

# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## HORROR COMICS BILL

### PROVISIONS OF THE BILL

The Horror Comics Bill, officially styled the "Young Persons (Harmful Publications) Bill," was introduced in the Lok Sabha on 15th September by Pandit Gobind Ballabh Pant, the Home Minister. It seeks to prohibit the production and circulation of "horror comics" within India, the Kashmir State (being accorded autonomy in internal affairs) being excluded from its operation.

Pandit Pant says in the statement of objects that pictorial and other publications containing stories of the glorification of crime, violence and vice are being circulated in India in large quantities. The dissemination of such stories is likely to encourage anti-social tendencies among children and exert a harmful influence on young persons.

"Harmful publication," the dissemination of which the Bill seeks to prevent, is defined as "any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying: (i) the commission of offences; or (ii) acts of violence or cruelty; or (iii) incidents of a repulsive or horrible nature; in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever."

"Young person" means a person under 20 years of age.

If a person—(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation any harmful publication; or (b), for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or (c) advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which may extend to six months, or with a fine, or with both.

On a conviction under this section, the court may order the destruction of all the copies of the harmful publication in respect of which the conviction was had

and which are in the custody of the court or remain in the possession or power of the person convicted.

The State Government may, if it is of the opinion, after consultation with the principal law officer of the State, that any publication is a harmful publication, declare, by order notified in the official Gazette, that every copy of such publication will be forfeited to the Government and every such notification will state the ground for the order.

Any person aggrieved by an order for forfeiture passed by the State Government may, within 60 days of the date of such order, apply to the High Court to set aside such order, and upon such application the High Court may pass such order as it deems fit.

Any police officer or any other officer empowered in this behalf by the State Government may seize any harmful publication.

Any First Class Magistrate may, by warrant, authorize any police officer not below the rank of sub-inspector to enter and search any place where any stock of harmful publications may be or may be reasonably suspected to be, and such police officer may seize any publication found in such place if in his opinion it is a harmful publication.

Any publication seized under the above provision will be produced, as soon as possible, before a First Class Magistrate or the court issuing the warrant.

If, in the opinion of the magistrate or court, such publication is a harmful publication, the magistrate or court may cause it to be destroyed; but if in the opinion of the magistrate or court such publication is not a harmful publication, the magistrate or court will dispose of it in the manner provided in secs. 523, 524 and 525 of the Code of Criminal Procedure, 1891.

Notwithstanding anything contained in the Code any offence punishable under this Act will be cognizable.

### Comments by the "Statesman"

The "Statesman" in its issue of 27th September commented as follows on the Bill.

The Home Ministry has informed the Business Advisory Committee of the Lok Sabha that it does not, in view

of the shortage of time, intend to proceed during the current session with the Young Persons (Harmful Publications) Bill. Shortage of time may indeed, given the published programme for the session, be an adequate reason. But at least as important a one should be recognition that this is a most inadequately drafted measure. The British Act of May last, on which it is partly based, was by no means free from objection; where the Indian Bill departs from the model, it seems to do so substantially for the worse.

The Bill in origin constitutes domestic legislation, consequent upon executive action already taken under the Sea Customs Act, against what is known as the "horror comic." This primarily American invention, in which unscrupulous publishers have exploited, at the barely literate level, innocent juvenile emotions to display examples of sadism, precocious sex, implied glorification of crime and other advantages of obtaining easy money, is defended by nobody outside the circles which make money out of exploiting it. Nevertheless, even in Britain responsible critics such as the novelist Joyce Cary have questioned how far it does in fact debauch youth, and anxiously wondered whether current measures do not open the way to persons, whose activities are already dangerously evident, favouring general literary censorship. Scrutiny of the published terms of the Indian Bill seems even less reassuring.

The Bill lays down as a harmful publication "any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told" with or without pictures, "portraying the commission of offences, or acts of violence or cruelty, or incidents of a horrible or repulsive nature." The definition would appear *prima facie* to cover, among much else, a considerable part of the world's literature. Nor can the deduction be considered tenuous, since a British Bench lately ordered to be destroyed, for instance, Boccaccio's "Decameron."

The test adopted is the English common law test of obscenity—that "the publication as a whole would tend to corrupt a young person into whose hands it might fall"—though this particular test has in Britain been under persistent and recent fire. As in Britain hitherto, it will be open, and perhaps obligatory, for the courts to rule that evidence of intent—especially artistic intent—is immaterial. As the Bill is drafted, in India as in Britain where many people are crying for reform, the author may not even be impleaded or be given a right to be heard. Any first-class magistrate or State Government may order or authorize the police to descend upon his distributors and seize his work for potential destruction, subject alone to the proviso that, if he happens to hear of this in sixty days, he can go at his own expense to the High Court for redress.

This sort of thing is surely illiberal and probably ineffective. The ambit is too wide. Though the Government may have no intention of bringing suit, under the terms of this Bill every newspaper reporting a criminal case appears, for instance, to be liable. So is every

publisher of a detective story. It will be no good merely to censor the children's pages of a magazine, for the age of potential corruption reaches 20, and the crime consists in "encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever." A university student, it presumably appears, is not permitted to read adult, supposing it to be dangerous or controversial, literature; a professor putting it "into circulation" may get six months' imprisonment and a discretionary fine. All offences are, incidentally, cognizable, but the only offenders difficult to cognize will perhaps be the real offenders, because difficult to catch.

#### Comments by the "Hindu"

*The "Hindu" in its editorial of 21st September made the following comment on the Bill.*

The Young Persons (Harmful Publications) Bill which has been introduced in the Lok Sabha, like all attempts to censor books and magazines, may or may not succeed in protecting the morals of the young. The Bill was reported originally to have been aimed at suppressing "horror comics" that is, those "comic books" which glorified sadism and brutality. But Clause 2 of the Bill says that harmful publication means books, magazines, pamphlets, newspapers and other publications which consist of stories told with the aid of pictures or *without the aid of pictures* (italics ours)\* which portray the commission of offences, acts of violence or cruelty or incidents of a horrible nature. In other words, the Bill seems to cover ordinary story books and novels as well as the "comics" which are stories told in panels of pictures. An unimaginative police officer may quite possibly seize "Treasure Island" or "Uncle Tom's Cabin" or some of the more violent specimens of the Elizabethan drama, not to mention the works of Hemingway or Faulkner, which may seem to him to dwell overmuch on the aggressive aspects of the humanity. It is true that the Bill specifies that books are to be proscribed only after consultation with the chief law officers of the State Government. But even such officers, though highly educated persons, may not be *au courant* with writers who are not as well known as the authors we have mentioned above. The fact of the matter is that in every genre of writing or publication, there are some examples of those which deliberately specialise in sadism or obscenity. For example, detective novels usually lead off with a couple of murders but in the average murder story the corpse is only the clinical peg on which the story is hung. But in the novels of a writer like Mickey Spillane, the hero detective himself uses so much brutality that the conclusion is forced on the reader that violence is proper when used against persons one dislikes. Similarly, the great majority of comic

\* Here the reference seems to be to the British Act, in which emphasis was laid on pictures. The Act defines a "harmful publication" as "any book, magazine or other like work [excluding newspapers from its scope] which consists wholly or mainly of [horror] stories told in pictures (with or without the addition of written matter.)"—Ed., BULLETIN.

books are ingenious entertainments for children in which, while there is much knock-about and fighting, there is no attempt to emphasise brutality. But among the dozens of varieties of comics there appear to be some (we do not claim to expertise in this branch of letters) which specialise in thuggery for thuggery's sake. Since these comic books are imported, it is not clear why the existing powers of officials under the Sea Customs Act do not suffice in stopping the entry of such publications into the seaports. There is little reason to saddle the police of the State Governments with fresh responsibilities which they may not always have been trained to shoulder. What we really need are one or two experts in this field in the Customs Department. If such men will read some of the better literary magazines published in London and New York, they will soon come to know which authors or types of comics are obnoxious and refuse them entrance into the country.

