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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Secretary respectively of
the All-India Civil
Liberties Council

DECLARATION ON FREEDOM OF THE PRESS Made by the Commonwealth Press Union ON 14TH MARCH 1950

The Press should enjoy by right the full freedom of expression that is secured to every individual, which freedom should in no case be restricted save for specific transgression, proved to the satisfaction of a competent court of justice, of the known and generally applicable law.

No separate limitations of the exercise by the Press of the rights of the individual are necessary or tolerable except during declared national emergencies.

Restrictions specially applying to the Press should operate only in time of national emergency, and then only under safeguards to ensure

- (a) minimum interference with Press freedom;
- (b) immediate and complete restoration of that freedom at the end of the emergency; and
- (c) protection of the courts for defendants.

Such restrictions should be textually agreed in advance between the Government and appropriate Press organizations at conference where the necessities of national security and the essential democratic functions of the Press are both fully considered. There should at no time be any obstacle to editorial protest by newspapers that proclamation of a state of emergency is premature, or is unwarrantably prolonged, or is in any way misused.

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also impels us to be at our place as long as it is given to us to be there.

The 24 numbers that have so far been published would make a sufficiently thick volume if bound together. Those of our readers who would like to have them bound might, however, wait for some time. It has been urged upon us that an index be brought out for these numbers, and we intend to publish an index, as detailed as we can make it, though that will take about a couple of months. If the readers find any of the past numbers missing, they may address an inquiry to us. We may be able to supply copies of a few of these—at eight annas a copy.

BULLETIN'S THIRD YEAR

On this occasion of the commencement of the BULLETIN'S third year of existence, we wish to tender our heart-felt thanks to all our readers who by their encouragement have afforded us considerable help in doing our job to the best of our ability for the past two years in the midst of dispiriting circumstances.

Few can have an adequate appreciation of the difficulties which beset the path of the BULLETIN. The Editor is a person who cannot give his whole time to this monthly journal. He has his hands full with his regular work as a member of the Servants of India Society. With the small amount of time that he can spare from that work, he has been able to conduct the journal only because he can rely upon receiving assistance from some others who also are fully occupied with their own work.

But apart from these difficulties of editing, there are serious difficulties of finance. The journal is being run at a loss, the deficit incurred being quite a large proportion of the total expenses, which are mainly expenses of printing and clerical establishment (the editing does not cost a pie). This deficit is being cheerfully borne by one individual whose identity we are forbidden to disclose. We do not, however, think it necessary to thank him even privately for carrying this burden as he is the soul of the civil liberty movement which the BULLETIN represents. But our readers will realize that the journal can have only a hand-to-mouth existence in existing conditions.

The difficulties in keeping the BULLETIN barely alive are grave, but we are emboldened to continue at our job because of the appreciations we have been receiving from some of the most eminent people working in this field who assure us that the BULLETIN is carrying on a worth-while education of the people in the matter of civil liberty.

Some initial suspicions which it encountered the BULLETIN seems definitely to have been able to dispel. They are : 1. That the journal was intended only to carry on a covert propaganda against the ruling political party ; 2. That its promoters are utterly indifferent, in propagating their views, to the legitimate claims of national security ; 3. That they help, and perhaps intend to help, Communists bent on conducting subversive activities. Our scrupulous detachment from all political parties, our equal concern for civil liberty and national security, and our unflinching opposition to all forms of totalitarianism while trying to protect the civil rights even of those who would deny such rights to others—these are matters in regard to which we have no longer to convince anyone, though many yet feel that our emphasis is often wrongly placed. This growing belief in our bonafides

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FETTERS AND MANACLES FOR THE PRESS

REVISED EDITION OF THE EMERGENCY PRESS ACT

The All-India Civil Liberties Council adopted the following resolution on the Press Act at its meeting on 21st October.

The All-India Civil Liberties Council, having considered the Press (Objectional Matter) Act, resolves as follows:

Amendment of Article 19 (2)

1. It must be emphasized at the outset that the Amendment recently made in clause (2) of Article 19 of the Constitution, by reason of the too comprehensive and vague restrictions which it allows the legislatures to impose upon the fundamental right to Freedom of Expression, eliminates practically all constitutional limitations in respect of the protection of that right and makes the right a purely statutory one capable of being abridged by the legislatures at their will. Even if the restrictions embodied in the Press Act now passed were all entirely unexceptionable, the right to Freedom of Expression would still have lost the protection of the Constitution; but as it is, the right does not enjoy even a temporary protection which a statute could have given, inasmuch as Government have failed to carry out the promise which they had made at the time the Constitutional Amendment was adopted, viz., that the scope of the new restrictions introduced by the Amendment would be narrowed in the legislation to be passed for the purpose of giving effect to the Amendment. For the Press Act has not given any closer and more precise definition to the restrictions than the Amendment does. They remain equally comprehensive and vague, no clear and definite standard of illegality having been established in the Act as all criminal laws must do.

Special Press Law

2. Government have framed the Act on the theory that whatever writing may be considered undesirable and likely to cause trouble requires to be prohibited and penalised in a special Press law, ignoring the healthy tradition which British rule handed down to India. In the United Kingdom liberty of the Press does not enjoy any constitutional protection beyond that which statutes and the common law may give. Liberty of the Press does not imply in that country any special privilege peculiar to the Press. As the Judicial Committee of the Privy Council declared in *Arnold v. the King Emperor of India (1914)*: "The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist; but apart from statute law his privilege is no other and no higher. . . . No privilege attaches to his position." But if the Press is in the enjoyment of no special privilege it is not subjected to any special disability either. It is governed by the ordinary criminal law of the country, no separate restrictions on the exercise by the

Press of the freedom of expression allowed to every individual being considered necessary or tolerable except in a period of grave national emergency.

Acts of 1931 and 1932

3. The present Act of the Indian Government constitutes a deliberate and flagrant departure from this tradition. If under the British regime special Press legislation was passed in this country, it was at least under the plea that such legislation, drastic as it was, was required by emergency conditions with which India was faced at the time, and in defence it was urged that the special powers taken by the legislation were necessitated by the critically dangerous situation that had then arisen. In 1931, for instance, the special power taken to curb the Press was limited in application to publications inciting to murder and other violent crime, because of the prevalence of the terrorist movement, and some other powers that were then contemplated to deal with some manifestations of the civil disobedience movement were not assumed because the movement had by that time been suspended. When, however, the movement was revived, the Government of the day took, by its legislation of 1932, additional powers to deal with such manifestations of the movement as defiance of the authority of the Government, non-payment of taxes, intimidation, etc. And while the legislation that was passed on either of these occasions was certainly not justified, it will have to be conceded that the situation was abnormal, and the Government could at least plead that the powers taken were called for by the peculiar circumstances then prevailing. It was avowedly emergency legislation, though even the emergency did not lend justification to the measures.

No Emergency Urged

4. Now, however, no emergency has even been alleged by Government to exist. Still in perfectly normal times they have passed a Draconian law giving powers of a sweeping character for the control of the Press. Government in fact assert that there will hardly be any occasion to apply the law and that it will for the most part remain a dead letter, acting merely as a scarecrow to warn off the less reputable species of journalists from indulging in objectionable writing. Government produced no evidence, though repeatedly asked to do so both in the Select Committee and on the floor of Parliament, to prove that such writing was widely prevalent and could not be sufficiently checked by the ordinary law of the country. Yet a statute which will not be applicable generally to all citizens but is to be made applicable to owners of presses and publishers of newspapers has been enacted for the purpose of effecting a purgation and purification of the Press so that the unintelligent section of the people who are in a vast majority might be saved from the evil influence of a

mischievous Press. The general ignorance that prevails in the country and the facility with which the mass of the population can be misled by the printed word are made by Government the sole reason for this Act. "The circumstances of our country demand a vigilant care over the minds of the people," declared the Home Minister in justifying it. It is the contention of the All-India Civil Liberties Council that there can be no justification whatever for enacting a special Press law for the purpose, as the Home Minister put it, of developing a sound Press ethic in the country.

Press Laws of Other Countries

5. Nor does this special Press law resemble the Press laws that obtain in some democratic countries of Europe. Those laws are in every case of a purely punitive nature; they are not preventive in character. Further, they only reduplicate various sections of the provisions in the criminal law obtaining in those countries; they do not provide for any special offences not provided for by the general penal law. And, lastly, they do not provide for any special punishment for the Press. Thus, provisions like those in the Indian law for taking a security from the Press and forfeiting it or for confiscating the Press are entirely absent from all such laws. The Press Laws Enquiry Committee of 1948 brought this fact prominently to the attention of Government and made a unanimous recommendation that these provisions should be struck off from the emergency legislation that was then on the statute book. In all these respects the Indian law now enacted differs radically from the Press laws of European countries like Sweden. It is of a preventive character, the ordinary method of dealing with offenders by prosecution being held insufficient to restrain the evil resulting from the dissemination of undesirable publications. It constitutes special offences for the Press over and above those provided for in the ordinary criminal law of the land. And it provides special punishment for Press offences like the deposit of a security and its forfeiture both from the publishers of newspapers and keepers of printing presses and forfeiture of the press itself. The Indian Press law is thus not only a special Press law of a kind that is unknown in England, but is also a law the like of which does not obtain in any other civilized country in the world. It is a special Press law which is special to India alone.

Press (Emergency Powers) Act Renewed

6. While professing to repeal the Press (Emergency Powers) Act, 1931, as amplified in 1932, Government have but renewed the Act, only in a more rigorous form in some respects. If certain categories of printed matter prohibited by the former Act have been omitted in this Act, certain others have been added, e. g., scurrilous writings and writings likely to interfere with essential supplies and services. But the main features of the former legislation remain intact, viz., that the legislation is of an exceptional character, and the excuse of a critical situation being now

unavailable as formerly, it is wholly gratuitous; that it is more preventive than punitive; that it provides for penalties unknown to a Press law anywhere else, and that it imposes penalties on printers as well as on writers for the same matter. Government claim to have made by this Act a "fundamental and all-comprehensive" advance over the 1931 Act. It consists in this, that whereas under the old Act the executive was empowered as a preliminary step to require the deposit or to order forfeiture of security from an offending publisher or printer though such an order was liable to be set aside later by the High Court on a review of all the facts, under the present law a like order can issue from a judicial authority alone. This is an improvement, but only of a procedural nature; for even in the old Act executive action was ultimately subjected to judicial tests. Government also claim much credit for the provision of a jury of pressmen to assist in the trial of offences under the Act. Apart from the fact that a jury of such special composition is inherently objectionable, it must be noted that the jury's verdict is not final, as is the case in every country where a jury is provided. In England, for instance, it is the jury which finally decides whether an offence has been committed or not, and this is illustrated by Lord Kenyon's remark in *Rex v. Cuthell* (1799) that "a man may publish anything which twelve of his countrymen think is not blamable." To take the example of a country which has a separate Press law, it is provided in Sweden that the criminal nature of printed matter shall be tried by a jury of nine members and that "the matter shall be considered criminal if at least six jurors concur in that opinion." The introduction of this feature in the Act is thus only a face-saving device intended to give a progressive-looking appearance to what is a thoroughly reactionary and oppressive measure.

Vicarious Punishment

7. The Act makes both the publisher and printer of a newspaper liable to penalties in the form of having to deposit a security and to forfeit it; and in addition it makes the printer liable to the penalty of forfeiture of the press. Such penalties are nowhere to be found. But in countries which have separate Press laws regulations are in force which clearly define the responsibility of individuals for printed matter, though for offences in connection with it only ordinary penalties of fine and imprisonment are imposed. The Swedish regulations, for instance, lay down that in the case of a periodical the editor alone shall be liable, and only in his absence the owner; that the printer shall become liable only when the identity of the owner cannot be determined; and that when the identity of the printer cannot be determined, the liability shall fall upon the distributor. In the case of a non-periodical it is provided that liability shall lie primarily on the author and subsequently, if he is not found, on the editor, the publisher, the printer and the distributor in the same circumstances. Similar provisions are made in the Netherlands, Switzerland, Norway, Denmark and Belgium.

