, which restricted the number of entries and the prizes to be offered by promoters of prize competitions. In dismissing the petitions, Mr. Justice T. L. Venkatarama Aiyar, who delivered the judgment of the Court, said that following the decision of the Court in the Bombay State's appeal, they should hold that, as regards gambling competitions, the petitioners could not seek the protection of Art. 19 (1) (g) and that the question whether the restrictions enacted in the Act were reasonable and in the interest of the public within Art. 19 (6) did not, therefore, arise for consideration. He said:

Having regard to the history of the (Central) legislation, the declared object thereof and the wording of the statute, we are of the opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend to any substantial degree on skill.

Assuming, however, that prize competitions as defined in sec. 2 (d) included both gambling and innocent competitions, His Lordship said that if the impugned provisions were supposed to apply by virtue of the definition in sec. 2 (d) to all kinds of competitions, they were severable in their application to competitions in which success did not depend to any substantial extent on skill.

HABEAS CORPUS PETITIONS

Detention in Kashmir

SET ASIDE BY THE SUPREME COURT

Mr. Dwarka Das Bhatia was arrested and detained on an order of the district magistrate, Jammu, on 31st May 1956 under the Preventive Detention Act for the reason that he was carrying on smuggling of essential goods like Shaffon cloth, zari and mercury to Pakistan. Some other persons were similarly detained. When they filed applications for a writ of habeas corpus in the High Court of Kashmir State, they were all ordered to be released on 21st June 1956 on the ground that Shaffon cloth, which they were charged with smuggling, was not an essential commodity within the meaning of the State Government's Essential Supplies Ordinance. (The High Court did not pronounce on whether zari which also they were charged with smuggling is or is not an essential commodity, but subsequently the State Government informed the Supreme Court that it was not.) But the High Court upheld the detention of Mr. Bhatia on the ground that he was alleged, unlike the others, to have smuggled "a certain quantity of mercury," which was an essential commodity.

Thereupon Mr. Bhatia challenged his detention in the Supreme Court on the ground that "since two out of the

three categories of goods, with reference to the smuggling of which the detention has been directed, are found not to be essential goods, the entire order is illegal, although one of the items, viz., mercury, is an essential commodity." In support of this contention the Supreme Court's judgments in *Dr. Ram Krishna Bharadwaj v. State of Delhi* (A. I. R. 1953 S. C. 318) and *Shibban Lal Saksena v. The State of U. P.* (A. I. R. 1954 S. C. 179) were cited.

On 1st November 1956 the Supreme Court set aside the detention order passed against Mr. Bhatia. Referring to these cases and to the cases of *State of Bombay v. Atma Ram* (A. I. R. 1951 S. C. 157) and to *Keshav Talpade's case* (A. I. R. 1943 F. C. 72), Mr. Justice Jagannadha Das, who delivered the opinion of the court, said:

The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged.

In this case, the order of detention is based on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities, cloth, zari and mercury, of which two are found not to be essential articles. No material is placed before us enabling us to say that the smuggling attributed to the petitioner was substantially only of mercury and that the smuggling as regards the other two commodities was of an inconsequential nature. On the other hand the fact that the particulars furnished to the detenu on 31st May, 1956, relate only to cloth and

zari indicates that probably the smuggling of these two items was not of an inconsequential nature.

We are, therefore, clearly of the opinion that the order of detention in this case is bad and must be quashed.

CRIMINAL PROCEDURE CODE

Interpretation of Sec. 207-A (4)

BOMBAY HIGH COURT'S RULING

Under sec. 207-A (4) of the amended Criminal Procedure Code it is not obligatory upon the prosecution to produce all or any of the eye-witnesses to an offence in committal proceedings before a magistrate; the discretion conferred upon the prosecution in this respect by the section is absolute.

A ruling to this effect was given by Mr. Justice Vyas and Mr. Justice Shelat, at the Bombay High Court, on 26th March while disposing of a reference made by the Sessions Judge of Madhya Saurashtra in the case in which Dhirajlal Maneklal was charged with murder.

Dhirajlal was committed to the sessions by the first class magistrate of Rajkot who had not examined any of the witnesses in the case. The magistrate committed the accused to stand his trial after recording the accused's statement and on relying on the police papers.

As the Saurashtra High Court (prior to the formation of bilingual Bombay) had in a similar case held that such committal contravened sec. 207-A (4) of the Criminal Procedure Code, the Sessions Judge of Madhya Saurashtra referred the matter to the High Court.