### Indian Editions of Foreign Periodicals

#### Prohibited by the Government of India

It was stated, in answer to a question in the Lok Sabha, that the Government of India had decided to accept the Press Commission's recommendation in regard to foreign journals. The Commission said in its report: "We would view with disfavour any attempt to bring out Indian editions of foreign periodicals which deal mainly with news and current affairs." Acting on this observation in the report, the Government has already turned down the request which the publishers of the "New York Times" made last year to be allowed to print the international edition of the paper in India. It appears that this application for printing the "New York Times" in India was considered by the Cabinet of the Government of India, and the cabinet decided that the Press Commission's recommendation to prevent all foreign news publications from printing editions in India be adopted and accordingly the "New York Times" was told that its request could not be acceded to.

We cannot understand the rationale of this prohibition. The Press Commission itself has given no reason why it was in favour of giving authority to the Government to interfere in this way with the free flow of news and opinion which an Indian edition of a foreign periodical would promote. The only reason one can conceive of is that the Commission feared lest a powerful foreign newspaper having large financial resources at its back, if allowed to take root in India, might prove too formidable a competitor to Indian newspapers. But such fear is entirely groundless. An international edition of the "New York Times," if printed in New Delhi like the edition printed in Amsterdam, cannot really affect to any appreciable degree the circulation of local papers. This international edition is an exact replica of the edition printed in New York, and the whole make-up of the paper is quite different in content from that of Indian papers. It does not, and cannot, deal extensively with either

Indian news or comment on Indian affairs, on which naturally Indian papers concentrate, and as it is the latter that Indian readers would care for most, it cannot possibly be a serious competitor to the latter. Why therefore the printing of such a paper should be prohibited passes all understanding.

It is said some officials in the Government of India felt that it would be desirable to put a ban on the printing of the "New York Times" in India as otherwise, by the sheer force of logic, the Government would be compelled to extend a similar privilege to Soviet newspapers, which in their opinion would be extremely undesirable. But it appears that this argument did not weigh with the Government when it decided to refuse permission to the "New York Times" to print in India. The Government saw no force in the argument, for it maintained that papers like "Isvestia" were Government-run papers while the "New York Times" was free from Government control, and that "India could logically agree to permit the printing of privately owned foreign newspapers while refusing permission to Government-owned Soviet journals." But we for our part see no reason why permission should not be given to the Soviet Government to print English versions of any of its papers in India either, if it desired to have an Indian edition. (The Soviet and Chinese News Bulletins, which interpret to us the policies of the respective Governments, are allowed to circulate freely in India, as of course they should be.)

We cannot believe that the views expressed in foreign journals on Indian or international affairs or the fear that expression of certain views might create complications in India's relationship with other countries were factors in persuading the Government of India to impose the ban. If any writings in these journals have a tendency to disturb our relations with friendly foreign powers, the Government of India is armed with sufficient authority to check such a tendency. In any case it could not be that the Government feared any such contingency to arise if the "New York Times" were allowed to have an Indian edition. All that it has secured by its ban is that Indian readers are deprived of having the international edition of the paper in this country for a week or so earlier than now. While it is a distinct loss to those who would like to read the paper, what is the advantage the Government hopes to derive, or the embarrassment it wishes to avert, by imposing this unnecessary restraint on freedom of information?

A queer outcome of the Government's policy is that an Indian edition of the "Reader's Digest" too has fallen under the ban. It does not really come within the scope of the Press Commission's recommendation, for it does not deal "mainly with news and current affairs." And yet the permission previously granted to it is now going to be revoked in order to have a "uniform policy" of total prohibition. The Commission appeared in this matter to be almost on a look-out for putting curbs, and the Government seems willing even to outdo it.

## INTERCEPTION OF MAIL BY THE POST OFFICE CONSTITUTIONAL IMPLICATIONS OF THE PROBLEM

Under an order of the Deputy Postmaster General the mail addressed to V. E. Standard was ordered to be temporarily impounded, a complaint having been filed against her that she was making unlawful use of the mails. This interim order, pending a hearing to establish whether there was any illegal activity on her part, was issued without notice or hearing. Stanard filed an action for declaratory relief in a federal district court, praying that the impounding order be enjoined as violative of her constitutional rights. The district court dismissed the complaint, holding that the Post Office had power to impound petitioner's mail pending the administrative determination. Petitioner then moved the Court of Appeals, and until her appeal had been heard, she made an application to the Supreme Court for relief.

The application was heard by Justice Douglas as Circuit Justice. Although he felt that the impounding order was invalid, he denied the interim relief sought, because "if it (the interim order) is lifted, the issue of its validity will become moot," but if the final administrative order of the Post Office is adverse to her, "the separate issue of the validity of the interim order will be open on review," and "petitioner will, in due course, get judicial review of the important question of law tendered." The observations made by Justice Douglas in his judgment (22nd May 1954) in this case, *Stanard v. Olesen*, are so important from the constitutional point of view that we think it desirable to quote them below. He says:

The power of the Post Office Department to exclude material from the mails and to intercept mail addressed to a person or a business is a power that touches basic freedoms. It might even have the effect of a prior restraint on communication in violation of the First Amendment, or the infliction of punishment without the due process of law which the Fifth and the Sixth Amendments guarantee. See the dissents of Mr. Justice Holmes and Mr. Justice Brandeis in *Leach v. Carlile*, 258 U. S. 138, and the *United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U. S. 409 (1921); cf. *Hannegan v. Esquire Inc.*, 327 U. S. 146 (1946). I mention the constitutional implications of the problem only to emphasize that the power to impound mail should not be lightly implied. Yet if this power exists, it is an implied one. For I find no statutory authority of the Post Office Department to impound mail *without a hearing and before there has been any final determination of illegal activity*.

Nearly fifty years ago<sup>c</sup> a district court held that there was no such statutory power, see *Donnell Mfg. Co. v. Wyman* (CC Mo) 156 F 415. And see *Meyers v.*

*Cheesman* (CA 6th Ky) 174 F 783. It has been held that the exercise of a like power without a hearing violated the Due Process Clause of the Fifth Amendment. *Walker v. Popenoe*, 80 App DC 129, 131, 149 F2d 522, 513. A manual, published by the Post Office Department in 1939, stated that there was no such power. A bill now pending in Congress would give such power, with certain judicial safeguards. The history of that bill and of related legislation does not show any awareness that the power proposed already exists.

The Department of Justice has presented strong policy arguments (both to the Congress and to the courts) that the power is necessary. Within the past year four district courts have accepted those arguments, including the District Court which passed on this case. There is something to be said on the side of the law enforcement officials. For if an illicit business can continue while the administrative hearings are under way, those who operate on a fly-by-night basis may be able to stay one jump ahead of the law. Yet it is for Congress, not the courts, to write the law. Under the law, as presently written, every business, until found unlawful, has the right to be let alone. The Administrative Procedure Act gives some protection to that right. The power of the Post Office Department to restrain the illegal use of the mails is subject to that Act.

Section 9 of the Act furnishes some safeguards. It provides that "no sanction shall be imposed... except within jurisdiction delegated to the agency and as authorized by law." Impounding one's mail is plainly a "sanction," for it may as effectively close down an establishment as the sheriff himself. The power to impound at the commencement of the administrative proceedings is not expressly delegated to the Post Office, as I have said. It carries such a grave threat, it touches so close to First, Fifth, and Sixth Amendment rights, it has such serious possibilities of abuse (unless carefully restricted) that I am reluctant to read it into the statute. I, therefore, strongly incline to the view that the interim order from which petitioner seeks relief is invalid. It seems to be a final order and there is no apparent administrative remedy.

It is clear, I think, that petitioner is entitled to judicial review of the interim order. Sec. 10 of the Administrative Procedure Act provides that "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action, within the meaning of any relevant statute, shall be entitled to judicial review thereof."

