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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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Office : Servants of India Society, Poona 4

Annual  
Subscription : Rs. 3  
Per issue : annas 4  
*including postage*  
No. 26  
November, 1951

## SEARCHES AND SEIZURES

### COMPARISON OF LAWS IN DIFFERENT COUNTRIES

One of the characteristics which distinguish a democratic government from a police-state is that while in a really free country the principle of freedom from liability to search of premises or the person except after a warrant has been produced or except after a charge has been preferred is accepted and enforced, in an arbitrarily governed country officers are empowered without a warrant to walk into any citizen's home or even break it open if they choose to suspect something against him and take possession of anything they may find therein. Our Public Safety Acts endow the executive with uncontrolled power of search and seizure and thus go quite a long distance in making a police-state of our country.

#### *Public Safety Acts*

Some of the typical provisions in these Acts relating to the power of search may be given. Sec. 17 of the East Punjab Public Safety Act, 1949, extends the power conferred by sec. 98 of the Criminal Procedure Code in respect to the search of a house for stolen property, forged documents, etc., by making the section applicable to the search of a house in which it is believed that "any act prejudicial to the public safety or to the maintenance of public order has been, is being, or is about to be committed" or preparation for such act is being made. These are surely wide powers, but here at any rate is the safeguard that the search can take place only upon the issue of a warrant by a magistrate, a search without such a warrant being illegal. But sec. 17 of the Act is followed by another ( sec. 18 ), which confers a general power of search, and under this section a warrant is not needed before any place can be searched and its contents seized. A more common form of provision in this behalf is what is contained in the Acts of provinces like Madras, Orissa, etc. It runs thus :

(1) The Provincial Government may, by general or special order, empower any officer to search any place, stop and search any vessel, vehicle or animal, and seize anything which he has reason to believe has been, is being, or is about to be, used for any purpose prejudicial to the public safety or the maintenance of public order.

(2) Any officer empowered under sub-section (1) shall forthwith report to the Provincial Government in detail any seizure made by him and, pending the receipt of their orders, may detain in custody anything so seized or take such other step for its safe custody as he may think proper.

(3) The Provincial Government may make such order as they think fit for the disposal of anything seized under sub-section (1), by destruction, confiscation or in such other manner as they may direct.

(4) An officer empowered under sub-section (1) may, subject to the control of the Provincial Government, authorize any officer subordinate to him to exercise any of the powers referred to in sub-section (1).

*Explanation* :—For the purpose of this section, 'place' includes a house, building, shed, enclosure and tent.

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#### SOMETHING FOR RAJAJI

Freedom of Expression is enshrined in art. 158 of the Constitution of El Salvador, which runs in part :

Every person may freely express and disseminate his thoughts provided that he does not offend against morality or harm the private life of any person. This right may be exercised without previous examination, censorship or surety ; any person violating the laws in the exercise of this right shall answer for any offence so committed.

So far the provision will be quite acceptable to Mr. C. Rajagopalachari, who as Home Minister of the Government of India gave us the precious Press Act. But he will gasp to find that the article provides later against confiscation of the press or such other penal measures. This part of the article says :

In no case may a printing press or its accessories or any other physical facilities for the dissemination of thought be impounded as the instruments of an offence.

*No Constitutional Guarantee*

Our Constitution provides no remedy against injustice involved in the exercise of such wholly uncontrolled power. For it contains no provision corresponding to the Fourth Amendment in the United States Constitution, which reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched or things to be seized.

Attempts were made in our constituent assembly by non-Congress members when the Constitution was being framed to insert a provision therein on the lines of the article in U. S. Constitution outlawing the issue of general warrants or searches and seizures without warrant; but these attempts proved unsuccessful. The legislatures are thus enabled to pass any laws on this matter, without the possibility of the courts curbing them in any way. Because of art. 19 in the Constitution relief can be obtained in some other matters when laws unduly restrictive of liberty are passed by the legislatures. For instance, the Public Safety Acts give arbitrary power to the executive to control newspapers or to restrict the movements of persons by orders of externment or internment. But, on the strength of provisions of art. 19, the judiciary has been able to give relief on the ground that either the law itself or the order issued thereunder imposed unreasonable restrictions on the rights guaranteed by the Constitution. If among the rights like freedom of expression or freedom of movement which are safeguarded to some extent by art. 19 freedom from search without a warrant were included, the law courts would have been able to afford relief in cases of unreasonable searches and seizures and prevent unjustifiable invasions on the sanctity of the home. But, in the absence of a constitutional guarantee to this effect, it is beyond their competence to give such relief. In the United States the guarantee is so spacious that the courts of justice in that country even refuse to receive at trial evidence that has been acquired by the government by means of illegal searches and seizures. In our country, however, the power that the executive wields in this respect under the operation of the Public Safety Acts is absolutely without limit.