In giving judgment, dismissing the reference and declining to quash the committal order, Their Lordships said that the view taken by the Saurashtra High Court was that the provision contained in the words "as may be produced by the prosecution" in sub-sec. (4) was not discretionary, but mandatory, and that it required the prosecution to produce before the magistrate persons who might be witnesses to the actual commission of the offence.

According to that view, Their Lordships added, the production of such witnesses was obligatory upon the prosecution and not merely optional resting with the discretion of the prosecution.

Their Lordships said that this construction was neither in consonance with the object of the Criminal Procedure Code as amended in 1955, nor justified by the language of sub-sec. (4). Before the Cr. P. C. was amended, the procedure in committal proceedings was elaborate.

The legislature intended to introduce expedition in that procedure concerning the inquiry into cases instituted upon police reports, and it was with that intention that sec. 207-A was enacted.

If sub-sec. (4) were to be construed as casting an obligation on the prosecution to produce all eye-witnesses to an offence, Their Lordships thought that such a construction would militate against the object underlying the enactment of this sub-section. They added that it would tend to make the procedure more protracted than before.

The language of sub-sec. (4) itself was against the construction that the prosecution was bound to produce at the inquiry stage any or all of the witnesses. Their Lordships said that the words "such persons, if any, as may be produced by the prosecution" were clearly indicative of the discretion which the legislature intended to vest in the prosecution in regard to production of witnesses in the committal proceedings.

Their Lordships said that this discretion was absolute and that the prosecution could not be compelled to produce any eye-witnesses to the offence at that stage if the prosecution did not wish to do so.

It was contended that the legislature had used the words "as may be produced" not with a view to relax the obligation on the prosecution to produce eye-witnesses to the offence, but in order to leave latitude to the prosecution not to produce such of them who would not support its case or whose evidence would not be essential to the unfolding of the case.

Their Lordships did not agree with the contention as the language used was indicative of emphasis on discretion and not on obligation.

Further, the words "as may be produced" occur in the old sec. 208 and the new sec. 208 of the Code and according to those sections there was no statutory obligation to produce all the witnesses before the magistrate at the inquiry stage.

Therefore, the legislature could not have used the words in sec. 207-A in the sense of imposing an obligation on the prosecution to produce witnesses.

Their Lordships further held that the construction they were putting on sub-sec. (4) would not result in any miscarriage of justice in view of the provisions of sec. 173 of the Code.

In the result, the reference was rejected.

BOMBAY POLICE ACT

Externment Order

HELD NOT TO BE BROKEN

A case concerning an externment order passed under sec. 56 of the Bombay Police Act 1951 came up recently for disposal before the Presidency Magistrate, Mazagaon Court, Bombay. The section authorizes externment of a person whose movements or acts "are causing or are calculated to cause alarm, danger or harm to person or property" or who "is engaged or is about to be engaged in the commission of an offence involving force or violence

... and when in the opinion of such officer [the externing authority] witnesses are not willing to come forward to give evidence in public by reason of apprehension on their part as regards the safety of their person or property. "

A notice was served on Soli Khushroo alias Khushru Shroff on July 20, 1955, calling upon him to present himself before the Deputy Commissioner of Police to answer certain allegations made against him. On April 6, 1956, an order of externment was passed against him.

It was alleged in the order that since November, 1954, the movements and acts of the accused were causing and were calculated to cause alarm, danger and harm to persons in Forjet Street, Gowalia Tank Road, and adjoining areas and that he was indulging in offences involving force and violence. Eight specific instances of violence and molestation of women were catalogued.

Khushru Shroff did not obey the externment order and was placed before the Presidency Magistrate on the charge of failure to obey the order. He pleaded not guilty and stated that the order was mala fide.

The Magistrate acquitted the accused of the charge. He said that the order failed as it was not shown that witnesses were unwilling to come forward. He observed it was incumbent on the prosecution to bring evidence to show that the authority passing the order had applied its mind to the matter. In the absence of evidence and in the absence of proof that the Deputy Commissioner of Police had really applied his mind to the conditions laid down in sec. 56 of the Bombay Police Act he could not convict the accused.

EVACUEE PROPERTY

Rights of Displaced Persons SUPREME COURT'S DECISION

A displaced person does not acquire any fundamental right of "property" in the land allotted to him on a quasi-permanent basis under the law governing evacuee property. On this ground the Supreme Court on 29th March dismissed the petition by Amar Singh and four others against the Custodian of Evacuee Property, Punjab and Simla.