In the last-mentioned country indeed the Constitution itself provides that "in case the writer is known and is a resident of Belgium, the publisher, printer or distributor cannot be prosecuted," and this provision is thus judicially interpreted: "There is no complicity in Press offences; the law is based on the principle of the successive and exclusive responsibility of the author, publisher, printer and distributor." The underlying principle is that when the real offender is available for receiving punishment, all the rest of a long series of persons concerned in such a conjoint affair need not be touched. The Government of India is, however, intent on punishing as many as could be got hold of, and their Act fastens the responsibility on all of the persons involved in the business and is particularly hard on the printer whom it punishes even after punishing the author, because the main intention of the measure is, in the words of the Home Minister, "to deal with those who use the printing machine for criminal purposes."

Intent to be Ignored

8. The Act specifically provides that in judging of Press offences only the effect of the words used shall be taken into consideration and not the intent of the writer or the printer. This provision is directly contrary to the principles of criminal jurisprudence of every civilized country. In such countries every criminal law requires as an essential element of the crime proof of the criminal intent of those who are charged with the violation of law. When, for instance, the British Government passed the Incitement to Disaffection Act in 1934 for the purpose of putting a stop to the dissemination of seditious pamphlets among the troops that was current in England at the time, the Act provided that "if any person, with intent to commit" the offence of incitement does certain things, he shall be guilty of the offence. Similarly, the Smith Act of the United States, under which the Communist leaders were recently convicted of advocating forcible overthrow of the Government, requires the existence of a specific intent to be proved, the words in the Act being "with the intent to cause the overthrow" of the Government. The Indian Act not only does not mention intent as an ingredient of the offence but expressly forbids its consideration as something irrelevant to the determination of whether a crime has been committed.

On Top of Ordinary Law

9. It has to be remembered that the provisions of the special Press law now enacted are to come into operation on top of the provisions, both preventive and punitive, that already exist in the ordinary criminal law of the country. For it should be remembered that sec. 33 of the Press Act, though it has the caption of "Bar of Double Penalty," does not in fact impose a barrier upon Government from proceeding against a newspaper under this Act and at the same time proceeding against it under the provisions of the ordinary criminal law. It can, for instance, resort to sec. 131 of the Indian Penal Code which provides for the offence of attempting to seduce officers

and men in the Army and Navy, a matter dealt with under sec. 3 (iv) of the special Act. The question in regard to every kind of "objectionable matter" specified in the Act is not so much whether the offence should not be punished as whether it should be punished in the special way laid down in the Act, viz., by the taking and forfeiting of a security and confiscation of the Press. Sec. 108 of the Criminal Procedure Code empowers the taking of security from the printer or publisher of a newspaper to be of good behaviour. A further preventive remedy is often resorted to by Government in the application of sec. 144 of the Code for prohibiting publication of specific matter in a newspaper. This is bitterly resented by the Press and the Press Laws Enquiry Committee recorded their opinion that "it was not the intention of the framers of the Code that this section should be applied to the Press." Accordingly, they made a unanimous recommendation that "instructions should be issued by Government to magistrates that orders in respect of newspapers should not be passed under this section. Yet prohibitory orders will continue to be made on the strength of this section. The Home Minister declared: "Sec. 144 has served more than anything else in this country to preserve order. Government would be most difficult in this country without that section. If we decided to go without sec. 144, we would only be paving the way for Fascists, or for chaos, and for domination by rowdy sections in every area, who will carve out authority for themselves." India must be a very peculiar country if chaos cannot be prevented except by the use of a weapon which does not exist in the armoury of any other country. But this is not all; in addition to employing such measures, Government must bring into use in normal times a special Press law of unheard-of severity.

Sedition Law

10. The Press Laws Enquiry Committee recommended that the law of sedition contained in sec. 124-A of the Indian Penal Code be brought into line with the English law on the subject and said that they understood that there was a proposal before Government to this effect. It was announced in course of the debate on the present Act that an amending measure would be introduced at a later date. What this measure will be remains to be seen, but the thing to note at this stage is that while Government are so quick in clamping down extraordinarily harsh restrictions on the Press, they are so tardy in amending an admittedly bad law, with the result that the law, which was declared unconstitutional by judicial authority but which has been revived by the Constitution Amendment Act, remains in full operation.

Duration of the Act

11. That Government purport to limit the life of the Act to two years will not relieve to any considerable extent the grave apprehensions felt about the measure. If the law had been enacted in view of any special circumstances of

an evil nature that are expected to last for a short time, this concession could have been appreciated. But the conditions which have led Government to pass it, like general prevalence of illiteracy and introduction of a universal franchise when masses can be easily misled, are not conditions likely to pass away for a very long period, and if the Act can at all be justified with reference to such conditions it can be justified almost as a permanent law, as indeed Government at first intended it to be. The All-India Civil Liberties Council has therefore very little hope that the present Government, if it continues in power, will not renew the Act after the expiry of two years. But the Council has a fundamental objection to the very principles of the Act which cannot be removed if even in fact the law is brought into force only for this period.

A Stigma on the Press

12. It may be, as Government hold out the hope, that the Press Act will rarely be brought into operation. But that will not alter the fact that the existence of the Act on the statute book is by itself a badge of bondage that can in no circumstances be tolerated. The measure has been opposed by the All-India Newspaper Editors' Conference, the Federation of Working Journalists and almost every newspaper in the country. That is surely because the Act casts an undeserved slur on the Press. But newspaper opinion is supported with equal fervour by all independent-minded politicians in the country because they realise that Freedom of the Press along with Freedom of Speech is the life-breath of Democracy, and that without such freedom democracy cannot survive. Upon the right of freedom of expression a unique value is set in every democratic country and the freedom is secured by various constitutional and statutory provisions. In our country, too, the Govern-

ment of the day places a unique emphasis upon Freedom of the Press, but the emphasis is laid in a different direction. Instead of protecting this freedom as an essential requisite of free government, it rivets on the Press all the fetters to which a foreign bureaucracy subjected it under the plea of compelling exigencies of the time and even forges for it some new fetters when no exigency remotely resembling the former ones could be alleged or even has been alleged to exist, solely because Government see in the Press a powerful moulder of public opinion and therefore, in the present state of illiteracy and ignorance of the common people, an engine capable of infinite mischief which can be checked only by abridging Freedom of the Press. The way to such a repressive Act had already been cleared by the adoption of an amendment to clause (2) of Article 19 of the Constitution which in effect abolishes all constitutional limitations in behalf of freedom of expression. That, while now legislatively suppressing Freedom of the Press, Government felt no compunction in forcing the measure onto the statute book by resorting to closure at every stage of the debate only shows that no kind of democratic freedom can be expected from the present Government.

Pledge for Restoration of the Freedom

13. But the All-India Civil Liberties Council believes that freedom of the Press which has been all but extinguished by the Act will soon come to be restored in its integrity when public opinion which is keen on preserving this freedom asserts itself. However, the repeal of the present Act can only be the immediate objective of people who have a genuine concern for civil liberty. They must not rest, as the All-India Newspaper Editors' Conference exhorted the journalists, till the amendment made in the Constitution which paved the way for the Act is itself repealed.

THOUGHTS ON THE PRESS ACT

The detailed resolution of the All-India Civil Liberties Council on the Press Act which has been published above makes it unnecessary for us to offer any lengthy comments thereon. But a few words may be added. The main object of the law is, as the AICLC resolution says, is to purge the Press of its weaker elements, to improve its general tone and to evolve a good journalistic ethic. While the object is very commendable, the way to achieve it is not to adopt a law restrictive of the liberty of the Press. Indeed, for a Government which values liberty of the Press this method of compelling the Press to behave better by means of a special law is not at all permissible. The danger of allowing the Press to mislead a public which is ignorant but has been given the power by a universal franchise of controlling the affairs of State is, in the view of the Government of India, so great as to justify imposition of restrictions on the Press as a whole. But

Freedom of the Press, properly understood, inhibits any such restrictions even for the purpose of raising the standard of the Press. For, as Justice Jackson of the U. S. Supreme Court said in *Thomas v. Collins* (1945) 323 U. S. 516 :

The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.

The Government of India apparently envisages that this work of controlling the Press will ultimately be taken over by the Press itself when, as is anticipated, a Council of Discipline in which the Press Commission to be appointed will eventually enforces internal reform on the

Press. While internal reform is the only practicable method of improving the Press, even this Council of Discipline, should it come to be constituted, will fail of its purpose if it be aided in its work by a special criminal law enacted for its behoof like the present one. The General Council, recommended by the Royal Commission on the Press in England, is meant expressly "to preserve the established freedom of the Press," and no Council which relies upon an exceptional Press law to "discipline" its members can ever hope to succeed in its objective. The essential condition for a successful working of such a body is that the Press should be free from any control by the State except such control as the ordinary law will impose both upon the Press and upon others: then alone will it be able to persuade the Press to subject itself to a voluntary control from within. Thus not only is the present Press Act based on entirely wrong principles, but it is bound to be infructuous even in its ultimate objective.

"Likely to" Lead to Evil Results

The Press Bill originally proposed to penalise publications "which tend to" seduce a member of the Army from his allegiance, for instance. Being a preventive rather than a punitive measure, it was thought appropriate to bring to book publications which have only a tendency to produce undesirable consequences. But the words "tend to" have now been replaced by the words "likely to," and the Home Minister thought that critics of the Bill would regard it as a great improvement. But in fact it is no improvement, and indeed the "Hindu" thinks that the words "likely to" are "far worse." To punish a man for writing what may be held to be "likely to" result in one thing or another is highly improper.

Such a law suffers from the fatal defect of vagueness. It is the cardinal principle of the criminal law that everyone should know precisely what one is permitted to do and what one is prohibited from doing, and for this reason it is essential that the forbidden conduct should be defined in definite terms, free from all ambiguity. If a Press law is so imprecise as not to advise those who would write in newspapers of the limitations it imposes upon their activity, the statute would for that reason alone be held void in the United States as violative of the due process clause of the Fourteenth Amendment. Under our Constitution it would perhaps be valid, there being no provision in it corresponding to the due process clause in the U. S. Constitution. But it is the elementary principle of the criminal jurisprudence of every country that penal statutes should lay down definite standards of conduct which the State will regard as unlawful so that the citizens may be adequately apprised of the offence with which they may be charged. In the United States several statutes have been declared unconstitutional because of the defect of vagueness which they contained.

The defect to which the words "likely to" give rise becomes the more serious because of the exclusion of

"intent" as an element of crime from the consideration of the offences provided for in the Act. As the AICLO resolution points out, the existence of a *mens rea* is the rule which the criminal law of every civilized country follows, but the departure from it which the Act enforces on the courts makes the indefiniteness engendered by the words "likely to" highly dangerous to all writers, printers and publishers (the distributors not being excluded either), if they are to suffer punishment for the possible effect of a publication which they may never have intended to bring about. It would be interesting to note here that when it was contended on behalf of the Communist leaders in the recent Dennis case that the Smith Act under which they were convicted was too vague, the Supreme Court considered the contention and put it aside as devoid of substance, and it further said that "this argument is particularly non-persuasive when presented by petitioners who, the jury found, intended to overthrow the Government as speedily as circumstances would permit." But if under our law the criminal intention is not required to be proved by evidence and if publications are to be judged only by the likely consequences to which they may lead, many persons are liable to be unjustly punished.