*War Regulation in England*

Search without a warrant from a magistrate is completely contrary to the tenets of British justice although, in this as in every other matter, the Constitution itself provides no guarantee. Occasions when departure from this practice was permitted in England were very rare indeed. In the last war, e. g., it was found necessary to include in the Defence Regulations of 1939 one on

this subject. The first two paragraphs of Regulation 88A provide:

(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence to which this Part of these Regulations applies has been or is being committed, and the evidence of the commission of the offence is to be found at any premises specified in the information, he may grant a search warrant authorizing any officer of police of a rank not lower than that of inspector, or any commissioned officer in His Majesty's forces, together with any other persons named in the warrant and any other constables or members of His Majesty's forces, to enter the premises at any time or times within one month from the date of the warrant and to search the premises and every person found therein, and to seize any article found in the premises or on any such person which the officer has reasonable ground for believing to be evidence of the commission of such an offence as aforesaid.

(2) If, with respect to any premises, any officer of police of a rank not lower than that of superintendent, or any person authorized by the Secretary of State to act under this paragraph, has reasonable ground for suspecting that an offence to which this Part of these Regulations applies has been or is being committed, and that evidence of the commission of the offence is to be found at those premises, and is satisfied—

- (a) that it is essential in the interests of the State that the premises should be searched for the purpose of obtaining that evidence, and
- (b) that the evidence is not likely to be found at the premises unless they are searched forthwith,

the said officer or person may, by a written order under his hand, confer the like powers of search and seizure in relation to the premises as might be conferred under paragraph (1) of this Regulation by the warrant of a justice.

In the first paragraph provision is made for entry and search of premises by a warrant of a justice of the peace; under the second paragraph, however, a search can take place without a warrant, but under strictly defined conditions: (1) a superintendent of police alone can give an order to make a search; (2) the search can be made only for a specific purpose, viz., in order to obtain evidence of an offence which "has been or is being committed;" and (3) when the officer giving the order is satisfied that the evidence is likely to be lost unless the search is made "forthwith."

One has only to compare these conditions with the absolutely discretionary character of the power given in our Public Safety Acts to find out the magnitude of the

difference between the two provisions. One has also to remember that paragraph (2) of Regulation 88A was enacted in England when the very existence of the country was in peril in order to realise how utterly unjustifiable the provisions contained in our Acts are in peace-time.

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#### *Australian Anti-Red Act*

The Australian Act for outlawing the Communist Party and confiscating its property necessarily contains a provision on this subject. The clause as it stood originally in the bill ran :

An authorized person shall at all times have full and free access to, and may, if need be by force and with such assistance as is necessary, break open, enter and search, any house, premises or place in which he suspects that there is any property of, or documents or papers relating to, an unlawful association and may search any person found in the house, premises or place and may take possession of, remove and impound any property, books (including documents or papers) in the house, premises or place which the authorized person is satisfied belonged to that association.

The clause in that form would have enabled a security service officer, without going before a magistrate and obtaining a warrant, to break into any home in which he suspected that property of an unlawful association was present, to search the home and everybody in it (e. g., the occupier's wife, children, guests, visitors) and to remove any property which he was satisfied belonged to an unlawful association. But this clause naturally evoked strenuous opposition from all liberals in the country and outside, and the Labour Party moved an amendment to the effect that "no house or place shall be searched except on a warrant from a magistrate." Consequently, the powers of search have now been reduced in the Act to reasonable proportions. The section in the amended form is :

If a police, stipendiary or special magistrate is satisfied by information on the oath of an authorized person that there is reasonable ground for suspecting that there is in any house, vessel or place any property of, or books, documents or papers belonging to, an unlawful association, he may grant a search warrant authorizing the authorized person, with such assistance as he thinks necessary, to enter at any time the house, vessel or place named or described in the warrant, if necessary by force, and to take possession of, remove and impound any property (including books, documents or papers) which the authorized person is satisfied belongs to that association.