## Anti-Evolution Law The Famous Scopes Case

The American Civil Liberties Union, having initiated thirty years ago the Scopes trial in the Tennessee State which attracted world-wide attention, has urged the Governor to repeal the "anti-evolution" law of the state which was involved in the trial. The law, which forbids a teacher in a public school to teach that "man has descended from a lower order of animals," survived the trial and still remains on the statute book, though Tennessee public schools "through custom and practice have accepted discussion of the theory of scientific evolution along with other theories about the existence of life." The Union suggests that the law be brought into line with practice through formal repeal of the notorious statute and thus lift the barriers which at any rate the statute places in theory in the way of free and open discussion in public schools, "the cradle of democratic debate which trains young citizens to consider the controversial issues which they will face in later life."

It would be interesting to give here a brief account of the Scopes case, in which Scopes, a teacher in a public school, was convicted of a violation of Tennessee's anti-evolution law in that he taught in the school that man had descended from a lower order of animals. The supreme court of the state upheld the law mainly on the ground that the state as employer had the right to prescribe what teachers in its service shall or shall not teach in its schools. It was contended on behalf of Scopes that the statute was invalid as violation of the "Law of the Land" clause of the Tennessee Constitution and the "Due Process of Law" clause of the Federal Constitution, "which are practically equivalent in meaning." The court held that these clauses were inapplicable in the present case. Noting that Scopes was an employee of the state of Tennessee, the court said:

He was under contract with the state to work in an institution of the state. He had no right or privilege to serve the state except upon such terms as the state prescribed. His liberty, his privilege, his immunity to teach and proclaim the theory of evolution, elsewhere than in the service of the state, was in no wise touched by this law.

The statute before us is not an exercise of the police power of the state undertaking to regulate the conduct and contracts of individuals in their dealings with each other. On the other hand it is an act of the state as a corporation, a proprietor, an employer. It is a declaration of a master as to the character of work the master's servant shall, or rather shall not, perform. In dealing with its own employees engaged upon its own work, the state is not hampered by the limitations of (the "Law of the Land" clause) of the Tennessee Constitution, nor of (the "Due Process of Law" clause of) the Fourteenth Amendment to the Constitution of the United States.

Since the state may prescribe the character and the hours of labour of the employees on its works, just as freely may it say what kind of work shall be performed in its service — what shall be taught in its schools.

Holding that freedom of worship was not involved in the case, the court observed that "belief or unbelief in the theory of evolution is no more a characteristic of any religious establishment or mode of worship than is belief or unbelief in the wisdom of the prohibition laws."

## The Bertrand Russell Case

### ESTABLISHING "A CHAIR OF INDECENCY"

This case can only be matched with the Bertrand Russell case, in which the appointment of Dr. Bertrand Russell in 1940 as Professor of Philosophy in the City College of New York was challenged by a taxpayer's suit. In this case the Court sustained the objection raised and said, with reference to Dr. Russell's views on marriage and sex:

The appointment of Dr. Russell is an insult to the people of the City of New York and to the thousands of teachers who were obliged upon their appointment to establish good moral character and to maintain it in order to keep their positions. Considering the instances in which immorality alone has been held to be sufficient basis for removal of a teacher and mindful of the aphorism "As a man thinketh in his heart, so he is," the court holds that the act of the Board of Education of the City of New York, in appointing Dr. Russell to the Department of Philosophy of the City College of the City of New York, to be paid by public funds, is in effect establishing a chair of indecency and in doing so has acted arbitrarily, capriciously and in direct violation of the public health, safety and morals of the people and of the petitioner's rights therein, and the petitioner is entitled to an order revoking the appointment of the said Bertrand Russell and discharging him from his said position, and denying to him the rights and the privileges and the powers appertaining to his appointment.

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## COMMENTS

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### The Press Manager Bill

Makes the Indian Press "a Licensed Press"  
"A DANGEROUS INFRACTION" OF FREEDOM OF  
EXPRESSION

The Southern India Journalists' Federation at a meeting of its executive committee held on 20th September expressed the opinion that some of the provisions of the Press and Registration of Books (Amendment) Bill "go far beyond the needs of any organization which may be set up for gathering full factual information about the working of the Indian Press." "These provisions," the committee declared, "would constitute a dangerous infraction

of the fundamental right to freedom of expression by subjecting the Press to constant surveillance and niggling interference by the Executive and its subordinates and thus reducing its status to that of a licensed Press."

The committee urged that sec. 19 (b) (2) (k) of the Bill — the omnibus clause which lays down that "any other particulars that may be prescribed," could be required by the Press Registrar and must be supplied by newspapers — should be omitted and any specific particulars which it is deemed necessary to have in addition to those mentioned in the clause 2 (a) to 2 (h) of sec. 19 (b) should be explicitly mentioned in the legislation itself. Sec. 19 (d) (b), which requires newspapers to publish at such times and such of the particulars as might be specified by the Press Registrar, was uncalled for. The committee urged that secs. 19 (f) (h) and (g) should be omitted. It objected to the conferment of power on the Press Registrar and any subordinate authorized by him to enter newspaper premises without even the safeguard of a warrant from a judicial officer, and to inspect or take copies of records or documents or question those present. "The proposal to make available to all and sundry all particulars about a newspaper in the Registrar's possession which they may ask for is objectionable in principle as it is calculated to make an invidious distinction between newspapers and other enterprises, especially as no public interest is likely to be served by such disclosure."

#### Pakistan's Constitution

##### PREROGATIVE WRITS BEING RESTORED

The Constituent Assembly of Pakistan, which is engaged in settling the framework of the country's organic law, is not having a smooth course, and its deliberations in the matter of welding the provinces and States of West Pakistan into a single administrative unit were particularly stormy. But one welcome sign that constitutional issues would be approached from a constructive point of view, irrespective of the many factions into which Pakistani politics seems to be involved, is the restoration of the prerogative writs, at first dropped, in the recommendations of the select committee on the Validation Laws Bill. What has happened in regard to this subject is thus described by the "Hindu":

The Bill as referred to the select committee during the Murree session did not include the Government of India (Amendment) Act, 1954, which had inserted sec. 223-A in the original Government of India Act, 1935. This section conferred on the High Courts the right to issue writs in the nature of habeas corpus, mandamus, etc. The purpose was to enable the citizen to seek redress, in the highest courts of the land, against arbitrary or illegal action by the Executive, more particularly in relation to his fundamental rights like personal liberty, freedom of speech and movement and so on. Though this provision is found in every democratic constitution and had

therefore been passed by the first Constituent Assembly, it was omitted from the list of laws to be revalidated by the new Constituent Assembly. There was country-wide agitation which ran across party lines for the restoration of this right to the High Courts and the citizens. Its inclusion now by the select committee is a good augury.

#### Detentions? Yes, but How Few?

##### A PARALLEL PLEA MADE IN SOUTH AFRICA

The refusal by the Union Government of South Africa to grant a passport to a 14-year old African lad for the purpose of completing his education in the United States has caused a furore even in the white community of South Africa, and the Government has in defence made a plea which puts us in mind of a similar plea advanced by Mr. C. Ragapolachari and Dr. Kailas Nath Katju when they were Home Ministers in defending the Government of India's repressive policy represented, for instance, by the Preventive Detention Act and the Public Security Acts in the States.

They used to say repeatedly, when some critic pointed to the number of people who were rotting in gaol on mere suspicion, that no doubt some persons were held in detention without their being proved to be guilty of an offence after a full and fair trial, but after all how small a percentage they formed in the total population! Even if some 3,000 persons were subject to preventive detention, it only meant that for every single individual who was deprived of personal freedom on grounds of national security, more than a lakh of individuals enjoyed this freedom without the least interference on the part of Government! Was this a matter at all to worry about?