"Scurrilous" Writing

The Act provides against "grossly indecent, scurrilous or obscene" publications. In doing so it has broken new ground, for even the Act of 1931 contained no provisions on this subject. With the desire of the Government to penalise such publications everyone will sympathise, but one fails to see the need for incorporating such a section in the Act when the ordinary criminal law amply provides for obscenity, indecency and libel which is the essence of the offence. As the Southern India Journalists' Federation has pointed out, the law of libel in this country already "throws even more onerous responsibilities on the Press" than the British law on which it is based (even when no account is taken of the recommendations made by the Porter Committee for liberalising the libel laws of England). Why, then, does this form part of a special Press law? The answer given by the Home Minister was as follows:

It is true that prosecutions for obscenity or libel can be undertaken in the ordinary way, but it is well-known that they are most ineffective and they will serve only to heighten and expand the injury already committed. In fact such newspapers as thrive on scurrility desire the advertisement that is secured by individual prosecution and protracted trial in court. It is necessary that the although individuals are also concerned, the public interest should be safeguarded by the State proceeding against the newspaper or journal as such.

The effect of including scurrility within the scope of the Act therefore will be twofold: 1. apart from the standered person proceeding against the newspaper under

the ordinary law, the State will be enabled to set the special law in motion against it on its own initiative, and 2. the newspaper will be subject to the special penalties of a deposit and forfeiture of a security instead of the ordinary penalties provided by the ordinary law. There is certainly no justification for a proceeding which has either of the two results.

Promotion of Inter-Community Ill-Will

The Press Laws Enquiry Committee recommended that the law of sedition in India should be assimilated to the British law on the subject. A seditious intent is of the essence of the law of seditious libel in England, and the intent requires for its establishment proof that the seditious writing or speech was intended to produce violence. Two members of the Committee, viz., the late Mr. Brelvi and Mr. K. Srinivasan, put the matter in concrete terms by saying that, in accordance with the recommendation of the Geneva Conference, "only expressions which incite persons to alter by violence the system of government or which promote disorder should be regarded as seditious."

We have to wait, one does not know how long, for this recommendation being implemented. But if the law of seditious libel is to be made uniform in England and India, it involves an amendment not only of sec. 124-A of the Indian Penal Code which deals with disaffection against the Government, but of sec. 153-A also which deals with promotion of ill-will between different classes of the people. For a seditious intent, which is a necessary element of seditious libel, includes in England an intention "to promote feelings of ill-will and hostility between different classes of His Majesty's subjects." And the amendment will have to be to the effect that expressions which promote ill-will between classes will be held unlawful if they are intended to produce violence or disorder. But the Government of India does not seem to contemplate making such an amendment, which would be wrong.

In this connection it should be noted (as we pointed out at p. 299 of the BULLETIN) that the effect of the article in the Constitution of the Irish Free State relating to the "right of free expression of opinion" was to secure the sort of amendment for which we plead. Mr. Leo Kohn, writing on this subject, says that under this article

An attempt "to bring into hatred or contempt or to excite disaffection against the Government" or "to promote feelings of ill-will and hostility between different classes of citizens" can hardly be held to be unlawful—as long as, in the opinion of a jury, it was not designed to produce actual violence.

And in England practically the whole law of seditious libel (including both parts, viz. exciting disaffection against the Government and ill-feeling between classes), has long become obsolete.

In the United States there have been passed in some states what are called "race" or "group" libel laws there,

though some of these laws have already been declared unconstitutional in some of the states. But the general feeling of liberals in that country is that such legislation should be repealed where it still exists, and the Commission on Freedom of the Press has made a recommendation to this effect (as we have pointed out before). While on this point we may bring to the notice of our readers what the American Civil Liberties Union has been doing on this matter. Last year Joseph Beauharnais, president of the White Circle League of America, who had circulated pamphlets calling upon white people to "preserve and protect white neighbourhoods from the constant invasion by the Negroes," was convicted of violating an Illinois law prohibiting publications which showed Negroes in an unfavourable light. His conviction was upheld by the Illinois Supreme Court. Now ACLU has filed a petition with the U. S. Supreme Court for a writ of certiorari (an order to review the conviction). ACLU of course strongly opposes Beauharnais' views, but still thinks it necessary to champion his right to hold and express them, on the principle that "if the right of free speech and press means anything at all it means freedom for the expression of opinions we hate as well as those with which we agree." This is of course the only position that one who believes in civil liberty can take up.

But here we are speaking of the necessity of amending the ordinary law. What, however, the Home Minister has done is that, instead of amending sec. 153-A, he has kept it as it is and also incorporated in into a special Press law, subjecting those who are guilty of using expressions "likely to promote feelings of enmity or hatred between different sections of the people of India" to the extraordinary penalties of a deposit and forfeiture of security (irrespective of what the intent of the writer is), penalties which are not awarded in any other country in the world!

Liability of Editor and Printer

It is not the wide scope of "objectionable matter" specified in sec. 3 of the Press Act that is objected to so much as the subjection of these Press offences to a special Press law, contrary to the practice in England, where since 1695 everyone is at liberty to write and publish what he pleases subject to the ordinary law of the land. "The liberty of the Press," declared Lord Russel, Chief Justice, in *Rex v. Gray* (1900) 2 Q. B., "is no greater and no less than the liberty of every subject of the Queen," and Lord Kenyon, Chief Justice, declared in *Rex v. Reeves*, "the power of free discussion is the right of every subject of this country."

Why the ordinary law is being superseded, or rather supplemented, by a special law applicable only to the Press was never really explained by the Home Minister. He advanced only one argument, which, however, is entirely futile, as pointed out by the "Hindu." The paper says:

The Home Minister's argument that a newspaper is a collective affair and it is not possible to get at and punish the individual behind the offence because of the veil of anonymity is on the face of it untenable. The Editor is declared by name and he takes the responsibility for what appears in his paper. He can be fined or sent to jail if the courts convict him under the Penal Code provisions. On the contrary, a demand for security punishes the owner of the press or the newspaper who may be totally unaware of the objectionable writing that constitutes the charge.

Nor does the special press law in any of the countries where such a law prevails impose the punishments for

which our law provides, and responsibility for the offence is fixed where it mainly lies. The AICLC resolution has given several instances. We shall add one more, that of France, where an elaborate Press law is in force. The responsibility for such offences is there defined in the following order: 1. The author or director of the publication; 2. failing them, the publisher; 3. failing the publisher, the printer; and 4. failing the printer, the sales agents, distributors or bill-posters. In our country, all become simultaneously liable, and the printer above all, because he is chiefly responsible for propagating the stuff to which the Home Minister wishes to put a stop.

RAJAJI'S MODE OF PERSUASION

A very unseemly trait which the Home Minister of the Government of India has developed of late is the habitual playing up of his own extremely repressive measures and the playing down of the right kind of constitutional and statutory provisions of other countries which are noted for their love of freedom. We suppose he feels that he cannot justify the coercive laws he proposes unless he can attribute to countries like England and the United States to which naturally his opponents in Parliament constantly refer as examples of how to preserve civil liberty qualities to which they are entirely foreign. If some one points out how personal freedom and freedom of speech and the press are inviolate under the U. S. Constitution, he promptly replies, "Yes, but you cannot understand a constitution unless you know how it works in actual practice," implying that the constitution in its phrasing may be quite faultless and may appear to leave no kind of loophole, and yet the executive may find ways to get round the constitutional provisions. He seems genuinely to believe that a Constitution like that of the United States which enshrines individual liberty in what appears to him to be an extreme form has survived for so long only because it is in fact not strictly adhered to.

Worse than Detention in U. S.!

Our readers know to what kind of shifts he was reduced when his critics pointed out in the discussion of the Preventive Detention Bill that in the United States habeas corpus cannot be suspended, even in the case of those who engage in subversive activities, except in conditions of a foreign invasion or an internal revolt, those conditions again being made subject to judicial tests. Mr. Rajagopalachari cannot for the life of him believe that guarantees of personal liberty so watertight as these can be other than purely nominal and that Governments in that country do not in times of difficulty dishonestly circumvent them. Led by this utter disbelief in the possibility of any country being more solicitous for civil liberty than India, he said when the article in the

U. S. Constitution relating to suspension of habeas corpus was brought to his notice: "That may well be the letter of the law; but its spirit is disclosed by the trial of the Communist leaders that is going on in that country for their subversive activities. Our Communists here would certainly prefer application of a law which openly allows detention without trial to being subjected to such trials as these." He suggested that the trial before Judge Medina was something like the trials of the so-called traitors in Soviet Russia! If only he knew that this was the most patient of trials ever recorded! Of this trial it has been authoritatively said: "The record discloses a judge, sorely tried for many months (as many as nine!) of turmoil, constantly provoked by useless bickering, exposed to offensive slights and insults, . . . who showed considerably greater self-control and forbearance than it is given to most judges to possess. As for any disposition to lean toward the side of the prosecution, we cannot find it in the record; his charges and his rulings were, if anything, too favourable to the defence." We know how Mr. Rajagopalachari's misrepresentation of the constitutional law of the United States brought down on his head a severe reprimand of such a universally respected personality as Mr. Roger Baldwin of the International League for the Rights of Man. (See p. 227 of the BULLETIN.) Yet Mr. Rajagopalachari made no amends for the unmerited aspersion he cast upon a great country. He sat back in his chair as if he had said nothing to injure his own reputation.

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Pre-Censorship in the United States!

On the occasion of the debate on the Press Bill he fell into an equally bad blunder. Critics of the Bill like Mr. Deshabandhu Gupta, President of the All-India Newspaper Editors' Conference, referred often in the course of the debate to the complete guarantee which the U. S. Constitution affords for Freedom of the Press. They pointed out that in the United States there is not only no separate law for the Press, but not even an ordinary law

restrictive of the right to a free Press can be applied; for if such a law were passed it would be declared unconstitutional by the courts. The limits of free speech were thus expressed by the Supreme Court in *American Communications Association v. Douds* (1950) 339 U. S. 382:

[The First] Amendment requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom.

The same doctrine was laid down by the Court in the *Communist leaders' case* (*Dennis v. United States*) this year. The Court said:

The rule we deduce from these cases is that where an offence is specified by a statute in non-speech and non-press terms, a conviction relying upon speech or press as evidence of violation may be sustained only when the speech or publication created a clear and present danger of attempting or accomplishing the prohibited crime.

What was poor Mr. Rajagopalachari to do when faced with a demand on the part of the Press that our Freedom of the Press be made as complete as that in the United States? Was he merely to plead that the conditions in India were peculiar which required muzzling of our Press? That would have been honest according to his belief, but of what use then would be his intellectual subtlety, making the worse reason appear the better, for which he is so famous in Congress circles? He therefore tried to get out of the difficulty by expressing a bland disbelief in the virtues of the First Amendment! He knows the real value of the Amendment! He said: Only this morning has come the news of President Truman imposing pre-censorship on newspapers by an executive order!

He referred of course to the order which the President signed on 25th September, applying to all Government departments the security regulations that have been in force for years in the Defence and State (i. e., External Affairs) departments. Extension in some form or other of such regulations has obviously become necessary, because all departments now handle national security data in considerable volume on account of the Korean war and the threat of Soviet imperialism. But the regulations are not directed against the Press at all; the Press is free to publish whatever information comes to its hands. The regulations are directed against spies who have already demonstrated that they could obtain vital wartime atomic secrets. In order to protect national defences from an enemy or a potential enemy, the administrative departments are now warned to withhold from the public "security information," the disclosure of which might weaken the country's defensive power. The U. S. Press is no doubt very critical of the new order because of the suppression, in which in the hands of over-

cautious officials it may result, of much of the information which, being essential to the appraisal of public policies, the people are entitled to have. In any case, the President's order has nothing to do with censorship, the Press not being involved in it at all; the only criticism to which it is open is that if administered by too timid and dyed in the wool officials the people would not be as fully informed on public affairs as so long they have been. The President himself made it clear that no kind of censorship was involved in his order. He said:

The American people have a fundamental right to information about their Government and there is no element of censorship, either direct or implied, in this order. The order applies only to officials and employees of the executive branch of the Government. The public is requested to co-operate, but is under no compulsion or threat or penalty to do so as a result of this order.