The nature of the change effected, on account of the efforts of Dr. Evatt, will be apparent to anyone who studies the two forms of the section. As introduced, the section would have given to any peace officer or any authorized person (i. e., any person authorized by the

Attorney-General) the right *on suspicion* (which was not even defined as a reasonable suspicion) to enter any place if he thought that in that place were papers, documents or property relating to an unlawful organization. The modified section, however, provides that *only on the warrant of a magistrate* can any place be entered and search made.

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#### *Incitement to Disaffection Act*

How deep-rooted is the objection which Englishmen feel to an invasion of the sanctity of the home by uncalled-for intrusions is perhaps best illustrated by a provision in the Incitement to Disaffection Act of 1934. When large-scale attempts were being made to seduce members of His Majesty's forces from their allegiance, Parliament passed this legislation with a view to preventing and punishing such attempts effectively. The legislation had necessarily to contain a provision relating to searches of private premises. The original draft of such a provision gave powers almost as wide as those given by our Public Safety Acts. It empowered magistrates to authorize the police to enter any premises (not necessarily connected with acts which constituted an offence under the Act) and seize anything found thereon. The clause created a great uproar throughout the country, and in order to allay the discontent that had been aroused, the Government modified the clause in a drastic manner. As finally passed, the section restricted the right to grant a search warrant to a judge of the High Court if "satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been committed, and that evidence of the commission thereof is to be found at any premises or place." Seizure was permitted only of those things which the officer carrying out the search under the warrant "has reasonable ground for suspecting to be evidence of the commission" of the offence. It will be seen from this that no entry and search would take place under this provision [sec. 2(2)] except with a search warrant, and the authority who is to be satisfied before issuing such warrant is to be a judge of the High Court who can bring a trained mind to bear on the subject instead of lay magistrates. It was recognized in all quarters that this was a great improvement.

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#### *Irish Legislation*

The Offences against the State Act, 1939, of Eire contains a provision relating to searches and seizures in sec. 29, to which reference may be made here. The section authorizes a chief superintendent of police, if "satisfied that there is reasonable ground for believing that documentary evidence of or relating to the commission of an offence under any section or sub-section of this Act or any document relating directly or indirectly to the commission or intended commission of treason," to issue a search warrant to an officer of the police not below the rank of inspector. Under the authority of such a warrant entry into and search of

premises and seizure of evidence may take place, but it is provided that these things can take place only within one week from the date of the warrant. So under this Act everything is regulated by the issue of a search warrant.

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Cannot the Nehru Government at least secure a repeal of the barbarous provisions in the Public Safety

Acts relating to searches and seizures? The fundamental rights part of the Constitution has omitted to make any provision in this essential respect. Is it not therefore the more incumbent upon the Government to see that the legislatures in practice refrain from using an unreasonable power which constitutionally is under no kind of restraint?

## "THE GREAT CHARTER OF LIBERTY"

It were very much to be wished that the Supreme Court in the case of Mr. Maganlal Patel (vide supra under "Habeas Corpus Petitions") had given a definitive ruling on the point raised by the Attorney-General, viz., whether a writ of habeas corpus, once denied by a High Court, can be issued by the Supreme Court on the same grounds that were urged in the court below. This issue is of crucial importance, and it is a matter of regret that it was not finally disposed of by the highest judicial authority, as requested by the Attorney-General. The Court no doubt said that it held against the Attorney-General on the point he had raised, but when asked to give a finding on the question, it refused on the ground that it was unnecessary to do so in that particular case because the habeas corpus petition under consideration already stood dismissed for other reasons. The question of general principle is therefore still left in doubt.