Our Republic (they argued) is still a nestling not yet fully fledged, and the nest must be kept completely safe till this young bird grows there to sufficient strength to meet any possible threat from vultures hovering round about. And is it too high a price to pay for the security of the Republic to detain a handful of persons in custody without charge or trial, particularly when we have good reason to believe that these persons have dedicated themselves to the promotion of the interests of hostile foreign countries? We are fully aware of all the copybook maxims (and these need not be trotted out before us in season and out of season) which roundly condemn detention without trial, but if these doctrinaire ideas were to be rigidly adhered to by us in the throes of many problems of national development, the Republic itself may disintegrate, with the only result that we shall then have to face the problem not of a loss of liberty by a few hundred persons of doubtful loyalty but of the maintenance of liberty by as many millions, whose right to live in peace it is our sacred duty to protect. It is their security that must be our first concern, and it must override any qualms of conscience that we may feel if, in

pursuing the policy that we are now pursuing of preventing any possible mischief from arising instead of waiting to crush it after it has arisen, a few persons lose their freedom.

The "Christian Science Monitor" recently said: "The very essence of the difference between democracy and authoritarian communism and fascism lies in the degree to which the security of the State is entrusted to the freedom of the individual." Our Ministers do not believe in this, and if civil liberties bodies argue that not one person should be subjected to preventive detention without sufficient cause and that the limits of this are recognized in all democratic countries, these Ministers put it away as a mere shibboleth not worthy of attention by practical administrators. In the same way the South African Ministers too treat with contempt the argument of those who urge that no person should be denied the privilege to travel abroad without sufficient cause. It was found that, in the year 1954, 57 out of 23,117 South African applicants were refused passports, and instead of these refusals posing any serious problem to the Minister of the Interior, they were to him a source of satisfaction that the number of refusals was so small! This was "analogous," he said, "to 12,970,000 out of the Union's 13,000,000 people being able to travel without restraint"! On this the "Pretoria News" wrote:

What we would really like to know, what it is really important for South Africans to know, is exactly why those 57 people were refused passports. This we have not been told, and this we are unlikely to be told. ... It must be remembered that in a matter of this sort where the Government comes into opposition with an individual citizen the protection of the individual is a protection of all individuals, for every one of us, irrespective of race or political view, is against arbitrary government action. If just one passport had been refused, we as the citizens of South Africa should know exactly why.

#### Frontier Gandhi's Arrest — and Release

Because Khan Abdul Ghaffar Khan's campaign against the West Pakistan one-unit scheme was regarded in Government circles as seditious and treasonable, he was served with a notice, under the Baluchistan Public Safety Regulations of 1947, not to enter Baluchistan as he had intended to do for the purpose of carrying his campaign into that province. The Khan Saheb however defied the order and as he crossed the border about 40 miles he was arrested on 17th September—and then released after about ten days. In the meantime the Pakistan Constituent Assembly had passed the one-unit bill.

That he should be put under a ban at all has naturally caused great resentment. His demand was very simple. He only urged that the scheme should not be put into effect without ascertaining the wishes of the people concerned. Under the scheme the four provinces

of West Pakistan, the princely states of Amb, Chitral, Dir and Swat, and extensive tribal areas are to be consolidated into one province with a population of 360 lakhs (the other province being East Bengal with a population of 422 lakhs).

This arrangement has obvious administrative convenience, and its chief merit is that it establishes parity with East Bengal on which the Pakistani Bengalis are very keen. But it has equally naturally aroused apprehensions in the minor provinces of the western part of Pakistan, and it is these apprehensions which Khan Abdul Ghaffar Khan voices. His own home province, the North-West Frontier Province, has a population of mere five lakhs, and he fears that in West Pakistan the Punjab, which has a population of 160 lakhs, will dominate to the neglect of his and other smaller provinces. His own idea of a democratic Pakistan, of which the constituent members are so diverse in culture and population, is that all the areas should form parts of a really democratic federation in which the constituent provinces should be given regional autonomy, if Pakistan is to enjoy stability. And it cannot be said that this idea is without merit. Anyhow the Khan Saheb and others of like mind should be allowed, without let or hindrance, to canvass and propagate this idea—and it is only this aspect of the question that concerns us here. The "Times of India" condemned Khan Saheb's arrest in strong terms; it asked:

If Government is confident that the one-unit plan for West Pakistan has the support of the majority of the people why does it seek to choke discussion on the issue even before it has been settled by the Constituent Assembly?

All West Pakistan regions have now been amalgamated, the bill sanctioning it being passed by the Constituent Assembly by a large majority. This does not deter the Frontier Gandhi, however, from continuing his agitation to have the amalgamation unsettled by the Gandhian method of passive resistance or non-violent coercion.

#### Detention of Kashmir Plebiscite Front Leaders

In our last issue, at p. iii: 279, we remarked with a sense of relief that action had not yet followed on the stern warning of the Prime Minister of Kashmir State to the sponsors of the Kashmir Plebiscite Front that any agitation in favour of holding a plebiscite in the State for the purpose of settling its future will be looked upon by the Government as a treasonable act. But the Prime Minister was not slow in taking action. On 19th September, soon after the warning was given, eleven persons connected with the Front were arrested and detained under the State's Preventive Detention Act. Incidentally, two of them are members of the State Assembly. That they were arrested on the eve of the meeting of the Assembly for its autumn session must have been a great

convenience to the Government, for with these M. L. A.'s in gaol, the Opposition which has a membership of nine is reduced to four, the others being in detention.

The arrest of Khan Abdul Ghaffar Khan by the Baluchistan Government for defiance of its ban evoked adverse comment in the Indian press, but one misses such comment on the detentions in Kashmir for carrying on a propaganda which one would think it is their legal as well as moral right to carry on. It is said that some of the members of the Front were secretly canvassing in favour of Kashmir's accession to Pakistan. This is believable, and it is probably because of these pro-Pakistan activities that the Praja Socialist Party has issued a mandate to its Kashmir unit to withdraw the support which the unit was giving to the Front. No one in India can possibly like any agitation for accession of Kashmir to Pakistan. But the point at issue here is not what kind of propaganda we would desire to be carried on but what kind of propaganda must be allowed under our stipulation with the United Nations. If the future of Kashmir is to be settled according to the wishes of the people of the State, and we are irrevocably committed to such self-determination by the Kashmir people, prevention of pro-Pakistan propaganda constitutes a clear breach of that commitment. A plebiscite in Kashmir would be meaningless if preliminary propaganda in favour of accession to both India and Pakistan is not to be equally freely allowed. And on pure civil liberties grounds we cannot but strongly condemn these detentions which have the effect of choking off one kind of propaganda, making the plebiscite, if it ever comes to be held, resemble the elections that were current in Nazi Germany.

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## AMERICAN TOPICS

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### Foul Murder of a Negro Boy

#### All-White Jury Finds White Accused Not Guilty

A case involving the murder of a Negro boy was tried last month in a county court in Mississippi, which has stirred deep racial feelings not only in that state which has a larger Negro population than any other but in the whole of the United States.

A fourteen-year-old Negro school boy from Chicago named Emmett Till went south to spend a two-week vacation with his uncle. While there, he with some other Negro boys entered a grocery store owned by Roy Bryant, a white man, and allegedly whistled at the storekeeper's wife who was alone and used insulting words to her. Before dawn the next day Bryant and his half-brother J. W. Milam forcibly took Till from his uncle's cabin, saying "no harm would come to the boy if he's not the right one." On 31st August a body, with a bullet hole in the head, trussed and weighted, was found in a near-by river. The body was identified by Till's uncle and others as that of young Emmett.

A grand jury, consisting of 18 men, all white, indicted Bryant and Milam on charges of murder and kidnapping

The grand jury was made up exclusively of white men because, as the deputy sheriff said, no Negroes were called for grand jury duty.

In the trial on the charge of murder two policemen corroborated the evidence tendered by Till's uncle that Bryant and Milam abducted the boy from his farm; the police said the men had admitted it in pre-trial questioning. A Negro boy testified that he heard "licks and hollering" coming from a barn owned by Milam's brother. A ring on one of the fingers of the body pulled from the river bore the initials "L. T." Till's mother said it was her husband's and the boy had put it on before catching the train for his holiday in the south.