In a further clarification he said: "The recent executive order on classified information (the classification being top secret, secret, etc.) does not in any way alter the right of citizens to publish anything." Such an order Rajaji characterizes as an order of pre-censorship! It may be that he was ill-informed on the subject (though even he should know that censorship has always been repugnant to the American people ever since the founding of the Republic), but his habit of smelling something unworthy in the actions of countries held out as examples to India makes him naturally prone to look at things from a distorted angle.

It may be interesting to notice here that at its annual convention the Associated Press Managing Editors' Association passed a resolution on the President's order which, while recognising that the claims of complete information and absolute security are sometimes likely to conflict, said that the order was capable of being "a dangerous instrument of news suppression" and added (and this is particularly notable):

The threat is a dangerous one, but we have full confidence in the power of American newspapers to defeat it if every editor does his part.

Suppose the All-India Newspaper Editors' Conference passed a similar resolution on Rajaji's Act, saying: "This is a draconian law wholly unnecessary, but though passed in face of the unanimous opposition of the Press, the editors if they only knew how to set about doing it could well bring it to nought; and they should bring it to nought." We suppose Rajaji would at once start prosecuting every single member of that body under sec. 3 (i) of his Black Act, for instigating the Press to resort to "sabotage," and the definition he gave of "sabotage" would well enable him to do so. Then, in addition to whatever sentence the editors may personally have to undergo, all the newspapers which published the resolution, whatever their own views may be (for

"intent" is of no consequence), will be liable to be called upon to furnish security which may later be forfeited, and confiscation of the presses also may eventually follow! These terrible things have not yet fallen to the lot of the Associated Press in America or to newspapers like the "New York Times" which have not even expressed disapproval of the resolution while publishing it. But that is only because the United States, in the matter of Freedom of the Press as in that of Freedom of the Person, is a backward country!

Council of Europe's Charter of Individual Freedom

It is not only the United States which Rajaji makes a target of his attack, due may be merely to a misunderstanding of the real situation or possibly (though we do not make such an assumption) to a deliberate misrepresentation of known facts with a view to presenting his policies in a better light than they can really bear. He referred to art. 10 relating to Freedom of Expression in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms as if he could derive support for his Press Bill from that Charter. We have already dealt with this article in our last issue at p. 316 and shown how much better it is, by reason of the omission in it of restrictions in the interest of "public order," "friendly relations with foreign States," etc., than the amended art. 19(2) of our Constitution. Yet what is the interpretation that Rajaji puts upon this part of the Convention? He says that all the restrictions embodied in the Convention "are exactly (like)—no less nor more than—what have been incorporated in the amendments of the Constitution in art. 19, against which such a great agitation was led and which was described solemnly as an encroachment on freedom of expression. They are, again, no less nor more than what is incorporated in cl. 3 of my Bill" which defines "objectionable matter." How wide of the truth is his description of the Convention, and how devoid of foundation is his claim for the merits of his atrocious Press Bill! Assuming that there was no conscious attempt in his part to mislead Parliament, he might have reflected why, if the Convention is as he makes it out to be, Great Britain which is a party to the Convention opposed so fiercely the restriction of "public order" embodied in the International Covenant on Human Rights or took a leading part along with the United States in persuading the Social Committee of the Unesco in dropping the proposal to hold a conference of plenipotentiaries for the consideration of incorporating in the U. N. Convention on Freedom of Information a restriction corresponding to "friendly relations with foreign States." But, frankly, there is no arguing with Rajaji who instinctively believes that there can be no more progressive country than India and insists upon proving this even if the facts point in the contrary direction.

Misrepresentation of Press Laws Committee

He was equally unfortunate in his references to documents and personalities in this country. He referred to certain observations made by the Press Laws Enquiry Committee, 1948, about the difficulty of fixing personal responsibility in the matter of the Press, which is "the composite product of the joint efforts of several persons," in such a way as to lead his audience to believe that the Committee favoured imposition of the penalties of a deposit of security, etc., on offending journals such as are provided for in his Bill. Indeed, he said so. This extract shows, he observed, that "it is very necessary that we must discover a different weapon in dealing with offenders and not simply treat the Press as a part of the normal citizenship and say they must be governed by the ordinary law. . . . Therefore it is that here we propose that when objectionable matter of this kind has been indulged in, then security is ordered. Then, when a second offence is committed, forfeiture (of the security), wholly or in part, is provided for." Anyone would think from this reference to the Press Laws Enquiry Committee that the Committee had recommended the enactment of a special Press law providing for the taking of security from the Press. In fact their recommendation was just the contrary on the ground that "provision for the demand of security does not exist in the laws of progressive countries." After making such a recommendation, the Committee considered the suggestion made to them that "provision should be made in the law to vest courts of justice with power to order the closing down of a press for a specified period in case of repeated violation of the law by the Press," since forfeiture of a press would no longer be possible if their recommendation to repeal the 1931 Act were carried out. This suggestion was accepted by the Committee as a whole, but two distinguished journalist members of the Committee, the late Mr. Abdullah Brelvi, then editor of the "Bombay Chronicle," and Mr. K. Srinivasan, editor of the "Hindu," recorded their disapproval of the suggestion. Mr. Rajagopalachari could not have been unaware of this dissent and yet be referred to these members by name again and again and made it appear as if they too were in favour of the suggestion. If it were not improper to attribute motives one might say that Rajaji was disingenuous in claiming the moral authority of the Press Laws Committee, and particularly of Messrs. Brelvi and Srinivasan, for any of the reactionary proposals contained in his Bill.

Undying Glory!

Finally, he appealed to the members of Parliament to be brave enough to pass the Bill. If the United States had no separate Press law, it was only because that country was too backward to have it, but he had no doubt that "they too would have to provide separately for the Press"! "Let us do what is right," he said, "and I promise you will succeed. You will all get name, fame position, credit and glory." We do not know that even

Congress members thought when they assisted in putting the law on the statute book that they were doing something very glorious, but evidently Rajaji believes that he will achieve immortal glory as the author of an Act which,

in course of time, even the purblind U. S. A. will have enough vision to follow. Who can hereafter say that Rajaji takes final leave of politics after the passing of this measure unwept and unsung?

EXTENT OF RESTRICTIONS UNDER ART. 19 (2)

REPRESENTATION OF AICLC TO THE INDIA GOVERNMENT

The Assistant Secretary of the All-India Civil Liberties Council has written as follows to the Home Minister of the Government of India:

I am directed by the All-India Civil Liberties Council to address to you the following representation, passed by the Council at its meeting on 21st October 1951, on the subject of the amendments made in Clause (2) of Article 19 by the Constitution (First Amendment) Act.

2. When the Act was passed, it was urged by its critics that the new restrictions in the interest of maintenance of "public order" and "friendly relations with foreign States" and prevention of "incitement to an offence" which the Act allowed the legislatures to impose on the exercise of the right to Freedom of Speech and Expression which sub-Clause (a) of Clause (1) of Article 19 purports to guarantee were expressed in such vague and broad terms as to make the right liable to be abridged in conditions in which even Government would not like to see it curtailed; and that if the legislatures were empowered to lay on this basic right such comprehensive restraints as the amendments, literally interpreted, allowed, the right would for all practical purposes be deprived of all protection, rendering Article 19 (1) (a) almost nugatory.

3. The justice of this criticism was accepted in substance by all spokesmen of the Government who took part in the debate on the Constitution Amendment Act, viz., the Prime Minister of India, the Minister for Law and the Minister for Home Affairs. But a plea was put forward by them that the Act was merely an enabling measure which would only empower the legislatures to impose certain restrictions the imposition of which the Constitution as it then stood did not permit; that the Act would not come into force by itself but would require specific legislation for being brought into operation; and that although all the three phrases now introduced into Article 19 (2) as a basis for restricting free speech and press were too wide, and capable of permitting very far-reaching restrictions, their scope would be narrowed when legislation was adopted on any particular occasion to make the restrictions effective.

4. The reason then given for leaving the constitutional provisions in an extremely inexact and indeterminate state was far from convincing, but the reason contained a promise that the additional restrictions which the amendment of Article 19 (2) permitted would be given a closer and more restricted definition when any legislation concerning free speech and press was passed and this promise has so far remained unfulfilled.

5. It was expected that when a Press law was passed the promise made at the time of adopting the Constitution Amendment Act would be implemented and that the wide restrictions which the Act allowed would be reduced in scope. But this has not happened. That was possibly because none of the three expressions used in the amendment of Article 19(2) are employed in the Press law. But it has to be noted that in clause 3 (iii) of the bill which has now become law under the title of the Press (Objectionable Matter) Act the phrase "the maintenance of public order" occurred, and yet no attempt was made at the time to limit the meaning of "public order," though the phrase has now come to be deleted from the law.

6. However, a law has now been passed in West Bengal which uses all the three expressions, viz., "public order," "friendly relations with foreign States" and "incitement to an offence," without giving any more definite and restricted connotation to them than they bore in the Constitution Amendment Act. This is the West Bengal Security (Amendment) Act, 1951. In it the definition of a "prejudicial report," which is made the basis of preventing "subversive acts," has been enormously widened by using all these expressions. A "prejudicial report" would now mean

any report, statement or visible representation which prejudicially affects or which tends to impair the interests of the security of the State, *public order*, decency or morality, the *friendly relations with any foreign State*, or which incites or tends to *incite the commission of any offence*.

It would be seen from the italicised words in the above definition that although full advantage has been taken by the Government of West Bengal to introduce all the restrictions which the amended Article 19 (2) allows, no steps have been taken to give them a narrower scope in accordance with the promise of the Government of India. The Chief Minister of West Bengal seems to have felt that he was obligated by the amendment of Article 19 (2) to introduce all these phrases in the widest sense which it is possible to attach to them in the Security Act. This was the explanation that he offered to the legislature.

7. It cannot be that the promise of the Government of India was meant to apply to legislation of the central legislature alone. The All-India Civil Liberties Council believes that the promise implied that the Government of India would issue a kind of directive to all local Governments to see that when by virtue of Article 19 (2), as amended, additional restrictions are sought to be

imposed on freedom of expression the restrictions would not be as extensive as the letter of the Article allows but that their scope would be limited as far as that could reasonably be done. If this belief is not entirely ill-founded, the Council would respectfully suggest that the Government of India do whatever may be appropriate within the limits of its constitutional power to ensure that the Government of West Bengal re-amends its Security Act at an early date with a view to defining a "prejudicial report" in narrower terms.

8. Even if the legislatures exercised the power conferred upon them by the amendment of Article 19 (2) in the right way and passed laws of an unexceptionable nature, the right to free speech and press would only be a right statutorily protected and it would still lack constitutional protection inasmuch as the laws would be capable of being altered for the worse subsequently. If such alterations are effected, the validity of the laws could not be challenged on the ground that they are contrary to the provisions of the Constitution. Where restrictions allowed by the Constitution are confessedly broader than what statutes are expected to impose, the constitutional guarantee necessarily ceases. Such is the inevitable consequence of the Constitution Amendment Act in respect of the right to Freedom of Speech and Expression. But at the present time this cannot be averted. It is, however, possible within the limits of the Constitution Amendment Act to see that no unnecessary and unreasonable restrictions are laid in statutes upon this right, and it is the purpose of the present representation to make an appeal to the Government of India to take whatever measures it is open to it to take for the purpose of ensuring that such restrictions are in practice not imposed by any of the local Governments.