We should have thought that there could be no room for doubt of any kind on this question. We do not know what were the arguments advanced by the Attorney-General to support a point of view which has long been discarded in every country which provides for this prerogative writ, but when the point of view was pressed, we cannot but feel that the Supreme Court would have done well to give an authoritative decision on it, so that the matter would once for all be beyond all doubt. The clearly established law on this subject in England was given by us in the BULLETIN at p. 103 on the strength of a quotation from Halsbury's "Laws of England." The quotation may be reproduced here to refresh the reader's memory. It is as follows:

The applicant has a right to apply successively to every court competent to issue a writ of habeas corpus, and each tribunal must determine such an application upon its merits unfettered by the decision of any other tribunal of co-ordinate jurisdiction, even though the grounds urged are exactly the same. Thus, each judge of the High Court of Justice has jurisdiction to entertain an application for a writ in term time or vacation, and he is bound to hear and determine the application on its merits, notwithstanding that some other judge has already refused a similar application.

The Constitution of the Irish Free State expressly contained a provision to this effect, viz., that "the High Court and any and every judge thereof" can and must

hear applications for habeas corpus, and the Judicature Acts provide for an appeal being preferred from the High Court to the Court of Appeal and from the latter to the House of Lords against a decision refusing the writ. And, as stated in *Cox v. Hakes* (1890) 15 A. C. 506, "every court in turn and each court or judge was bound to consider the question independently, and not to be influenced by the previous decision refusing to discharge." Thus the application can be pressed until all jurisdiction has been exhausted. Can it be the case that in India the jurisdiction stops at the High Court, no access being possible to the Supreme Court if the High Court denies the writ?

One further principle that has been firmly established in England is that while the prisoner has a right to take an appeal to a higher court from a decision refusing the writ, the Government has no such right to prefer an appeal from a decision granting the writ. Once the writ is issued, the Government must regard it as a final decision, and must set the prisoner at liberty forthwith. Nothing can be allowed in our country also to derogate from the operation of these two principles which have been evolved by a long course of history in England.

In India a detained person can go straight to the Supreme Court in the first instance and apply for a writ of habeas corpus, without having to wait for the lower courts to deny his application. This unusual procedure was devised in order to afford what was thought to be an additional safeguard for the prisoner. But it would be calamitous if this procedure was thought to imply that if the prisoner first approaches the lower courts which refuse the writ, his access to the Supreme Court would be barred. In the United States federal courts exercise their jurisdiction, as regards habeas corpus, over persons held by state authority in cases where they are in custody in violation of the laws or the Constitution of the United States. But in view of the relations subsisting between states and the Federal Government and those between their respective courts, it is now the settled practice in that country, for the orderly administration of justice, that the federal courts do not interfere with the state courts by issuing a writ of habeas corpus to a prisoner held by a state authority until all of judicial remedies afforded by state courts have been exhausted. But this only concerns the time and mode in which the Supreme Court exercises the undisputed power conferred upon it of finally disposing of applications for habeas corpus. There have been long discussions as to the

exact point where the judicial remedies provided by the states may be regarded as being exhausted, and attempts are made for preventing too long a delay in the Supreme Court taking up the matter in its discretion. The curious may turn to the opinion of Mr. Justice Frankfurter in

Darr v. Burford (1950) 339 U. S. 200 for one aspect of this question. But it would be a travesty of justice if in India a prisoner cannot bring habeas corpus in the Supreme Court because a High Court has denied it.

## MINISTERIAL INTERFERENCE IN JUDICIAL DECISIONS

A sensational instance has occurred of grave interference on the part of the Ministers in the quasi-judicial decisions of the Custodian General of Evacuee Property, which resulted in the virtual dismissal of that official, who previous to this appointment had occupied the post of a judge of the Punjab High Court. This is not a solitary instance of interference, but what led to the removal of the Custodian General was his decision in the Chhatriwala case.

Mr. Mohammed Din Chhatriwala, a business man of Delhi, was declared an evacuee and his properties worth about sixty lakhs of rupees were notified as evacuee property on 14th September 1949 under Ordinance XII of the Government of India of that year. Mr. Chhatriwala filed a claim petition against this notification, contending that he was a non-evacuee. This petition was heard by the authorized Deputy Custodian who, after hearing the evidence of the other interested parties, held on 4th April 1950 that Mr. Chhatriwala was an evacuee. From the Deputy Custodian's order an appeal was filed before the Custodian General, and another in the Punjab High Court. The Custodian General dismissed the appeal on 6th September 1950, holding that Mr. Chhatriwala was an evacuee, and the Punjab High Court also later gave the same ruling.