The jury, however, returned a verdict of not guilty — a jury of twelve white neighbours of the defendants — after 70 minutes of deliberation and three ballots. Afterwards the jury foreman said the deciding factor was "the belief that there had been no identification of the dead body as that of Emmett Till." They felt that the body was too badly decomposed to be identified. A sheriff, a doctor and an undertaker had also said so. Defence attorneys had mainly relied on the argument that the dead body was not identified beyond a reasonable doubt as Till's.

The state attorney had prepared the case well and pressed it strongly. Nor could any complaint be made about the manner in which the judge conducted the trial. (The National Association for the Advancement of Coloured People, which described the murder as lynching, has given praise to both.) But the all-white jury found the accused not guilty. The trial on the count of kidnapping is to be held in the neighbouring county in which Till's uncle has his farm.

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Even before the trial began, it was recognized everywhere, as a correspondent put it, "that this was more than a murder case; that it was a case to test Mississippi law and Mississippi mores." "Though criminal law does not in Mississippi differentiate between black and white, in actual fact — by common practice and long tradition — the colour line has by many devious ways extended into court cases." The first reaction even among the whites was very favourable. "Overridingly, the white community of Mississippi reacted to Till's slaying with sincere and vehement expressions of outrage. From one end of the state to the other, newspaper editorials denounced the killing, demanded swift retributive justice and warned that Mississippians could defend their theories of separation of the races only if the law enforcement machinery was geared to equal justice for both races." "In this instance perhaps to a depth hitherto unknown in Mississippi race-relations annals, Negroes working in white homes and in downtown stores and restaurants heard on every side a strong and vigorous condemnation by white people, friend and stranger alike, of brutality in race relations. Many of the state's Negro leaders paid tribute to this development."



When the all-white grand jury brought indictment against Bryant and Milan, all heaved a sigh of relief. A journal of the standing of the "New York Times" hailed the indictment by 18 white men against other white men for a crime against a Negro as possibly a harbinger of "progress towards greater justice and greater democracy in Mississippi." It said:

Over a long term of years Mississippi stood at the head of the shameful list of the states in which lynchings had occurred. There are few or no lynchings now in any state in an ordinary year. The prompt action of the grand jury in the Till case indicates that the people of contemporary Mississippi are against this form of murder as against other forms of murder.

The acquittal of the accused by regular court action has naturally and properly stilled the voice of criticism against the verdict in this particular case. But political organizations are not slow in pointing to the moral. The Federation of Jewish Women's Clubs promptly sent a telegram to President Eisenhower beseeching him "to act now for elimination of basic anti-democratic practices of all-white jury and denial of the right to vote for Negroes in Mississippi." The respected Paris paper, "Le Monde," commented on the case itself. It devoted its front-page editorial to an appraisal of the murder trial and condemned the acquittal as a demonstration of continuing racism in the United States. It attributed the result to the fear of the white minority in Mississippi of being swallowed up by the Negro mass.

## Inter-Racial Schooling

### Complete Integration in Washington

Washington is the first large city to carry out the desegregation of its school system in accordance with the mandate of the Supreme Court. President Eisenhower had expressed the wish that the nation's capital become a model in doing away with the dual system of education, and the educational authorities of the District of Columbia were engaged for over a year in the merging of classes for whites and Negroes. The process is now complete, and when the schools reopened last month, the Superintendent of the Board of Education for the district could boast that from kindergartens to adult education night schools desegregation had been effected and that racial lines no longer existed in the public schools of the district. This is no mean achievement, considering that Negro students outnumbered white (64,000 Negro and 40,000 whites) in Washington. As an item in the programme for racial-equality integration, the board has decided to make appointments, transfers and promotions of teachers solely on merit.

The integration process has been carried to other fields also, athletics for instance. Football and basket-ball programmes are now desegregated. The school cadet corps has been fully integrated, and

the superintendent reported that "it so chanced that, on the basis of taking turns, the colonel on the regimental drill was a Negro, commanding the whole review." "Negro couples danced at a senior prom without incident." Negro and white teachers' associations have merged. That the colour line has been fully erased in Washington is undoubtedly due largely to the President's initiative, and the results achieved in so short a time prove that there is no substance in the cry that desegregation will not work at least in predominantly Negro areas.

Similar progress was made in schools of the Southern states which are financed by Federal grants. Such schools opened without a colour bar. At Oak Ridge (Tennessee), site of the Atomic Energy Commission station, about 100 Negroes enrolled with white students at two schools despite an appeal circulated to white parents asking them to keep their children out of school. This is the first time that integration has been permitted in Tennessee. Negro pupils were being admitted to schools at U. S. Air Force bases in Florida.

### N. A. A. C. P.'s Survey of the Southern States

On the eve of the opening of the school term the National Association for the Advancement of Coloured People, which won the segregation cases in the Supreme Court, conducted a survey of the 17 states in the South where school segregation was required by law. The Association found that in the particularly race-conscious six states of the Deep South there was no indication of any intention to desegregate. Indeed, in some of these states the indications are to the contrary. Laws have been passed there for abolishing the public school system, or withdrawing financial support, if integration is ordered by the local courts. But in the remaining eleven states some signs of initiation of desegregation are visible. Children in 66 school districts in Oklahoma and in several in Kentucky now attend racially integrated schools for the first time. Two dozen towns in Texas integrated their schools. Twenty-one school districts in Delaware and seven counties in Maryland will soon start inter-racial schools. Notable advance has been recorded in Missouri, where 80 per cent. of all Negro pupils are in districts which have integrated schools. In West Virginia desegregation has been started in 44 out of 25 counties. Altogether, at least 362 school districts in eight states are reported to have started the new school year with some measure of desegregation.

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## MADHYA PRADESH SALES TAX ACT

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### Sales Tax on Inter-State Trade

#### Removal of Ban by President's Order SUPREME COURT'S JUDGMENT

The Constitution Bench of the Supreme Court, by a majority judgment, held on 20th September that even if the President removed the ban on the levy of sales tax on

inter-State trade under the proviso to Art. 286 (2) of the Constitution, by virtue of Art. 286 (1) (a) only the State in which the goods were delivered for consumption could levy such a tax and not the other from which they originated.

The Court gave this decision on appeals preferred by three firms of Amravati, Madhya Pradesh, carrying on the business of cotton commission agents who supplied cotton from Madhya Pradesh to mills outside the State, against the judgment of the Nagpur High Court which had held them liable to pay sales tax in respect of their business.

Messrs. Ramnarain Sons Ltd., the Eastern Cotton Company and the firm of Messrs. Khimji Brothers, Bombay, were assessed to sales tax under the Central Provinces and Berar Sales Tax Act, 1947. The assessment in the case of the first two firms was in respect of sale transactions, some of which took place before the commencement of the Constitution in 1950, and some later. In the case of the third firm the assessment was for the period October 1950 to September 1951.

These assessments were challenged in the Nagpur High Court on the ground that the sale transactions in question were inter-State in character and, as such, no sales tax could be levied by reason of the prohibition contained in Art. 286 (2) of the Constitution.

The High Court dismissed these applications holding that, before the commencement of the Constitution, the levy of the sales tax on inter-State transactions of the kind they were dealing with was valid and this position continued until the commencement of the Constitution on January 26, 1950, when the President issued the Sales Tax Continuation Order No. 7 of 1950 in exercise of the power conferred by Art. 286 (2) of the Constitution.

The High Court also held that the sales in question had taken place in the course of inter-State trade or commerce and accordingly they were covered by Art. 286(2) and would, therefore, be liable to tax even after the commencement of the Constitution by virtue of the President's order. The court held that it would be making the proviso to Art. 286(2) nugatory if it was held that Art. 286(1) overrode it and took away the taxing power of all States in inter-State trade or commerce except the delivery State.