9. The All-India Civil Liberties Council would feel obliged if they could be informed whether the Government of India would take the kind of action that is herein suggested.

SPECIAL ARTICLE

THE REFERENDUM IN AUSTRALIA Power to Outlaw the Communists Denied

The Australian Government's proposal to empower Parliament to outlaw the Communist Party was defeated in a referendum held on 22nd September. It will be recalled that the Menzies Government's Communist Party Dissolution Act was declared by the High Court, when its validity was challenged in March last, to be beyond the legislative power of the Commonwealth. Thereupon Mr. Menzies dissolved both Houses of Parliament and in the election that followed in April he was returned to power with a majority in both Houses and the election might be said to have given him a mandate to deal with the Communists along the lines of the invalidated Act. In order to avoid a constitutional

amendment for the purpose of validating the Act, Mr. Menzies first tried to persuade the states to cede to the federal legislature the power, which they possess, of outlawing the Communists, but having failed in this he was compelled to go to the people in a referendum asking that the Constitution be so amended as to give to the Commonwealth Parliament the power which the highest judicial authority had ruled that the Parliament did not possess. For a referendum to be successful, two conditions must be fulfilled: 1. that a majority of the electors in the country as a whole must be in favour of the proposal; and 2. that a majority of the electors in a majority of the states (i. e., in at least four out of the six states) must also be in favour of the proposal. In fact, however, neither of these conditions was satisfied as a result of the referendum held recently, which means that the country does not want to give to the Commonwealth Parliament the kind of blanket power which Mr. Menzies sought.

The main points in the High Court's decision were that:

- (i) In time of peace an act to dissolve bodies or exclude persons from office because the Parliament thinks their existence or conduct is prejudicial to defence cannot be justified under the defence power; it is for the court to decide that question.
- (ii) In time of war, and possibly when the danger of war is imminent, an act which did these things, as the Communist Party Dissolution Act did, could be justified under the defence power.
- (iii) The court, and not the Parliament or the Government, must be the final judge both of the existence and the degree of the danger and of the necessity of the measures adopted to meet it.

This decision, it will be noted, corresponds exactly to the legal position which arises in the United States when Congress suspends habeas corpus, for instance; the court in such a case is the final judge of whether in fact the public safety was endangered by rebellion or invasion and required suspension.

Mr. Menzies, by his proposal for a constitutional amendment, desired to take away this power from the High Court and vest it in the Parliament and the Government. The amendment put by him to the electorate was the addition of the following provision to art. 51 of the Constitution which defines the legislative power of the Commonwealth:

The Parliament shall have power to make such laws for the peace, order and good government of the Commonwealth with respect to Communists or Communism as the Parliament considers to be necessary or expedient for the defence or security of the Commonwealth or for the execution or maintenance of this Constitution or of the laws of the Commonwealth.

Thus, although the Government would have to satisfy the court that the law was in truth a law on the subject of Communists or Communism, the judgment of the relationship between that law and national defence and security would be that of Parliament and not the court. Another part of the proposed amendment expressly referred to the Communist Party Dissolution Act invalidated by the High Court and said that the Parliament would have the power to re-enact that Act as a valid measure and even to amend it in any way that the Parliament liked.

How extensive the power is which the amendment would have given will be realized when it is remembered that the amendment does not define Communists or Communism at all even in the loose way in which the nullified Act had done. In the Act a "Communist" was defined to include anyone who supports Communist "objectives" or "policies," and sec. 5 of the Act gave power to the executive to ban any organization whose policy is "substantially influenced" by "Communists" in the very wide connotation given to the term in the Act. The power could thus be used against bodies and persons not truly Communist in the least; it could be employed to suppress the whole labour and genuinely socialist movements, as the Parliament was to be the final arbiter of what is necessary and expedient and the jurisdiction of the High Court was to be out out. Further, the 1950 Act had at any rate excluded the registered trade unions from its operation; but the power to alter the Act which the amendment proposed to give was capable of being used to remove even this exemption. Similarly under the Act of last year some kind of court review was open to declared persons or bodies, though the onus of proof was placed by the Act, not on the Government, but on the declared persons or bodies. But a revised Act might abolish all court review and yet it would not be liable to be challenged in the High Court.

The Labour Party opposed the amendment tooth and nail. Not that it has any covert sympathy with the Communist Party, but it holds that such an amendment which involves the by-passing of the judicial organs and allowing the executive in place of them to decide the facts in any particular case is wrong in principle and, besides, is wholly unnecessary. The existing laws of Australia provide fully for the prosecution and punishment of every form of seditious enterprise and conspiracy and of all kinds of sabotage. The Crimes Act further allows the Government to declare the Communist Party unlawful on the ground that it advocates the overthrow of the Constitution by force or violence. But the Government does not bring the Act into operation because when proceedings are taken under it the facts must be brought before the court and it must be proved by evidence that the people in question do advocate the forcible overthrow of the Constitution. In the United States such action was taken against eleven Communist leaders under the Smith Act, but there the Government had to prove that the accused were guilty of the offences

with which they stood charged. However, in Australia, instead of having recourse to the due process of law, an attempt was made by the proposed amendment to circumvent the jurisdiction of the High Court as the interpreter of the Constitution. To this the Labour Party was strongly opposed. Dr. Evatt described the amendment as follows:

It is totalitarianism. It is fascist in spirit and a definite step towards the police State. It will cut a link between this country and the basic features of British law and jurisprudence.

It was very fortunate that the Australian people by decisively rejecting the amendment, have yet kept Australia among the democratic nations of the world.

COMMENTS

Rajaji's Parting Greek Gift !

POWER BEGETS RESPONSIBILITY

A remark that Mr. Harry Haig, who as Home Member of the Government of India was in charge of the bill which in 1932 sought to renew and extend the provisions of the Press (Emergency Powers) Act of 1931, made in defending the measure in the legislature is very pertinent to the Press Act of Mr. Rajagopalachari. There was fierce opposition to the Bill on the part of non-official members, who, finding that all their resistance was fruitless, said: "Why do Government insist on taking these powers? Political freedom is soon going to be conceded to India, and the very drastic powers that the present rulers are taking to themselves by this Bill will then devolve on us. We shall certainly be able to administer the country without recourse to any such powers. They are required now because the Government is foreign. They will not be required at all when the people of this country come into their own. And the first thing we shall do on the attainment of self-government is to repeal this most obnoxious legislation." Mr. Haig was very humble. He answered: "We are undoubtedly taking extraordinary powers which are repugnant to the traditions of the British people who have always believed that there should be no separate legislation to govern the Press. We still ask for these powers because the conditions in India at present are very abnormal, and we ask for them because, in our view which is sincerely held, they will be urgently needed for a short time. Do let us take them; you may depend upon it, we shall use them with the utmost self-restraint, always taking care that no freedom of criticism is ever arbitrarily or wantonly curtailed. As for the future, it will be on the lap of the gods. You on acquiring independence will perhaps be able to dispense with these powers. No one will rejoice more than we if you find it possible to put this Press Act on the discard. I hope you will do so." But he had his doubts and added slyly:

It is surely a commonplace of experience that those who speak very scathingly and drastically in opposition very often change their minds when they come into positions of responsibility. . . . *Responsibility moulds opinions in unexpected ways.*

How prophetic was this remark! Self-rule does not necessarily mean giving up autocratic powers; democracy is something deeper than mere nationalism; a foreign government which has democracy in its blood may in fact be more lenient in its dealings with the people it governs than indigenous rule. In 1932 the conditions in the country were without a doubt very anxious and disturbing. Now the conditions are normal, and yet the edge of the sense of responsibility of our new rulers who have the same blood in their veins as we is so keen that they go and enact a measure which is surely no less drastic than that of the alien Government which they were so vociferous in condemning! Rajaji has made a veritable Greek gift to us before retiring from politics!

Government's Contempt for the Press

We wish to draw prominent attention to the Commonwealth Press Union's Declaration on Freedom of the Press printed on the first page of this issue. It is no doubt a profession of faith by a Press organization alone, but it is one to the broad principles of which the Government in England is already traditionally committed.

That the Press should be subject only to a "generally applicable" statute law and that there should be no special legislation to govern the Press is a principle that has been invariably adhered to in that country for at least two hundred and fifty years, and thus this is not an aspiration of the Press which is yet to be fulfilled.

The Press Union says in the Declaration that "no separate limitations of the exercise by the Press of the rights of the individual are necessary or tolerable except during declared national emergencies." This again is a principle to which the British Government will not have the slightest hesitation in agreeing. The operative part of the Press Union's demand in this respect consists in this, that "such restriction (to be enforced in a period of grave national emergency) should be textually agreed in advance between the Government and appropriate Press organizations." In this matter also the British Government will find little difficulty in agreeing, it shows such respect for the Press and values its co-operation so much.

Here the contrast between the British Government and the present Indian Government is the most striking. The All-India Newspaper Editors' Conference has by the great influence it wields over the entire Press and the sense of responsibility it has uniformly shown in its dealings with Authority ever since it came into existence acquired such a position that the least that one would have expected the Nehru Government to do was to consult this body before formulating its proposals for a drastic law (intended as a permanent peace-time measure to govern the Press alone). But the Commonwealth Press Union

would be shocked to learn that the Government refused to show the Press Bill to this body even a day before it was made available to members of Parliament, not to speak of seeking its approval thereof.

The entire Press was strenuously opposed to the Bill, but Mr. Rajagopalachari thought nothing of it. He coolly remarked that the opinion that found expression in the Press was manufactured; it was "steam-rolled." To consult the Press on a Press law, he declared, was like consulting license-holders on the question of Prohibition. He knew exactly what the Press would say, and he had already made up his mind to disregard it and go forward in putting a tight bridle in its mouth as the source of infinite mischief. No Government ever showed itself to be more contemptuous of the chief instrument for making democracy effective than has the Nehru Government.

"Thoughts We Hate must be Allowed"

In the address delivered by Mr. Paul G. Hoffman, former director of the Economic Co-operation Administration in the United States, when receiving the Freedom House Award on 7th October, said:

If we want to assert the free nature of man and strengthen our free society, we must insist that within the law of libel and slander the unlimited right to criticize must be maintained. This right is meaningless unless it extends to the thoughts with which we disagree,—in the words of a great Chief Justice of the United States, freedom for the thoughts we hate.

I, for example, disagree most intensely with The Daily Worker's tagging of every opponent as a Fascist. I also disagree intensely with those who make reckless charges of Communist sympathies. But I would not for a moment suppress these irresponsible critics. They must not be suppressed. They must be answered.

Amendment of the Bengal Safety Act

EFFECT OF AMENDED ARTICLE 19 (2) SEEN

The effect of the additional restrictions which art. 19 (2) of the Constitution as recently amended enables the legislatures to impose on freedom of expression is seen in the amendment introduced in West Bengal's Security (Amendment) Act. It was said when art. 19 (2) was amended that the expressions "public order," etc., added to the article, though too wide in their scope, would be given a narrower definition when any legislation based on the amended article is passed. But the Bengal Act that has now been amended reproduces these expressions without narrowing their scope in any way.

Sec. 2 of the Act as it stood previously to this amendment defined "a prejudicial report" as a report which incites to a subversive act, i. e., an act likely to endanger the safety of the State, etc. Now the definition has been widened so as to bring in all the restrictions allowed by the amended art. 19 (2). "A prejudicial report" would now mean a report

which prejudicially affects or which tends to impair the interests of the security of the State, public order, decency or morality, the friendly relations with any foreign State, or which incites or tends to incite the commission of any offence.