The petitioners as displaced landowners were temporarily allotted agricultural land in a suburb of Amritsar. As a result of subsequent readjustments the allotment of the petitioners was cancelled with the approval of the Custodian. The petitioners filed a revision before the Custodian General and when this was dismissed they moved the Supreme Court by a petition under Art. 32 of the Constitution, claiming to be reinstated in possession of their lands.

The petitioners urged that by virtue of the quasi-permanent allotment in their favour they had acquired certain rights in the lands which constituted their "property." The right to hold property was a funda-

mental right guaranteed by the Constitution, and consequently the order of cancellation of their allotment amounted to a violation of their fundamental rights under Arts. 19 and 31.

The Supreme Court examined the evacuee property legislation in order to determine whether the rights of a quasi-permanent allottee constitute "property" and whether the cancellation of such allotment amounts to a violation of any fundamental right under the Constitution. In the opinion of the Court the legislation on the subject indicated that the nature of allotment under evacuee law is like the grant of the right of use or occupation and is something akin to a licence which is liable to cancellation at any time by the grantor.

The Court stated that the sum total of rights created in the allottee did not in any sense constitute even a qualified ownership of the land allotted, and at most the petitioners had a provisional interest in the land. No doubt the allottee had certain rights granted by and subject to the provisions of evacuee legislation and these were to be safeguarded by the ordinary processes of law but "we are unable to hold that the interest of a quasi-permanent allottee is 'property' within the concept of that word so as to attract the protection of fundamental rights." The Court accordingly held that no fundamental right of the petitioners had been infringed.

INDUSTRIAL DISPUTES ACT

Supreme Court's Ruling

DISPUTE RELATING TO A SINGLE WORKER

The Supreme Court by a judgment delivered on 20th March held that an individual dispute "cannot per se become an industrial dispute but may become one if taken up by a trade union or a number of workmen" and thus set at rest the conflict of judgments between the various High Courts as to whether a dispute relating to a single person could form the subject of a reference under the Industrial Disputes Act

The judgment was delivered by Mr. Justice Kapur in the appeal by the Newspapers Ltd. from a decision of the High Court of Allahabad, in which the main issue was whether the term "industrial dispute" in the U. P. Industrial Disputes Act covered a dispute by an individual workman. The reasoning of the judgment is equally applicable to the interpretation of that term in the Industrial Disputes Act (Central), 1947.

The facts leading to the appeal before the Supreme Court were that Tajammul Hussain, who was dismissed by the Newspapers Ltd. claimed that he had been wrongfully dismissed and should be reinstated. His case was not taken up by the other workmen of the company or by any union of workmen employed in a similar trade, but by the U. P. Working Journalists' Association, with which he had no connexion. This dispute was referred by the U.P.

Government to an Industrial Tribunal, which made an award granting reinstatement to the employee. The award was upheld by the Labour Appellate Tribunal and the High Court refused to interfere with it in writ proceedings.

Mr. Justice Kapur stated that in order to get the true import of the enactment it was necessary to examine the reason for enacting the legislation, the evils it was to end and the objects it was to subserve. Both in England and in Australia it had been held that legislation providing for conciliation and adjudication of industrial disputes was essentially applicable to collective disputes only. The provisions of the U. P. Act also showed that "the machinery of the Act has been devised with the object of maintaining industrial peace so as to prevent interference with public safety and with public order or with the maintenance of supplies and services essential to the life of the community. The Act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication."

On these premises the judgment proceeds to state that

The provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to a dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, namely, the workmen as a body or a considerable section of them make a common cause with the individual workman.

The court held that in the present case there was nothing to show that the dispute had at any time been taken up by the other workmen of the company or that it had passed from the stage of an individual dispute to that of an industrial dispute. In these circumstances the Government had no authority to make a reference under the U. P. Industrial Disputes Act and consequently the appeal was allowed and the order of reinstatement set aside.

RIGHTS OF GOVERNMENT SERVANTS

Dismissal Order Set Aside

OPPORTUNITY TO MEET CHARGE DENIED

Mr. Vasantrao Shankarrao Sawant, superintendent of excise, was suspended from service in February 1948 and in March 1948 he was arrested along with eight others in connection with certain incidents in the then Jawhar State with regard to the issue of an excise licence. Eventually he was discharged by a presidency magistrate in August 1952. In the meantime, a departmental inquiry was held against Mr. Sawant, the charges being that he issued a bogus licence in favour of one Mohomedalli and Co., and that he made a false statement before a police officer investigating the case that he did not know one Menzes.