Against this judgment of the Nagpur High Court, the three firms came in appeal to the Supreme Court by virtue of a certificate granted under Art. 132(1) of the Constitution.

Mr. Justice Bhagwati, who delivered the majority judgment of the Court on the interpretation of Art. 286 of the Constitution, said that, as held by the majority judges in the Bengal Immunity Case (vide p. iii, 279 of the BULLETIN), the bans imposed by Art. 286 on the taxing powers of the States were independent and separate and each one of them had to be got over before the State legislature could impose a tax on transactions of sale or purchase of goods. The terms of the proviso itself made it abundantly clear that the proviso was meant only to lift the ban under Art. 286(2) and no other. "It carves out an exception to the main provision to which it has been annexed as a proviso and no other." The ban imposed by Art. 286 (1) (a) was independent and separate and could not be lifted by the President's order which had operation only in regard to the inter-State character of the transactions.

So far as Art. 286 (1) (a) was concerned, His Lordship said, the Explanation determined, by the legal fiction created therein, the situs of sale in the case of transactions coming within that category and when a transaction was determined to be inside a particular State it necessarily became a transaction outside all other States.

The only relevant inquiry for the purposes of Art. 286 (1) (a), therefore, was whether a transaction was outside the State and once it was determined by the application of the Explanation that it was outside the State it followed as a matter of course that the State, with reference to which the transaction would thus be predicated to be outside it, could never tax the transaction.

His Lordship said that this ban was effective independently of the fact that the transaction might also have taken place in the course of inter-State trade or commerce or with reference to such goods as had been declared by Parliament by law to be essential for the life of the community. The ban under Art. 286 (2) might be saved by the President's order but that did not affect or lift the ban under Art. 286 (1) (a) read with the Explanation.

The majority, therefore, held that so far as the post-Constitution period was concerned, the ban which was imposed by Art. 286 (1) (a) and the Explanation thereto could not be saved by the President's order which had been issued under the proviso to Art. 286 (2) and that the High Court was in error when it construed the proviso to Art. 286 (2) as projecting into the field of Art. 286 (1) (a) and lifting the ban imposed therein.

The Court, accordingly, held that the President's order saved only transactions of inter-State character and not out of State sales and allowed the appeals. It allowed the appeal of the firm Ramdas Khimji Brothers whose assessment related wholly to the post-Constitution period and set aside the assessment. In respect of the other two firms, the Court allowed the appeals and set aside the assessment, but sent the case back to the Assessment Officer for reassessment in accordance with law.

The majority judgment in these appeals was dissented from by Mr. Justice Jagannadha Das. He said that the pre-Constitution sales tax laws, if then lawful, are not hit by Art. 286 (1) (a), at least to the extent that the ban under that Article overlaps with that under Art. 286 (2).

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## BOMBAY LAND REQUISITION ACT

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### Housing a Member of Consular Staff

#### SUPREME COURT REVERSES HIGH COURT'S DECISION

A Constitution Bench of the Supreme Court on 4th October overturned the decision of a division bench of the Bombay High Court (vide p. ii: 218 of the BULLETIN) in the Bombay Government's appeal against the decision in the test case brought by Mr. Ali Gulshan whose premises were requisitioned under sec. 6 (4) (a) of the Bombay Land Requisition Act.

It was stated in the Government's requisitioning order that the requisition was for a public purpose, viz., housing a member of the staff of a foreign consulate. The order was challenged in the Bombay High Court by a writ petition on the ground that the purpose of the requisition was not a public purpose. Mr. Justice Tendolkar dismissed the petition, holding that the requisition order was for a public purpose. The petitioner appealed against this decision raising the further contention that "although housing a member of the staff of a foreign consulate may be a public purpose, it is not a purpose of the State but a purpose of the Union, and therefore the State Government did not possess power under the Act to requisition the property for a public purpose which was a purpose of the Union and not of the State." Sec. 6 (4) (a) of the Act empowers the State Government to requisition any

promises "for the purpose of the State or any other public purpose."

#### HIGH COURT'S DECISION

The division bench of the High Court consisting of Chagla C. J. and Dixit J. on 16th December 1952, while agreeing with Mr. Justice Tendolkar that the requisition order was for a public purpose, upheld the other contention of the petitioner and allowed the appeal. In its judgment holding the requisition order invalid, the Court said :

In our opinion, every public purpose must be either a purpose of the Union or a purpose of the State. . .

In this particular case, it is clear from the Union List (in the Seventh Schedule) that "diplomatic, consular and trade representation" [entry 11 in the List] is a Union subject, and legislation with regard to this subject can only be undertaken by the Union. Further, the Court remarked that, in view of Arts. 162 and 73 of the Constitution, all executive functions relating to diplomatic, consular and trade representation can only be undertaken by the Union Government. And turning to the contention of the Advocate-General that the expression used in the Act, viz., "the purpose of the State or any other public purpose," shows that there may be a public purpose which may not be the purpose of the State, the Court said :

If the legislative competence of the (State) legislature is restricted to pass a requisition Act only for the purpose of the State, then we must read "any other public purpose" as *ejusdem generis* with "the purpose of the State," and the expression used by the legislature can only mean that the power of the State to requisition is restricted to a public purpose which is also the purpose of the State. In other words, the State Government cannot requisition property for a public purpose which is a purpose of the Union.

The Court then referred to Central Act No. 30 of 1952, sec. 3 of which provides that where the competent authority is of opinion that any property is needed or likely to be needed for "any public purpose, being a purpose of the Union," the property can be requisitioned by the Union Government, and said :

The Central Act makes it perfectly clear that the power of the Union executive to requisition is restricted to requisitioning only for that public purpose which is also a purpose of the Union.

Therefore, in our opinion, every public purpose for which land or property can be requisitioned can be divided into two categories. It must either be a purpose of the Union or a purpose of the State. If it is a purpose of the State, then our State Government has the power to requisition the property or the land. If it is a purpose of the Union, then only the Union executive has the power under Act 30 of 1952.

It was thus held that as the public purpose in this case is "a purpose of the Union and not a purpose of the State," the State Government "erroneously and improperly exercised the power of requisitioning this particular property."

#### SUPREME COURT'S JUDGMENT

Against this judgment of the Bombay High Court, the State of Bombay came in appeal to the Supreme Court.

Mr. Justice Chandrasekhara Aiyar who delivered the judgment of the Supreme Court said that they were unable to uphold the High Court's interpretation of sec. 6 (4) (a) of the Act in regard to either of its two standpoints, viz., (i) that the words "any other public purpose" should in the particular context be read *ejusdem generis* with "the purpose of the State," and that the provision of accom-

modation for a member of a foreign consular staff was a "purpose of the Union" and not a "purpose of the State."

Turning to the observation of the lower court that every public purpose for which property can be requisitioned can be divided into two categories, (1) a purpose of the Union and (2) a purpose of the State, the Supreme Court in its judgment referred to three entries in the three Lists of the Seventh Schedule, viz.,

(i) entry 33 in the Union List: "acquisition or requisitioning of property for the purpose of the Union;"

(ii) entry 36 in the State List: "acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 42 of List III;" and

(iii) entry 42 in the Concurrent List, which relates to compensation: "principles on which compensation for property acquired or requisitioned for purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

It was fairly obvious from this, the Court remarked, that the categories of "purpose" contemplated were three in number, namely, Union purpose, State purpose, and any other public purpose.

Mr. Justice Chandrasekhara Aiyar said that even if it was conceded that the law contemplated only two purposes, namely, State purpose and Union purpose, it was difficult to see how finding accommodation for the staff of a foreign consulate was a Union purpose and not a State purpose. The trade and commerce of the country which appointed the consul with the State in which he was located was his primary concern. The State of Bombay was primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State. They were inclined to regard, the purpose for which the requisition had been made in this case more as a State purpose than as a Union purpose. His Lordship observed :

It can hardly be said that securing a room for a member of the staff of a foreign consulate amounts to providing for consular representation, and that therefore it is a purpose of the Union for which the State cannot legislate.