Since the Government of India has already admitted that "public order," "friendly relations with foreign States," and "incitement to an offence," as a basis for limitations on freedom of expression, are too vague and too broad, it will have to admit that the Bengal Security Act, as now amended, will impose unjustifiably broad limitations on the right of free speech and press.

In one respect the amended Bengal Act is an improvement. It provides for an Advisory Board to examine every order passed under the Act imposing restrictions on movements, such as externment, internment, etc. This amendment had become necessary due to the declaration of sections 21 and 22 of the Act to be ultra vires of the Constitution by the Calcutta High Court on 13th October last (vide BULLETIN, p.170). The Advisory Board, now provided, will have at least two persons appointed on it who are qualified to become Judges of the High Court, or an ex-Judge or a sitting Judge. One month's time limit has been allowed to the Board to make their recommendations to the State Government, which would be binding on the latter. The Act makes it incumbent upon the State Government to furnish the Advisory Board with all the information that they might require for the proper consideration of cases referred to them. The Government cannot refuse to disclose to the Board facts which it considers to be against public interest to disclose. In cases of detention, Government is under no such legal obligation of furnishing all information including even that which it considers dangerous to disclose. But the restrictions on movements that Safety Acts contemplate are of a minor character, and therefore the Government of West Bengal is willing to assume the obligation of holding back nothing in supplying information to the Advisory Board. The Bengal Act further provides for a maximum period of six months for continuance of the restrictive orders, though of course they are capable of being renewed.

Release of Communist Detenus on Parole

TO ENABLE THEM TO PARTICIPLE IN ELECTIONS

The Madras Government has taken an important decision which will contribute greatly to making the ensuing general elections in the state fair and free. In the first place it has relaxed the conditions governing parole and in the second place it has decided to release on a four-month parole Communist detenus in the state, the chief condition of the parole being that they will not take part in "subversive activities." The object is to enable Communists who are held in detention to take part in the forthcoming elections. The Chief Minister stated at a

press conference that the Government's decision did not mean a general release of Communist detenus; individual cases would be examined with a view to release and those detenus would be set at liberty whose detention was found to be no longer required in the interest of public order. This is a very wise step on which we must congratulate the Government. We have no doubt that what this state Government has found it possible to do, other state Governments also can do. In the absence of such a measure the Communist Party would obtain much less representation in the legislatures than what is its due, and whatever one may think of Communist politics, it is essential to the working of democracy that all opinions should be properly represented in policy-making bodies. In order to ensure such a result Governments should be prepared to take some risk.

Punjab's Public Safety Act

The East Punjab Public Safety Act of 1949 having expired, the President of the Indian Republic promulgated the Punjab (Security of the State) Act for the purpose of safeguarding the safety and welfare of the Punjab and of India, and Parliament passed a resolution on the subject on 28th September, notwithstanding the opposition of some members like Sardar Hukum Singh and Mr. R. Velayudhan. The Act will remain in operation till 12th September 1953. Like the Public Safety Acts in other states, it imposes certain penalties for sabotage or attempt of sabotage, both of which are defined; gives power to the Government to prohibit "quasi-military organizations," any form of unauthorized military "drilling" by civilians and the wearing and display of uniforms and flags associated with "unlawful organizations;" permits the State authorities to prohibit meetings and processions; restricts the movements of persons in the interests of the security of the State or the maintenance of public order and imposes collective fines in "dangerously disturbed areas." It also considerably widens the list of essential services interference with which is tantamount to sabotage.

Punitive Police in Bombay

It was stated in the Bombay Legislative Assembly on 7th September in answer to an interpellation that last year the State Government had employed punitive police in 19 villages. Of these 17 were in Ahmednagar district and a fine of Rs. 1,27,000 was imposed on them. It was said that these villages were placed in "a disturbed and dangerous state" on account of widespread subversive and violent Communist activities. It was also found that a majority of the people of these villages were actively aiding the Communists in all possible ways in their subversive and violent activities and also suppressing evidence against the offenders.

**Suppression of Freedom of the Press
IN CENTRALLY ADMINISTERED AREAS**

In a statement laid on the table of Parliament on 11th October, information was given to the effect that in centrally administered areas, i. e., in areas under the direct control of the Government of India, pre-censorship was imposed on 20 newspapers since 15th August 1947, on which day India became independent. During this period security was demanded from 158 newspapers and forfeited in the case of four of them. Moreover, action was taken against 41 newspapers during this period.

**VALIDITY OF CONSTITUTIONAL
AMENDMENT UPHELD**

Zamindari Acts held Constitutional

A constitution bench of the Supreme Court presided over by the Chief Justice, Mr. Kania, on 5th October declared by a unanimous judgment that the Constitution (First Amendment) Act of 1951, passed by Parliament on 2nd June and assented to by the President on 8th June, was valid and constitutional.

The amendment purported to insert, inter alia, articles 31 (a) and 31 (b) in the Constitution which affect the property rights of landlords inasmuch as they seek to validate certain State Acts, namely, the Bihar Land Reforms Act 1950, the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950, and the Madhya Pradesh Abolition of Proprietary Act 1950.

The High Court at Patna had declared that the Bihar Act was ultra vires the State legislature. The High Courts at Allahabad and Nagpur had declared the corresponding legislations to be good in law.

The effect of the amendment in the Constitution is that the Acts, regardless of judicial decisions, have been validated.

The constitutionality of the amendment came to be examined by Their Lordships in connection with the petitions of Mr. Shankar Prasad Singh Deo of Bihar, Maharaja Pateshwary Prasad Singh of Uttar Pradesh and Mr. Visheshwar Rao of Madhya Pradesh, under article 32 of the Constitution for a declaration that the amendment to the Constitution was void as it sought to infringe the fundamental rights guaranteed to the citizens of India.

It had been argued at the bar that the amendment was unconstitutional as, under article 368 of the Constitution, it was the two Houses of Parliament as a designated body and not the present uni-cameral Parliament which was competent to bring about the amendment.

Secondly, it was contended that the Provisional Parliament under article 379 of the Constitution was not competent to bring about the amendment as the words "all the powers conferred by the provisions of this Constitution on Parliament" could refer only to such powers as are

capable of being exercised by the Provisional Parliament consisting of a single Chamber.

Thirdly, it was argued that the Constitution (Removal of Difficulties) Order made by the President on January 26, 1950, in so far as it purported to adapt article 368 by omitting "either House of" and "in such House" and substituting "Parliament" for "that House" was beyond the powers conferred on him by article 392 as "any difficulties" sought to be removed by adaptation under that article must be difficulties in the actual working of the Constitution during the period of transition. No such difficulty could possibly have been experienced on the very date of the commencement of the Constitution.

It was contended that article 368 which provided the machinery for amendment was a complete code unto itself where it was provided that the Bill must be passed as introduced. The Bill in the present case having been admittedly amended in several particulars during its passage through the House, the Amendment Act could not be said to have been passed in conformity with the procedure prescribed in article 368.

It was further argued that the Amendment Act in so far as it purported to abridge the rights conferred by Part III of the Constitution fell within the prohibition of article 13 (2) and, lastly, that the new articles 31 (a) and 31 (b) which sought to make changes in articles 132 and 136 and article 226, required ratification in terms of clause (b) of the proviso to article 368. They were also ultra vires because they were the subject matters of the articles occurring in the State Legislative List, and Parliament therefore had no power to enact them.

Their Lordships held that the Provisional Parliament was competent to pass the amendment because the words "all the powers" occurring in article 379 amply empowered it to do so.

On the argument on the President's powers under article 392 (1) of the Constitution, Their Lordships held that the adaptation of article 368 by the President was valid as there was nothing in article 392 to suggest that the President should wait before adapting a particular article till an occasion actually arose from the Provisional Parliament to exercise the power conferred by that article.

On the argument under article 13 (2) of the Constitution, Their Lordships found that it was difficult, in the absence of a clear indication to the contrary, to suppose that the Constitution-makers intended to make the fundamental rights in Part III immune from constitutional amendments. "Law" in article 13 (2), Their Lordships observed, could not mean amendments to the Constitution.

On articles 31 (a) and (b) which deprive Courts of the power to examine certain Acts, Their Lordships held that no ratification was necessary as, apart from what effect the new articles had, they did not bring about any changes in articles 226, 132 and 136 of the Constitution.

On the argument that the new articles could only be enacted by State legislatures. Their Lordships held that the articles being essentially amendments to the Constitution, Parliament alone had the right to enact them.

HABEAS CORPUS PETITIONS

Privileges of M. L. A s Under Detention

Previous to his application for a writ of habeas corpus, Mr. K. Anandan Nambiar, a Communist member of the Madras Legislative Assembly under detention in the Cuddalore jail, petitioned the Madras High Court on two points. In his petition Mr. Nambiar had stated that several letters of his to the Speaker of the Assembly and the Chairman of the Committee of Privileges had been withheld by Government and prayed for an order that his privilege as a member of the Assembly to correspond freely with these officials be recognised and his letters be allowed to reach their destination without let or hindrance. It was admitted by the Government of Madras that Mr. Nambiar's letters had been withheld. Making use of the power conferred upon High Courts by art. 226 (1) of the Constitution to issue writs for the enforcement of fundamental rights "and for any other purpose," a division bench of the High Court on 11th September granted Mr. Nambiar's prayer. The judges said :

We declare that it is the right of the petitioner as a member of the Assembly to correspond without let or hindrance with the Speaker and the Chairman of the Committee of Privileges through the Secretary of the legislature during his period of detention. We issue a writ by way of mandamus directing the Chief Secretary to the Government and the Superintendent of the Cuddalore Central Jail to forward to the House any letter by the petitioner held up on executive orders so that the Assembly may deal with it in accordance with parliamentary practice in England, by which the legislature is bound. In other respects, we dismiss the petition.

The petitioner's other prayer was however refused, viz., for a writ directing the Government to allow him to attend the sittings of the legislature under escort. Mr. Justice Mack said :

The position both for the petitioner and his electorate has no doubt been most unfortunate, but that in itself can give the petitioner no legal right to the relief which he now seeks, to attend the legislature while under detention.

Once a member of the Assembly is lawfully detained, though without any trial, under the Preventive Detention Act, there can be no doubt that, under the law as it stands, he cannot be permitted to attend sittings of the House. A declaration by us that he is entitled to do so under armed escort is out of the question.

"Readily conceding" the petitioner's contention that if the party in power detained a political opponent with the mala fide object of stifling opposition, there would be an undermining of the Constitution, Mr. Justice Mack however pointed out that the contention was "wholly irrelevant" for the purposes of the present petition, which proceeded on the basis that the detention was lawful, bonafide and for proper grounds. He said :

The framers of the Constitution could never have contemplated the High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals, supervising, criticising, modifying, or cancelling actions and orders of the different departments of executive authority, institutions and public bodies and, last but not least, the legislatures as regards their internal affairs which are controlled by the Speaker of the House and its committees. It is only in exceptional cases that writs under these very wide powers for "any other purpose" can in our opinion be issued.

Communist Detenus Released

JURISDICTION OF HIGH COURTS IN DETENTION CASES

When the habeas corpus petitions of Mr. Nambiar and another Communist M.L.A., Mr. P. Venkateswaralu, with that of Mr. M. R. Venkataraman, Secretary of the Tamil Nad Provincial Committee of the Communist Party, came on for hearing, a division bench of the Madras High Court consisting of Mr. Justice Mack and Mr. Justice Somasundaram on 24th September allowed all the three petitions and ordered the petitioners to be released from detention, for the reason that the grounds adduced were irrelevant for the purposes of further detention. Their Lordships delivered separate but concurring judgments.