The inquiry officer found Mr. Sawant not guilty on the first charge and guilty on the second charge. A show cause notice was then issued against Mr. Sawant and eventually he was removed from service. Mr. Sawant challenged this order in the Bombay High Court, but it was dismissed by Mr. Justice Coyajee. Mr. Sawant appealed.

The Chief Justice and Mr. Justice S. T. Desai allowed the appeal and set aside the removal order (22nd March). Their Lordships said that the charge against Mr. Sawant was held to be established on the strength of the

statements made by six witnesses, who included Menzes, in the police inquiry. But in the inquiry before the inquiry officer, Menzes was not examined and other five witnesses retracted the statements made by them before the police officer. The inquiry officer, acting on the statements made by the five witnesses before the police, held Mr. Sawant guilty on the charge of making a false statement to the police.

The Advocate-General, on behalf of the State, had conceded that no court or tribunal could have possibly convicted a person on this type of evidence, but his contention was that the inquiry officer was not bound by the law or rules of evidence.

Their Lordships said that while it was not necessary for a disciplinary tribunal to act on strictly legal evidence, they thought that even for such tribunals it was necessary and desirable not to completely overlook or ignore the principles underlying the law of evidence.

Mr. Sawant had, during the inquiry, asked for copies of the statements made by the five witnesses, but the request was turned down by the inquiry officer without assigning any reason.

Their Lordships said that from the records it could not be said that Mr. Sawant was given a reasonable opportunity to meet the charge against him, as contemplated by Art. 311 of the Constitution, which was the most important safeguard vouchsafed to a public servant.

In the result the order of Government removing Mr. Sawant from service was set aside.

Dismissal Order Set Aside

ORDER PASSED UNDER MINISTER'S DIRECTIONS

Mr. Justice Bishan Narain of the Punjab High Court on 22nd March set aside an order of the Deputy Commissioner, Sangrur, passed under the directions of a Minister, dismissing from service Mr. Anand Parkash, Secretary to the Small Town Committee, Julana, in Sangrur district. His Lordship also awarded costs to the petitioner against the respondents.

Mr. Anand Prakash was suspended by the Deputy Commissioner, Sangrur, on May 13, 1956, for his allegedly making an alteration in the name of a voter in the voters' list. An inquiry was held by the S. D. O., Jind. On April 30, 1956, after receiving the report of the S. D. O., the Deputy Commissioner ordered the stoppage of the petitioner's grade increments for two years and forfeiture of salary due to him for the suspension period. The petitioner resumed duty on May 7, 1956. Subsequently the former Minister for Local Self-Government, Pepsu, on the basis of some complaints, directed the Deputy Commissioner to terminate the services of the petitioner on the above charges and the Deputy Commissioner on August 20, 1956, passed orders for his dismissal accordingly.

Counsel for the petitioner submitted that the Minister had no jurisdiction to issue any such order or direction to the Deputy Commissioner under the Pepsu Small Town Act and that the order of the Deputy Commissioner terminating the petitioner's services without issuing any notice was illegal.

His Lordship quashed the order of the Deputy Commissioner dismissing the petitioner, as the order of dismissal was passed by the Deputy Commissioner at the instance of the Minister and as such the Deputy Commissioner, who had already awarded a punishment to the petitioner, had not applied his mind in dismissing the

petitioner and also that notice was not given to the petitioner before issuing the order of dismissal.

NOTES

Segregated Universities of S. Africa

BILL BEING VIGOROUSLY ATTACKED

Details of the South African Nationalist Government's Separate University Education Bill, which would prohibit non-white students from enrolling in any of the "white" universities after 1st January next year are now available. The Bill empowers the Government to set up separate university colleges for the different non-white groups. The staff of these colleges will be Government employees. The accusation has been made that the colleges will not be proper universities in the full sense of the term, but "tribal colleges" with inferior facilities which will be held in ridicule throughout the world.

The main provisions of the Bill are as follows: It debar non-white students from the "white" universities as from next year, although non-white students at present on the rolls will be allowed to complete their course. No white students will be allowed to attend the non-white colleges, for which the council, the senate, and the principal will be appointed by the Minister of Native Affairs or the Minister of Education.

The Minister will be able to refuse admission to any student if he thinks it is in the interests of the university to do so. He will also be able to appoint, promote, transfer or discharge any person holding office at a non-white college.