The State of Bombay, was primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State.

In any event, the judgment held, the words "any other public purpose" found in the Bombay Act, referred to a distinct category for which the State of Bombay could legislate, as "acquisition or requisitioning of property except for the purposes of the Union" was within the State's competence under item 36 of the State List.

## RIGHTS OF CIVILIANS

### Supreme Court Dismisses Suit

Reversing the decision of the Madras High Court, the Supreme Court on 27th September dismissed the suit filed by Mr. K. M. Rajagopalan, a member of the Indian Civil Service, for a declaration that the order issued by the Chief Secretary of Madras on August 7, 1947, purporting to terminate his services was void and that he should be deemed to continue in service.

On behalf of the State, the main contention put forward before the Supreme Court by the Attorney-General of India was that political changes which came into force on the Independence Day operated in law to terminate the

services of all persons in the position of Mr. Rajagopalan as and from August 15, 1947, and that, in this situation, it was open to the new Dominion of India or the Governments of the various provinces, either to invite such persons to continue to be in their respective services or to intimate that their services were no longer required.

Dealing with this and other arguments, Mr. Justice Jagannadha Das who delivered the judgment of the Court, said that it would be seen that by virtue of the Indian Independence Act, a completely independent Dominion of India was set up, with a wholly independent legislature and a completely independent Government. While previously the Secretary of State's services were under the Crown, this authority completely vanished from and after August 15, 1947, as envisaged in the Viceroy's announcement of April 30, 1947, and as specifically affirmed by sec. 7 (1) (a) of the Indian Independence Act.

Thus, His Lordship said, the essential structure of the Secretary of State's services was altered and the basic foundation of the contractual-cum-statutory tenure of the service had disappeared. It followed that the contracts as well as the statutory protection attached had come to an automatic and legal termination. Mr. Justice Jagannadha Das said that it was clear that apart from the fact that the Secretary of State and his services had disappeared as from August 15, 1947, sec. 10 (2) of the Indian Independence Act and Art. 7 (1) of the India (Provisional Constitution) Order proceeded on the clear and unequivocal recognition of the validity of the various special orders and the individual arrangements made and amounted to an implicit statutory recognition of the principle of automatic termination of the services brought about by the political change. In their opinion, therefore, His Lordship said, the services of Mr. Rajagopalan had come to an automatic termination on the emergence of the Indian Dominion and he was not entitled to the declaration he had asked for.

## TAX ON CINEMA SHOWS

### Not a Tax on Trades and Callings THE PUNJAB HIGH COURT'S RULING

A number of cinema proprietors of Amritsar and Simla filed a writ petition in the Punjab High Court challenging the validity of the Punjab Entertainment Tax (Cinematograph Shows) Act, under which the Government has levied a tax on all cinema shows at a rate not exceeding Rs. 10 per show. A division bench of the Court consisting of Bhandari C. J. and Khosla J. dismissed the petition on 26th September.

It was contended on behalf of the petitioners that as the tax was recoverable from proprietors, it was in substance a tax on their occupation and calling, and that it was thus in contravention of Art. 276 (2) of the Constitution, which provides that "the total amount payable in respect of any person to the State . . . by way of taxes on professions, trades, callings and employments shall not exceed Rs. 250 per annum." It was also urged that the tax was imposed, irrespective of the gross returns of a particular cinema or show and, therefore, the manner of levying the tax was unreasonable, arbitrary and discriminatory.

Replying to these arguments, the Advocate-General maintained that the tax did not fall under entry 60 ("taxes on professions, trades, callings and employments") in the Provincial List of the Seventh Schedule, but was covered by entry 62 ("taxes on entertainments, amusements, . . ."), and that it did not matter whether the tax was payable by the proprietor or anyone else who was in

the management of the premises where the show was held. The tax was not subject to the requirement in Art. 276(2) about the maximum amount payable by a person.

Their Lordships held that the Act was *intra vires* the Constitution and dismissed the petition.

## NOTES

### Anti-Subversive Legislation

#### RESOLUTION OF THE LIBERAL INTERNATIONAL CONGRESS

At a session of this Congress, which was held at Lucerne in Switzerland in the first week of last month and which was attended by over 150 delegates and numerous observers from Liberal parties of twenty nations, discussed the question of need for anti-subversive legislation. The Congress was divided in its opinion. A French Radical delegate moved a resolution calling for adoption of anti-subversive legislation, and such a curb met with stiff opposition from several other delegates. Ultimately a compromise was effected between supporters and opponents of vigorous anti-subversive legislation and the resolution thus adopted stated that measures "may have to be taken" against abuses of liberty "in certain contingencies," and another resolution was passed urging "constant vigilance" in the peaceful co-existence of Communist and non-Communist systems. The main resolution said:

A serious threat to the liberal democratic way of life is occasioned by the subversive tactics of those who, often supported by funds from foreign sources, use the freedoms allowed them in the free world in order to destroy [those freedoms].

Liberty must be protected against the abuse of it, and, in certain contingencies, special measures may have to be taken to that end.

Any special legislation, thought in particular countries to be necessary, and the definition of subversion contained therein, should not seek to proscribe opinion, but should be designed in order to prevent the commission of acts of subversion. It should be subject to regular review by the legislative body concerned.

### Non-Discrimination Clause in Carrier Contracts

It is the established general policy of the President's Committee on Government Contracts to require such contracts to contain a clause barring racial discrimination in the employment of people to carry out the proposed work. Having received a complaint from the Urban League of New York charging discrimination on the ground of colour in the hiring of airline employees, the committee has decided to call leaders of all transportation services, railroads, airlines and steamship companies, and labour unions into conference with the object of laying the ground for federal contracting agencies of these services to include non-discrimination clauses in their contracts.

The present position in respect of these services is that major airlines generally do not employ Negroes as pilots, flight engineers, stewardesses and in some other capacities; railroad companies generally do not promote Negro employees above the grade of brakeman; and many steamship companies do not employ qualified Negroes as ship's officers.

It is to be seen what amelioration in this situation will result from the labours of the committee. It is not enough that non-discrimination clauses are inserted in the contracts with transit services. The main difficulty that

has acted as a barrier to federal action so far is that of enforcing such clauses. It is expected that the committee will arrive at an arrangement with industry representatives at the conference about the method of ensuring compliance.

### Uncovering of Communists

#### A NEW STATUTE IN NEW HAMPSHIRE

The New Hampshire legislature has passed a new "anti-subversion" statute. It first adopted such a law in 1951; that law was not open to any serious objection inasmuch as it penalized actual acts of subversion. In 1953 it passed another law authorizing the Attorney General to investigate possible violations of the earlier law. This statute too was unexceptionable if the Attorney General would conduct his investigation under the safeguards of due process of law. But the actual investigation has not always proceeded on right lines. The investigation was not in fact limited to subversive acts but was extended to advocacy of subversion, and the cases brought to light are not cases of advocacy of subversive acts which creates a present and clear danger, to which, again, no exception could be taken. Even so, the Attorney General could only uncover within two years 19 people supposed to have advocated subversion. His report further admits that the effect of his investigation was to drive the Communist Party underground.

In spite of this experience the legislature has in the new statute extended the Attorney General's power of investigation for another two years, which can only result, on his own showing, in driving the Communist Party further underground and compelling it to carry on its activities sub rosa. The new law contains a provision granting immunity to a witness in exchange for his waiving his privilege against self-incrimination. But the immunity conferred can only be from state prosecution and not from federal prosecution and, as the American Civil Liberties Union has said in its statement, "it would be grossly unfair to exact a confession of a federal crime on a promise of state immunity." Condemning the legislation, the Union stresses the need to rely on court action rather than the legislature or the Attorney General in determining guilt in cases of violation of the statute. It says:

Calm findings of fact about individual cases should be made by the courts, where the accused has all the protections of centuries-old safeguards of due process to protect him against the grave charge of disloyalty.