The petitioners were arrested and detained under the Maintenance of Public Order Act in 1948. Their detention was continued under the Preventive Detention Act IV of 1950 and again under the Preventive Detention (Amendment) Act IV of 1951. They had filed habeas corpus petitions in the High Court without success since their first arrest. They now sought under the present petitions to challenge the validity of their continued detention under Act IV of 1951.

Mr. Justice Mack, in the course of his judgment, observed that the scope of their jurisdiction as a habeas corpus Bench dealing with the detenus' continued detention under Act IV of 1950, had been sought to be narrowly restricted by the Advocate-General. According to him, as Their Lordships understood his arguments, they could only interfere and release a detenu if, after considering each ground of detention separately, they found it irrelevant for the purposes of detention, and that they were precluded from going into the sufficiency and adequacy of the grounds. That might be so, His Lordship stated, in

considering the validity of the grounds under the Maintenance of Public Order Act or even the Preventive Detention Act of 1950.

SCOPE OF ARTICLE 226

"But," His Lordship observed, "we are wholly unable to accept these fetters on our jurisdiction in the light of article 226 of the Constitution. If we accept the limitations the Advocate-General seeks to impose upon us, we shall be rendered powerless and helpless as a habeas corpus Bench to intervene not only in these cases, but in any case at all." His Lordship added: "Now, in 1951, we, of course, have no hesitation in holding that the detention of these detenus was on grounds good in law in 1948 and we are, in fact, precluded in the case of these petitioners, in view of the dismissal of their habeas corpus petitions, now from looking into those grounds to see whether they were good or bad in the context of 1948 or 1949."

Proceeding, His Lordship observed that Mr. Mohan Kumaramangalam, counsel for two of the petitioners, urged that the Bench of this Court, under the Act of 1951 had as wide discretion as that conferred statutorily on an Advisory Board to order release, if in its opinion there was no sufficient cause for detention or further detention. He contended that an Advisory Board was a tribunal under the superintendence of the High Court under article 227 of the Constitution and that under that article, read with article 226, the High Court could and should intervene in suitable cases within the scope of the Board's statutory discretion.

POWERS OF ADVISORY BOARD

In some sense, His Lordship stated the Board was a tribunal clothed with the widest powers. It was also substantially, by virtue of its composition, a judicial assembly on which absolute reliance could be placed to exercise those wide powers judicially. It had only some features of a judicial tribunal. No detenu or advocate on his behalf could claim a right to be heard before it. It could only at its discretion accord such a right. It might be defined as a quasi-judicial body to which had been delegated, statutorily, authority of wide executive discretion to be exercised judicially so far as possible. His Lordship continued:

At the same time, we are quite unable to accept the position that Parliament, when it enacted Act IV of 1951, intended to emasculate the High Court of all powers in connection with these old detenus. The Act, as regards this, is eloquently silent and, in fact, it could not, under the Constitution, make any attempt to limit the powers of the High Court under article 226 in this connection. Nor can we think that it was, in any event, the intention of the legislature to confer powers on an Advisory Board which cannot, in appropriate cases, be exercised by a habeas corpus Bench after a full hearing of the detenu and his

representations. If, for instance, an Advisory Board failed to perform its statutory duty of reporting a case within the ten weeks prescribed and the detenu applied to us for release, would we have to grant it solely on the ground of the statutory violation? We feel we will not be justified in doing so and that the duty and responsibility will devolve on us to give the detenu a personal hearing and see whether it is a fit case for release from detention. We have felt that the failure of the Government to insert in the new order of detention a clause that the detenu had a right of representation to the Advisory Board was not in accordance with the principles of natural justice. But we, certainly, do not propose to make this a technical or legal ground for an omnibus release of all detenus.

We have set out these difficulties in the way of any precise determination of the scope of our jurisdiction in these cases and think that they can only be resolved by our bringing into play such reserve powers as are vested in the High Court under the Constitution as may be necessary to afford equity and justice on which the Constitution is founded. We have abandoned our quest for any legal theory by which our jurisdiction can be precisely defined or fettered or exercised, and decided to invoke commonsense, the quintessence of which is, or should be, law, though, unfortunately, it cannot always be embodied in any rigid legal theory.

We think that in view of what we have said we, clearly, have jurisdiction, which we propose to exercise in appropriate cases, of releasing detenus if, on an examination of the original grounds of detention in the light of their representations and in the context of Act IV of 1951, we find them irrelevant for the purpose of further detention; in other words, if we consider that they are fit cases for release.

GROUND OF DETENTION ANALYSED

His Lordship next analysed the grounds of detention in the cases of petitioners and said that there were two grounds which were common. The main one, which was really the foundation of preventive detention, was that the Communist Party, though banned by the Criminal Law Amendment Act of 1949, had underground Communists all over the State still indulging in subversive activities such as loot, arson, murder, etc. The ban on the Party had since been removed—the Criminal Law Amendment Act in this connection having been declared ultra vires—though that fact had been omitted in the grounds of detention. There could be no doubt as regards subversive activities which had convulsed some areas in the State and crimes committed particularly in 1948 and 1949, which were in evidence in cases coming up for Their Lordships' disposal. "The petitioners before us," His Lordship observed, "have proclaimed their belief in non-violence and disclaimed connection with these terrorist activities."

The second common ground in the present and in practically all the other petitions of other detenus released, His Lordship said, was that they were involved in rioting and disorder which broke out in August, 1948, in Vellore Jail where Mr. Anandan Nambiar was detained and also in Cuddalore Jail in August, 1949, where Mr. M. R. Venkataraman and Mr. P. Venkateswaralu were detained. The resulting criminal cases were admittedly withdrawn. That being a ground common to many detenus who had been unconditionally released, His Lordship stated he considered it was now irrelevant for the purpose of further detention.

Taking up first the case of Mr. Venkateswaralu, His Lordship said, it was stated that he had made several speeches since 1945, very critical of the policy of administration of the Government and the administration of the police. He was stated to have fomented unrest among kisans and labour in the State. None of those grounds contained any allegation of either violence or direct incitement to violence. It was difficult to hold that those speeches were outside the ambit of legitimate freedom of speech accorded by the Constitution and the grounds were irrelevant for the purpose of further detention. Mr. Anandan Nambiar was described, in the grounds dated March 16, 1950, as a leading Communist bringing about intemperate agitation among the railway workers and promoting strikes with the ultimate object of bringing about chaos. He was stated to have brought about the general strike on the South Indian Railway in April, 1946. His Lordship observed that the grounds taken as a whole were now irrelevant for the purpose of further detention. Mr. Venkataraman was described as a top-ranking Communist, who was in May, 1941, sentenced to 18 months' rigorous imprisonment for being in possession of prejudicial literature, and released in July, 1942 consequent on the lifting of the ban on the Party. He became the Secretary of the Tamil Nad Communist Party in 1945, and in 1946 he was stated to have guided and assisted the South Indian Railway workers at all stages of their strike. There was a general indictment that, with other Communists in the State, he was charged with responsibility for many violent acts, including murder and rioting, which took place at Madurai during 1947. In his representations, Mr. Venkataraman had stated that he was one of the 100 accused charged in the case in that connection and that the case against him and 30 others had been withdrawn.

" GROUNDS IRRELEVANT FOR CONTINUED DETENTION "

"In connection with this ground," His Lordship observed, "we certainly think that the result of any case against him should have been disclosed and the non-disclosure does expose the Government to criticism for suppression of facts relevant to grounds favourable to the detenu." His Lordship observed that he could see nothing in the grounds, subsequent to his release in 1947, even

suggesting any act of violence or incitement to violence and that he found in this case also that the grounds, put in the context of to-day, were irrelevant for the purpose of further detention.

Concluding the judgment, His Lordship said :

In conclusion, we desire to say that we have been favourably impressed with the moderation, restraint and straightforwardness with which the petitioners have made their representations to us. We do not think the freedoms of the Constitution have been teacherously invoked by them to obtain freedom to subvert it by violent and subversive means. We are on the threshold of the greatest democratic experiment in human history, the first free election based on universal suffrage under our Constitution affecting more than 300 million people. We must have faith in the electorates' allegiance to the Constitution and that they will not return to Parliament and to the Assemblies members who are likely to undermine it and the security of the State and the maintenance of public order by violent and lawless means. We think that the two M.L.A. petitioners should have their liberty to implement the assurance of their belief in non-violence they have made before us by similar disclaimers on public platforms and to face the new electorates who should now exercise their right and take their responsibility for passing judgment on them as on all other M.L.A.s seeking election.

In the result, His Lordship stated, "We release the three petitioners who are present in the court from further detention and set them at liberty."

His Lordship Mr. Justice Somasundaram, agreeing with the judgment of Mr. Justice Mack, observed that he did not think it was legally open to them to go into the petitioners' original grounds of detention which the Supreme Court had, in the cases of Messrs. Venkateswaralu and Venkataraman, held to be valid. His learned brother had, however, analysed them in order to consider whether those were appropriate cases in which the Court should exercise its reserve powers under article 226 of the Constitution. Even without such analysis he (Mr. Justice Mack) had given in his judgment sufficient other cogent reasons for the release of the petitioners with which, His Lordship Mr. Somasundaram said, he was in complete agreement.

Punjab Detenus Released

A division bench of the Supreme Court presided over by the Chief Justice, Mr. Harilal Kania, ordered on 28th September the release of seven Communist detenus of the Punjab on habeas corpus petitions.

One of the petitioners was Sardar Niranjan Singh. He was arrested at Gurdaspur on 26th January 1950 under sec. 3 of the Punjab Public Safety Act. The rule on his petition was issued on 4th September last, but when the petition came on for hearing, the Advocate-General of the

Punjab informed the Court that the State Government had issued on 14th September a fresh order furnishing him with another ground of detention to cure the defects of the grounds supplied previously. Thereupon the Chief Justice observed that such a practice was not permissible. "Don't you realise what would happen if this practice is allowed? Every time the Court comes to the conclusion that the grounds of detention are bad and issues rule, the Government will issue a fresh order. This cannot be allowed," the Chief Justice remarked.

The Advocate-General pointed out, however, that the State Government was competent to pass a fresh order whenever it was satisfied that it was necessary in the interest of the maintenance of public order.

The Chief Justice remarked that the Simla Government should apply its mind to the law as declared by the Supreme Court. The administrative machinery needed looking into very much.

The Advocate-General submitted, however, that the State Government applied its mind carefully at every stage. It issued a fresh order of detention only after it was satisfied that the detenu must be kept under detention and that the original order could not be sustained.

The Judges, however, asked what the legal advisers of the Punjab Government were doing. Why were the grounds of detention given to the detenus four and half months after their arrest?

Allowing the petition, Their Lordships observed: "There is no attempt made to justify the delay in serving the grounds of detention. There is, therefore, an infringement of a fundamental right. The petitioner is ordered to be released forthwith." In connection with the ground served by the Government of the Punjab on September 14, 1951, Their Lordships said that they were not prepared to take cognizance of that order which was passed obviously to defeat the present petition.

The Chief Justice added that if the Punjab Government had proper grounds for detention, they might act according to law after the petitioner had been set free under this order of the Court.

Two of the detenus, Teja Singh and Jaichand, had been detained on the ground that they had opposed the payment of the water tax in the State. The Chief Justice, observed that there was no apprehension of a breach of public order if the detenus exhorted the people not to pay the water tax. "We must be living in a precarious state in need if this was to constitute a threat to public order," the Chief Justice said.

PROTEST AGAINST THE PRESS BILL

All-India Civil Liberties Council

There follows below a statement issued by the All-India Civil Liberties Council on 13th September on the Press (Incitement to Crime) Bill as it was then called. The

statement was signed by Mr. N. M. Joshi, Vice-President, and Mr. S. G. Vaze, Secretary.