Lecturers and professors will be subject to a 17-point code of conduct. They can be dismissed if they "publicly comment adversely upon the administration of any government or provincial department." A lecturer or professor can also be dismissed if he "propagates any idea or takes part in or identifies himself with any propaganda or activity or acts in a manner calculated (1) to cause or promote antagonism amongst any section of the population against any other section of the population, or (2) to impede, obstruct, or undermine the activities of any government department."

Fort Hare University College, the only non-white university in South Africa and at present a college of the "white" university of Rhodes (Grahams Town) will be transferred to the department of Native Affairs and will be open only to Africans. The staff will become employees of the department. If they refuse, they can resign and retire on pension.

It is not as if the "separate but equal" doctrine now discredited and rejected in the U. S. A. is being applied in South Africa. American experience has proved that separation necessarily involves inequality. But one cannot credit the South African Government with the genuine intention to provide equal facilities for non-whites. Mr. A. Van de Sandt Centlivres, former Chief Justice and Chancellor of the University of Capetown, said: "The facilities proposed for the non-whites are the very negation of the concept of a University." But the motive for introducing apartheid in universities is more sinister. It is the same as that of introducing apartheid in primary and secondary education. Under the Bantu Education Act the Govern-

ment in 1950 took over elementary education, formerly under the supervision of various missionary groups, under its own control, making the curricula for the European and African children different. This led the Vice-Principal of the University of Capetown to remark:

There can be little doubt that it is the intention of the framers of the Act that the education of the African child shall be different from that of the European and, further, that the difference shall establish and perpetuate inferior status for the African in relation to the European. The education of the child is intended to prepare it for a certain service to the State: a service which is primarily that of servant of the European.

In fact, the Minister of Native Affairs, who administers the Act instead of the Minister of Education, said: "There is no place for the African in the European community above the level of certain forms of labour." So it is also with this new Bill extending apartheid to higher education. The Students' Representative Council has said: "The Bill makes a mockery of the university as it is understood in the Western democracies. The Government is setting up institutions to be used for the indoctrination of non-white students in order to produce men and women incapable of rising above a predetermined level in society." Nor does the Government make any bones about it. The Minister of Native Affairs is reported as having said that the fault with the previous system of African education was that it showed the African "the green pastures of European society in which he was not allowed to graze"! The Prime Minister, Mr. Strydom, defended the Bill in a speech at Bloemfontein on 23rd March, saying that clashes would result if whites and non-whites were mixed in colleges, and that the Bill was being introduced for the purpose of avoiding such clashes.

Apartheid in Churches

But the Strydom Government goes very much farther. Its Native Laws Amendment Bill denies even racial association in worship without prior official consent. The Dutch Reformed Church has submitted to this order not to admit coloured worshippers to its service, but other churches are fighting it. The "Statenman" says:

It has evoked, as it should evoke, immediate and vigorous denunciation. That by the Anglican Archbishop of Capetown, Dr. Clayton, was the most dramatic. After giving his colleagues to understand that he would rather go to prison than obey, and two hours after signing a letter of protest to Mr. Strydom, he was found dead in his study of heart failure; whereupon his will disclosed that he preferred to be cremated rather than risk burial in a segregated cemetery. But his has by no means been the only protest. "We cannot admit," said the Roman Catholic Archbishop, "that we must have the permission of the State to carry on our work as a church, which will remain open to all comers. Bishop Inman of Natal appealed publicly at a requiem mass for support to Dr. Clayton's stand, and the Moderator of the Presbyterian Church on its members' behalf expressed general agreement. Dr. Clayton's letter naturally possessed the full backing of his own bishops, and has been countersigned and forwarded

by the acting Metropolitan — not to the pleasure of Mr. Verwoerd, Minister of Native Affairs.

U. K.'s New Code for Civil Servants

"BEING SUSCEPTIBLE TO COMMUNIST PRESSURE"

It will be recalled (vide p. iv: 99) that in accordance with the recommendations made by a conference of Privy Councillors in March last year, a new code for civil servants was framed and three advisers were appointed who are to hear appeals from such civil servants "employed in connection with work the nature of which is vital to the security of the State" as may be threatened with dismissal or transfer to less sensitive jobs. The advisers have now been given new terms of reference, which have caused concern. A civil servant who has been "associated with Communism" or is "susceptible to Communist pressure" is held to be a bad risk, and in judging his reliability defects of character and conduct like homosexuality or loose living are to be taken into account. The onus of proving that he is not unreliable lies on the civil servant who is charged as a security risk; he will be told of the charges and of the evidence against him, but not in such detail as to disclose the source of the charges or the evidence.