To uncover a handful of Communists, the Attorney General has cast a pall over freedom of speech and freedom of association in New Hampshire. Can there be any doubt but that people in this state will now fear to join even legitimate organizations lest their membership will sometime later be considered evidence of subversion if the Attorney General later decides that the group has become subversive?

#### Film Censorship Law Held Void

In Massachusetts, the supreme court of the state, called the Supreme Judicial Council, recently ruled a motion picture censorship law invalid. The statute is part of what is called a Sunday law and requires the Commissioner of Public Safety of the state to approve a film or stage show for Sunday showing "as being in keeping with the character of the day and not inconsistent with its due observance." Under this 300-year old statute the commissioner banned a Swedish film, "Miss Julie," for exhibition on Sundays. The court held that the Sunday law, as administered, was void as a prior

restraint on the freedom of speech and the press guaranteed by the First and the Fourteenth Amendments to the U. S. Constitution.

A federal district court granted an injunction against the refusal by the censor authority of Atlanta to issue a license to Loew's Inc. for showing the film, "The Blackboard-Jungle." The Judge granted a preliminary injunction on the ground that the operation of the city's ordinances in delaying the exhibition of the film would cause the plaintiff to suffer a loss of revenue without an adequate remedy at law. He did not pass on the constitutionality of the ordinances but declared:

Upon a final hearing of this case it may well be that the scheme of censorship here shown will be found in irreconcilable conflict with the language and purpose of the First Amendment. . . . The evidence here is insufficient to sustain a finding that the picture is immoral, lewd, obscene or licentious within the meaning of these terms as used in the ordinances here involved.

### Separation of Church and State

#### WHAT DOES IT SIGNIFY?

The First Amendment to the U. S. Constitution has a dual character in respect of guarantee of freedom of religious worship. It bars not only laws prohibiting the free exercise of religion, but also laws respecting "an establishment of religion." While the struggle for freedom from religious compulsion has been won and the content of the free exercise clause of the guarantee is well established, the struggle for freedom from established religion is still continuing and the content of the non-establishment clause is yet to be defined by the Supreme Court in a sufficiently specific manner. The dictum of Jefferson that the clause in the First Amendment against establishment of religion by law was intended to erect "a wall of separation between Church and State" is accepted by all and the separation is by universal consent thought to entail, as the Supreme Court said in *People ex Rel. McColum v. Board of Education of Champaign*, 333 U. S. 203 (1948), at any rate the following consequences:

No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practise religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.

To what precise limits these prohibitions extend it is difficult to ascertain; the matter will be settled as cases come up before the Supreme Court and its rulings give a definitive meaning to the prohibitions. In the meanwhile it is interesting to have a formal opinion of the Attorney General of Illinois (the state which was involved in the *McColum* case, supra) about the sectarian practices forbidden by the "establishment of religion" clause. The opinion was asked for because of the recent Larson case, which is thus described by the American Civil Liberties Union: "The Johnsburg School, in McHenry County, had been receiving public funds as an accredited public school even though it served at the same time as an approved Catholic parochial school. The teachers and principal were nuns who taught in religious garb, sectarian textbooks were used, Catholic symbols, awards, decorations and reading matter were in evidence, Mass preceded school each day and catechism was taught after the end of the school day. Twenty-five per cent. of the children were

not Catholic. One mother, Mrs. Larson, sought relief in the courts charging that such practices violated the constitutional principle of separation of church and state. Shortly after, all the nuns resigned and a new, all-Catholic school was built for Catholic pupils. Because of this, the local school board succeeded in having the case dismissed. The court's opinion condemned the former practices of the school. "The Attorney General's opinion is this summarized:

He restated the basic constitutional prohibition of expenditure of public funds "in aid of any church or sectarian purpose."

Specifically, he ruled that the teaching and recitation of prayers in class, the use of sectarian textbooks and other teaching materials and the conducting of classes in religious instruction on public school premises during school hours are all illegal. However, the conducting of *voluntary* sectarian classes either before or after school hours and either on or off public school premises does not fall under the ban.

Also the presence of religious objects, medals, statues, etc., are illegal where they are used to promote the interests of a religion or dedomination.

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## GLEANINGS

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### Judiciary-Executive Separation

#### PROGRESS "HALTING AND HALF-HEARTED"

Almost since 1885 when the Congress met for the first time in Bombay, the establishment of an independent judiciary separate in personnel and free of control from the executive figured with a recurring prominence in its charter of demands. The separation of the judiciary from the executive was also promised in most of the party's programmes for action. After independence, however, the progress on separating the two has not been as rapid or impressive as it could have been. There are only a few States like Bombay and Madras, where the separation is happily complete. Barring these exceptions, the other States seem to have embarked upon a policy of go-slow. Whether this is so because of New Delhi's indifference or inspiration must remain indeterminate. For there is much that the Centre can do to hasten the culmination of this overdue reform. In the meantime, it is good even to have assurances that the aim still remains in view.

Mysore's Education Minister has just stated that "sooner or later the scheme will be implemented in full." A beginning has already been made in the State. But there has been some delay in recruitment at the lower level; there also are not enough judicial officers. A well-thought plan for the separation of the judiciary would indeed have provided for the recruitment and training of the necessary personnel at all levels. In Himachal Pradesh, the Judicial Commissioner now wields direct control over all the judicial officers in the State. Yet the proposals await a final decision on the part of the State Government. According to the State's Chief Minister, however, the separation should be completed "shortly." Less is being heard of progress in other States, probably because there is little to report. It is time all the State Governments, severally or in common agreement, worked out the details of a time schedule which would see the completion of this reform. Progress so far has been both halting and half-hearted and brings little comfort to those

who regard the separation as an essential characteristic of democratic government.—The "Times of India," 15th September.

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### Control of the Press

It is a journalistic axiom that the best way to foster a healthy press is to leave the press alone. The press is a very delicate and complex organism, the slightest interference with which, however well-intentioned, might prove harmful to its healthy growth. That is the reason why the Royal Press Commission in Britain and the press enquiry commission in the United States displayed a marked reluctance to recommend sweeping measures of reform in the press organisation of their respective countries. That was also the reason why the British Royal Commission favoured a voluntary press council as against a statutory body. The underlying conviction is that self-regulation is the most effective method to tackle the problems of a democratic press. . . .

No one can honestly claim that everything is fine or satisfactory in the Indian newspaper industry. Indeed, the appointment of the Press Commission in this country was hailed in all sectors of the industry. Equally convinced were they that the Press Commission in its recommendations was actuated by the highest motives of improving the standards of journalism and the condition of the newspaper industry. There are, however, many who have honest apprehensions that the total effect of the several measures, some regulative, others restrictive in character, recommended by the Commission, would be to discourage, if not to hamper, the free growth of the newspaper industry at a moment when our greatest need is to have more and more newspapers in the country. They believe therefore that the best service that Government could render to the newspaper industry as well as to democracy is to create conditions in which more newspapers might be started. In a country where there is an almost unfathomable readership potential and where individual newspaper circulation has not gone beyond a paltry lakh, the best way of fighting monopolistic tendencies, if indeed they exist, would appear to be not through restrictive measures against economically better placed papers, but through encouraging more newspaper enterprises to come into existence.

There are many legitimate ways in which Government could help the newspaper industry without laying itself open to the charge of subsidising the press. Finance, costly mechanical equipment and technical skills are the main problems facing the industry. Facilities for liberal loans, concessions on the import of machinery and newsprint and the institution of scholarships for young men for training abroad not only in journalism but also in business management and on the mechanical side are badly needed. It is important that in the present heat of controversy, the perspective is not lost, that the wood is not missed for the trees, and that the goose that lays the golden eggs does not get killed. At the end of it all, it is to be hoped that the great objective of guaranteeing a free press and giving the newspaper profession and industry in this country a high standard of efficiency and integrity, befitting the onerous role of the press in a democracy, will be achieved.—The "Times of India," 18th September.