The most noteworthy feature of the Press (Incitement to Crime) Bill now before Parliament is that it fails to carry out the promise repeatedly made by Government when amendments to the Constitution were being made, viz., that while the new restrictions allowed by the Constitution Amendment Act to be imposed on the right to Freedom of Expression were too broad and vague, their scope would be narrowed in the legislation to be enacted for the purpose of giving effect to the amendment. In the Bill that is now being debated, however, the scope of the restrictions remains as broad as in the amended art. 19 (2). For instance, nothing has been done in the Bill to limit the scope of "public order", which is one of the new categories of restrictions that the amended Constitution permits. In the Bill it is provided that whoever is guilty of inciting to interference with the maintenance of law and order (the wording has since been changed) will be subject to the drastic penalties provided for in the Bill. Similarly, the other categories of restrictions also remain in the Bill in just as comprehensive a form as they are in the amended Constitution. The admittedly overbroad nature of the restrictions makes the Bill a piece of legislation which is of a most dangerous kind.

Another feature of the Bill that should be noted is that this measure has not been evoked by any specially virulent tendencies observable in the Press at the secrete time which would call for a drastic remedy in an exceptional measure. The Home Minister, indeed, says that the measure would mostly remain a dead letter, which proves that the Bill is introduced not for the purpose of meeting any need urgently felt, but only for the purpose of putting the Press law of the country in a neat form, as Government conceives it. In contrast to this, all the legislation of the British regime which was restrictive of the Press had at least this in its favour, viz., that it was in the eyes of its promoters legislation which was necessitated by an emergency. However unjustifiable that legislation might have been, it at all events implied that in normal times the Press ought to remain completely free and that special legislation would be justified only by an emergency which required additional powers to be given for controlling the Press. In that view the Press (Emergency Powers) Act, 1931, was limited to a possible duration of two years. But the new legislation that is now sought to be enacted is to be of a permanent nature (the life of the Act as now passed is limited to two years "for the present") applicable not only in exceptional conditions but also in normal conditions. The fact that even Government does not feel that circumstances have arisen which partake of the nature of an emergency shows that the legislation now being introduced is entirely gratuitous.

The Government claims to introduce two improvements upon the present position. Abolition of pre-censorship is undoubtedly an improvement, but it is an improvement of a very elementary kind. Again, it should be

remembered that pre-censorship was introduced by Indian Governments themselves into their Public Safety Acts. The British Government had never introduced it even into their emergency legislation. The second improvement is only a matter of procedure and not of much significance. Whereas under the 1931 Act an order for the deposit of a security or for its forfeiture was left to executive discretion, the Bill proposes to introduce judicial discretion from the beginning. But as even under the 1931 Act the initial executive discretion was made subject to the ultimate decision of the High Court, the Bill really makes no substantial advance on the provisions of the 1931 Act.

Real Objection

The real objection to the 1931 Act was that its terms were so comprehensive as to make recourse to the judicial authorities almost illusory, and this objection is just as valid in respect of the Bill as of that Act, because the definition of "objectionable matter" in the Bill is equally comprehensive. Nothing that was included in the former Act has been left out in the present Bill (some matters have now been left out). The only difference is that the provisions in the 1931 Act were due to certain movements of terrorism or intimidation or boycott, while the same or similar provisions find place in the Bill when there are no such movements being conducted. Again, the provision about "scurrilous" matter that the Bill makes was never incorporated in any special legislation enacted during the period of British rule. This is our Republican Government's own contribution to the freeing of the Press from its fetters! By this reasoning the whole of the Indian Penal Code can be incorporated into the Bill.

The All-India Civil Liberties Council's stand is that there should be no special legislation of any kind in respect of the Press; that the Press should not be discriminated against in any such way. The whole of the apparatus of taking a security from the Press and of forfeiting it should be given up. Such a system obtained in some countries in early times when Freedom of the Press was not fully appreciated. But it obtains in no democratic country at present, and the Council would hate India being ranked with undemocratic countries as without a doubt it will be if the Bill is passed into law. Again, it must not be forgotten that the Press alone is not involved in this measure, but every individual who has something to communicate to others is also involved. To take away the right of the Press to publish is to take away the right of the common man to express his thoughts. The preservation of this right to have free discussion on public matters is essential to a democracy such as our country claims to be.

The Bill destroys this right almost completely. Even the most innocent criticisms of Government policy are liable to be penalised under it. What the status to which India has now attained requires is a measure repealing all special legislation in connection with the Press. No reputable country has found it necessary to enact any such legislation; it is none the worse because it has not armed itself with powers such as our Government proposes to take. In all decency the Bill should be withdrawn in toto and another of simple repeal substituted for it.

Bombay Civil Liberties Union

The Executive Committee of the Bombay Civil Liberties Union passed the following resolution at its meeting held on 17th September:

The Executive Committee of the Bombay Civil Liberties Union had expected that, after the attainment of free-

dom by India all restrictions on the freedom of the Press which were imposed by the British would be removed. But the expectations were falsified. On the contrary soon after the passing of the Fundamental Rights, instead of declaring void all such restrictions as were inconsistent with the Constitution, Government took steps to amend the Fundamental Rights so as to be able to retain on the statute book most of the old restrictions and have now come forward with a Bill which with some unimportant changes practically re-enacts the old Press Emergency Powers Act of 1931 when what was expected to be done was simple and complete repeal of the old obnoxious restrictions.

The Executive Committee admits that the abolition of pre-censorship which the Congress Governments themselves had introduced and the substitution of judicial discretion for initial executive discretion are some improvements, but they feel that these improvements do not remove the basic evil consisting of the demand for deposits and their eventual forfeiture. The evil not only still remains but is added to, first, by proposing an unlimited amount of penalty in the place of the heavy but limited one and, secondly, by converting what were at least emergency and temporary restrictions into permanent and normal ones.

The Executive Committee considers that the claim made by Government that the Bill is directed only against violence and grave offence is not true inasmuch as the definition of the words "objectionable matter" is made so broad and comprehensive that penalties may be imposed even in cases where no violence is involved and only ordinary criticism is intended. Even the mere expression of a pacifist view or a criticism that the conditions given to the soldiers in the army or to the police are not fair may be penalised on the ground of its discouraging recruitment.

The Executive Committee regrets that Government have not even attempted to make out a case that the present conditions in the country or the present writings in the Press are such that the imposition of drastic restrictions are justified. Their action is simply gratuitous.

The Executive Committee strongly urges that only section 34 of the Bill repealing all old objectionable legislation should be passed immediately and the rest of the Bill be wholly scrapped.

The same resolution was passed by a public meeting organized by the Union on 22nd September. This meeting was presided over by Professor P. A. Wadia and addressed by Messrs. Jannadas M. Mehta, Dinkar Desai, P. R. Lele and V. B. Karnak.

Another resolution that was adopted at the public meeting and previously at the meeting of the Union's Executive Committee concerned preventive detention. It was as follows:

The Executive Committee of the Bombay Civil Liberties Union strongly protests against the detention without trial of Mr. DeMello and five other office-bearers of the Bombay Dock Workers' Union. The action of the Bombay Government is specially difficult to understand as the general atmosphere of the city including the dock area is free from any disturbances or even strikes. The Executive Committee urges the Bombay Government to immediately release these detenus, particularly in view of the forthcoming general elections.

Madras Civil Liberties Union

The Union at its annual meeting passed the following resolution on 28th September:

The provision for demanding security and the absence of a judicial review of certain executive acts and of the payment of compensation when destruction of news sheets by executive authority is not approved by Courts, all indicate a deliberate policy to make it impossible for persons without resources to express their honest views on public administration.

The omnibus clause making any matter objectionable which tends to interfere with administration while allowing the officials to break their laws and orders with impunity will clearly lead to the establishment of a one-party dictatorship in the country.

The Press Bill is unconstitutional, as the clause relating to objectionable matter cannot be a reasonable restriction even under the Constitution (First Amendment) Act, and hence this meeting urges upon the Government its immediate withdrawal.

C. L. U. NEWS

Madras Civil Liberties Union

ANNUAL GENERAL MEETING

The annual general meeting of the Madras Civil Liberties Union was held under the presidency of Mr. P. Chenchiah at 379, Esplanade, Madras, on 28th September.

Mr. Chenchiah, the President, reviewed the activities of the Union and emphasised that in the coming year there should be different committees to review legal and judicial decisions and that there should be organized meetings for the protection of civil rights. Reviewing the judgments of the Madras High Court, he appreciated the work of the Judges who had acted with sufficient courage and strength of mind in interpreting the civil rights guaranteed in the Constitution. "Our start was good," he said, "when the Constitution was framed. But those in power seem to repent the good acts they have done and are slowly scrapping the civil rights in the Constitution." It had become a habit with all political parties to secure votes by appealing that they were servants of the people and when once they got into power to proclaim that "whatever I do is public good." The situation to-day was like the twilight which might emerge either into light or darkness. He appealed to lovers of civil liberty not to lose confidence so long as there was a Providence which ruled over men's affairs.

Mr. K. G. Sivaswamy, Secretary, in moving the adoption of the report, which reviewed the activities of the Union since March 1950, made a rapid and elaborate survey of civil liberties in Madras State. Analysing police excesses in their various forms to put down the Communist movement or to help Congressmen or to assist vested interests against workers and also the sufferings of the public who were victims of the incompetence of police administration, Mr. Sivaswamy said that the root cause lay in the inability, though not unwillingness, of the Ministry to exercise effective control, the recruitment

of Sub-Inspectors from Head Constables used to the methods of the old Raj, and the difficulty of officers in not heeding false complaints of Congressmen as against their rival groups, when they themselves were subject to transfers at a moment's notice on complaints of influential people. A reform of the criminal law was necessary, particularly after the incorporation of fundamental rights of citizens in the Constitution, which would make it an offence to infringe on such rights under colour of enforcing public order. An independent division of the Public Department at the state level to take complaints of discrimination and the brutalities of the police and the public and to educate, mediate and prosecute the offenders, was essential under the existing conditions of a backward democracy. Police training programmes should educate the police in their duties to protect civil rights and proper treatment of those who are in their custody. More than all, a permanent Commission on Civil Rights should be established at the Union level to review the work of law and order in every state and publish its findings.

Continuing, the Secretary said that there were nine police shootings in five district Jails, in which 26 prisoners were killed and 261 prisoners and 238 officials were injured. The refusal of the Government to hold an open enquiry into the Salem shooting, its failure to publish the report, and the withdrawal by it of cases against prisoners, all these acts indicated a guilty conscience and self-condemnation. Jail reform was urgent, as, according to the Minister for Jails, "a Sub-Jail was a hell on earth and that a prisoner who was sent to it can as well be sent to hell." The Secretary hoped that the Jail Reform Committee would make suitable recommendations regarding jail administration.

The number of detentions reached their peak in April 1949, when it rose to 1169. Thereafter there was a decline. In the interest of safeguarding fair elections, Mr. Sivaswamy appealed to the Government to release the few detenus that are in detention or put them on open trial.

After the adoption of the report a resolution was passed protesting against the Press (which is given on an earlier page) and another concerning detentions. Finally, the election of office-bearers took place, Mr. Chenchiah and Mr. Sivaswamy being re-elected President and Secretary respectively.

A Union for Madhya Pradesh

At a public meeting held at the Gokhale Memorial Hall in Nagpur on 24th September under the presidency of Mr. A. V. Khare, an advocate, a Civil Liberties Union for Madhya Pradesh was formed and it was decided to affiliate it with the All-India Civil Liberties Council. A committee was appointed at the meeting to enrol members for the Union, and it is hoped that within three months' time 500 members will be enrolled. The election of office-bearers will take place later.

The newly formed Union adopted a resolution condemning the Press Bill as destructive of the freedom of the Press and urged the Government of India to drop the Bill.