The code introduces, as the conference of Privy Councillors fully recognized, features like guilt by association and encouragement of spying by ensuring anonymity to the spy, which are alien to British traditional practices. But it was the considered opinion of the conference that in the interest of national security it would be justifiable "to tilt the balance in favour of offering greater protection to the security of the State rather than in the direction of safeguarding the rights of individual." And on libertarian grounds opposition is now growing to the new security requirements. An all-party committee of M.P.'s has decided to challenge the code. But the general feeling is that though the security arrangements are capable of abuse, the tradition of liberty is so strong in the United Kingdom that an alert public conscience will prevent any serious miscarriage of justice. The "Economist" says:

On legalistic and libertarian grounds, it is possible to think up many criticisms of this procedure; unfortunately, it is not so easy to suggest a better system if security is to be preserved.

Britain's witch hunt is a gentlemanly one. The penalty of being found unreliable is not usually crushing. Genuine efforts are made to see if the man so judged can be transferred to another job. If it is less to his liking, well, the Communist sympathiser who takes up physics cannot complain if his field of research is changed from atomics to fish manure. Promotion may be prejudiced, and the man accused (even when accused only of being "susceptible to pressure") cannot but become in closed circles a subject of gossip, but he risked that in the nature of the private life he is adjudged to have chosen to live. What if he is wrongly adjudged? The best safeguard against this probably does not lie in the rules, but in Ministers' knowledge that every doubtful action they take—together with some certainly correct ones—will set the watch-dogs of civil liberty barking. More power to their barking, but do not let it have too hysterical a ring.

A Legal Barrier to Desegregation

THROWN UP BY FLORIDA SUPREME COURT

Mr. Virgil D. Hawkins, a Negro, has been trying for eight years to gain admittance to the all-white University of Florida Law School. In 1955 the state's supreme court decided to appoint a commissioner to take evidence as to whether Mr. Hawkins could be enrolled without causing "public mischief." Thereupon Mr. Hawkins filed a petition for review in the U. S. Supreme Court. The Federal Court on 12th March 1956 ruled that he be admitted to the law school promptly. The Court's brief unsigned opinion said:

Since this case involved the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates.

The opinion meant that graduate schools such as those in law and medicine were not subject to the transition permitted in the tribunal's decision of 17th May 1954 ordering desegregation of elementary and secondary public schools. With this opinion Mr. Hawkins came back to the state asking for immediate entrance to the law school. But on 8th March last the state supreme court in a 5 to 2 decision denied his petition for an immediate order requiring his admission despite the Federal Supreme Court's ruling of last year.

The rebuff which Florida's supreme court has thus administered to the highest tribunal of the nation has naturally caused great sensation, but the state court has avoided going flatly in the face of the Federal Supreme Court. The majority opinion of the state's supreme court, written by Justice Roberts, recognized the duty of the state court to compel Mr. Hawkins' admission "if it be feasible to do so at this time." But the majority said it was convinced that violence would break out in the university and a critical disruption of the university system would occur if Negroes were permitted to enter white schools at this time. Mr. Hawkins would have the right, they said, to come before the court again "when he is prepared to present testimony showing that his admission can be accomplished without doing great 'public mischief.'" The majority took the position that the U. S. Supreme Court had not knocked out the 1955 decision of the state court. That decision was based on two grounds—one state and one Federal. The Federal ground had been cut off by the Federal Supreme Court's ruling of last year that the implementation decree did not affect graduate professional schools, but the state ground remained. Inasmuch as the U. S. Supreme Court had stated in the same ruling that Mr. Hawkins' petition for review was denied, it presumably left intact the state ground, viz., "the exercise of our traditional power as a state court to decline to issue the extraordinary writ of mandamus if to do so would tend to work a serious public mischief." The court added:

We cannot assume that the Supreme Court intended to deprive the highest court of an independent sovereign state of one of its traditional powers, that is the right to exercise a sound judicial discretion as to the date of the issuance of its process in order to prevent a serious public mischief.

In a dissenting opinion, Justice Drew said he had taken an oath to uphold the Federal Constitution and that the United States Supreme Court had been long established

as the "final interpreter." "Such an interpretation has been made in this case," Justice Drew said. "I cannot conclude that any discretion remains in this court to lawfully postpone the issuance of the peremptory writ."

The other dissenter, Justice Thomas, said he thought the ruling of the United States Supreme Court that "there is no reason for delay" had ended the litigation. "The matter is now one purely of administration," he said.

Segregation on Buses

A STATE COURT REFUSES TO FOLLOW THE SUPREME COURT

While in this case there was some attempt not to defy the Supreme Court openly, the City Judge of Birmingham in Alabama did not mince words in attacking the Supreme Court's decision outlawing the bus segregation ordinance of Montgomery, the capital of the state (vide p. iv. 111). Twenty-two Negroes of Birmingham had joined in a mass demonstration against bus segregation in the city in December last and they were prosecuted for violating the local law. It was argued on their behalf that all bus segregation laws were dead as a result of the Supreme Court's Montgomery ruling. But the Judge refused to follow this ruling and on 21st March fined the Negroes \$55 each.

The Judge said that to drop segregation on Birmingham buses would create "a state of emergency" and that he would not be responsible for such a calamity. He attacked the Supreme Court's ruling as a mistake and went so far as to say that the Fourteenth Amendment on which it was based was "null and void" in view of the fact that ratification of the amendment "was coerced by military government" after the Civil War! He declared:

No one until recently ever dreamed that the Federal Government would attempt to take over the powers, and particularly the police powers, of our cities and municipalities. There is certainly nothing in the Constitution that even mentions segregation.

Two Types of Colonialism

GHANA SYMBOLIZES ONE OF THEM

The emergence of Ghana, the former Gold Coast Colony, on 6th March, from the womb of Empire as a sovereign member of the Commonwealth of Nations, which Commander Noble said was "the latest demonstration of the flexibility and democratic process by which the Commonwealth develops," furnished an occasion for many commentators to point out the contrast between two concepts of colonialism. Mr. W. N. Ewer, diplomatic correspondent of the "Daily Herald," for instance, refers to the attainment of independence by the first African country within only ten years of the attainment of independence by four Asian countries — India, Pakistan, Ceylon and Burma — and says:

This is a continuing process. It is a revolution. But it is a revolution which is also an evolution. The beginnings go far back.

It is well over a century since Lord Macaulay, then Secretary for India, said that the day when the people of India would demand self-government would be one of the proudest days in British history.

The path since has been a chequered one. We are all conscious of that. But the path is set. It is the

accepted and declared aim of British policy that the peoples who, during the period of "imperial expansion," in one way or another, came under British rule shall, as quickly as possible, become self-governing and independent.

It is an aim which is being achieved. Ghana is the latest proof that for us the age of "colonialism" has passed. The concept of "the Empire" has given place to the finer concept of "the Commonwealth."

And that, in various ways, is true of other European countries which from the 16th century spread their rule over Asia and Africa and America.

Yet to this there is an exception—and an ironic one. The only European great power which continues in the old "imperialist" way is Soviet Russia. The Asian dominions of the Tsarist regime are not moving to independence. There are no Soviet Ghanas. On the contrary, they are being more and more closely "integrated" with Russia itself.

Russia is, quite literally, "colonizing" them. Russian and Ukrainian immigrants are displacing the Kazakhs and the Kirghiz and the other Central Asian peoples. In Europe the Hungarians have been brutally taught what can happen to a people which dares to try and free itself from Russian domination. The lesson is intended for others as well.

Tibet is a warning that Communist China has the same "great-Power chauvinism" as Russia. Of all the great Powers, these two alone still show the will to dominate and the will to expand. They may find justification for it in a desire to replace "capitalism" by "communism." Imperialist Powers have never failed to find ideological reasons for expansion.

Here is the strange picture of the world to-day. The old "empires" of the West are being liquidated—some may think, too slowly, but they are being liquidated, with the assent of the "imperialist" Powers. At the same time, the two Communist empires are pressing outwards on their neighbours—not always by direct armed force. There are other means: economic infiltration, propaganda, exploitation of internal dissensions and conflicts.

These, as the peoples around their borders—whether in Europe, in Asia, or in Africa—must surely be aware, are the current weapons of Communist imperialism. They are none the less dangerous for being non-military. And the massive armies are always in the background.

And, as the Hungarians and the Tibetans have learned, where a Communist Power once gets a grip it does not loosen it.

There are no Ghanas in either the Russian or the Chinese empire.

Russia's Imperialist Expansionism

DEMANDS FOR A HANDS-OFF POLICY

The reference in Mr. Ewer's remarks to the Soviet's assault on Hungarian freedom puts one in mind of the charge that Russia has brought in the Special Political Committee and the General Assembly of the U. N. that the United States has been undermining the Soviet Union by intervention and subversion in the internal affairs of the countries of the Soviet bloc. The accusation really amounted

to a demand that all other countries should disinterest themselves in the liberation of countries whose independence has been crushed by Russian arms. To this demand Mr. Lodge, United States delegate, on 28th February replied by a resounding "No." He said:

The American people cannot accept with indifference or apathy the situation which the Soviets have created in central Europe. We will not reconcile ourselves to the relentless Soviet assault on human dignity and freedom.

So long as independence remains unachieved, so long as the Soviet Union continues to intervene in the affairs of these countries, we cannot and we will not remain silent and unprotesting.

It is natural that we should be concerned about the people of Eastern Europe and concerned about the fate of its people. We desire to see them free and independent, able to pursue their own lives and pursue their own destinies, I mean independent of Soviet control, independent of American control, independent of any type of control.

We will do what we can, always in conformity with the principles of the United Nations, to show these hapless victims that they are not forgotten, that they are not lost.

We will continue to supply these people with the truth about our world and the truth about their world. At every opportunity we will assure them that no matter what they hear from their masters of to-day, the old ties of kinship and friendship have not been broken and that this is but a long night and that the end of that night is the dawn.

Set-Back to Liberalization IN EAST GERMANY

After the 20th Congress of the Communist Party of the Soviet Union there was, as in other parts of Eastern Europe under Soviet control, some relaxation in the repressive policy of the East German Government. The regime is permitting, we are told, "the expression of critical views but only through approved channels. It has released some 20,000 prisoners, many of them political convicts, mostly Social Democrats. The people have been promised a more careful observance of laws, especially those dealing with political offences (in a Communist country all offences tend to take a political colour), and a revision and liberalization of the laws." But this liberalization, such as it was, is short-lived. Observers now discern a drift back to the old severity of rule. They say:

Dispensation of justice in East Germany is to make a sharp left about turn and march back to its pre-de-Stalinization position. Judges and public prosecutors have been called to book for showing too much "subjectivity and liberalism" ("subjectivity" is evidently used in the Communist sense, meaning objectivity).

The courts have not clamped down swiftly or heavily enough on provocateurs. Judges and public prosecutors are to bear in mind that "it is wrong that the rights of a citizen should be protected and the rights of the (Communist) State neglected." This

seems to be the gist of the warning sounded by the East German Ministry of Justice in its official organ, "Neue Justiz."

The trend towards some sort of East German habeas corpus, which was supposed to set in after last year's East German Communist party conference, has been reversed.

Strike while Contract is in Effect

TAFT-HARTLEY ACT INTERPRETED

The employees of the Lion Oil Company in El Dorado, Arkansas, went on strike after giving sixty days' notice of a desire to re-negotiate certain provisions of their contract with the company, in accordance with the Taft-Hartley Act which provides for a sixty-day "cooling off" period before strikes are called. The company contended that the strike was illegal and the matter went ultimately before the Supreme Court.

The question in this case was whether employees might legally strike after sixty days' notice that they desire to re-negotiate their contract although the contract had not expired. The Circuit Court of Appeals had ruled that the Taft-Hartley Act banned strikes to obtain modifications of a contract until the contract was terminated either by its terms or by agreement of the parties to it.

The Supreme Court on 22nd January ruled that employees who went on strike while a contract was in effect did not necessarily lose the protection of the Taft-Hartley Act and that the law did not bar all walk-outs during a contract. Chief Justice Warren wrote the opinion of the Court, with the concurrence of seven of his colleagues and the ninth member of the Court not participating in the consideration of the case.

Chief Justice Warren held the Appellate Court's construction of the law, as applied to the Lion Oil case, to be erroneous. He ruled that since the collective bargaining agreement between the company and its employees provided for notice of re-negotiation while it was still in effect, a strike within sixty days after such notice, before the original contract had terminated, was not an unfair labour practice on the part of the employees.

Chief Justice Warren said that the "dual purpose" of the Taft-Hartley Act was to "substitute collective bargaining for economic warfare and to protect the right of employees to engage in concerted activities for their own benefit."

He said the restriction upon employees' concerted activities that would result from the Appeals courts' decision was "obvious." He continued:

We think it would discourage development of long-term bargaining relationships. Unions would be wary of entering into long-term contracts with machinery for re-opening them from time to time if they thought the right to strike would be denied them for the entire term of such a contract though they imposed no such limitations on themselves.