In the meantime, however, Mr. Chhatriwala approached the Government of India and succeeded in obtaining a no-objection certificate under sec. 16 of the Administration of Evacuee Property Act, 1950. On the basis of this certificate Mr. Chhatriwala applied on 8th June 1951 to the Custodian for the restoration of his property to him. The All-India Refugees Association and 22 displaced persons, including lessees of the property involved, filed objections against the restoration on various grounds. The Custodian dismissed the objections, upholding the plea taken by Mr. Chhatriwala that the objectors had no locus standi to oppose restoration and that they were not interested in the property within the meaning of the Act. The Custodian, in so dismissing the objections, relied mainly on the ground that once an applicant produced a certificate of the kind mentioned in the proviso to sec. 16 (1), the Custodian was bound to restore the property and could not entertain any objection to its restoration.

From this order of the Custodian a petition for revision was filed by the objectors before the Custodian General, which the latter allowed. Here the effect of a no-objection certificate given by the Government of India was in question, viz., whether the certificate was of

a mandatory nature, leaving no room for apparently the authority below thought, for consideration of the validity of any objections that might be raised. The Custodian General held that the certificate had no such mandatory character. Sec. 16 (1) provides that

The Custodian *may* restore the evacuee property provided that the applicant produces in support of his application a certificate from the Central Government ... to the effect that the evacuee property may be so restored *if the applicant is otherwise entitled thereto.*

This means obviously that the production of such a certificate is a necessary preliminary to a possible restoration of evacuee property by the Custodian, and that without such a certificate it would be beyond the competence of the Custodian to entertain an application for restoration at all. But it also means that the granting of a certificate by the Government of India is not an order to the Custodian to restore evacuee property without a consideration of the other factors involved in the matter. The Act casts upon the Custodian the duty to determine whether the applicant is otherwise entitled to restoration. And these other factors that become relevant are whether the evacuee applicant had returned from Pakistan to India by a certain date and had settled in India after his return, i. e., had done nothing inconsistent with an intention to settle in India. In regard to the latter point it appears that there were certain matters that needed to be examined in the case of Mr. Chhatriwala, viz., whether he was transferring his assets to Pakistan after his return to India and whether he was recovering rent from the property purchased by him in Pakistan. But the Custodian General did not raise any such point; he only held that the objectors could become parties and sent the case back to the Custodian for hearing on merits.

But this decision was unacceptable to the Government of India. An official of the Rehabilitation Ministry, which was the ministry concerned, made it known to the Custodian General that the latter's interpretation of the force of a certificate under sec. 16 was one which the Government found itself unable to acquiesce in, so much so that the "order was deemed to constitute a defiance of the authority of the Government." And the Minister himself repeated this and added that the Government took a serious view of the matter and that the Custodian General would have to quit. This talk was followed a few days later by a communication from the Minister that if the Custodian General would tender resignation the Government would condescend not to issue an order for

his dismissal. This did not come as a surprise to the Custodian General, for he says that "due to the influences that had been at work against me almost from the time I had taken over, I had been all along almost carrying my resignation in my pocket," and he promptly resigned his post.

The Custodian General's interpretation of sec. 16 was present by the Government of India because it thought that it was contrary to the policy which it was pursuing, and apparently it felt that it was justified in calling for the resignation of an officer who failed to carry out that policy. Previously it had issued a notification which it thought would apply to Mr. Chhatriwala. But the Custodian General ruled that the notification could not be given retrospective effect as it must if Mr. Chhatriwala was to benefit by it. Now the Government of India thought that its no-objection certificate would do the trick and the certificate would automatically enable Mr. Chhatriwala to get back his property without any further question being raised about it. But again the Custodian General stood in the way; not that he barred restoration, but insisted that Mr. Chhatriwala might have to answer certain inquiries in a satisfactory way. All this the Government of India considered to be against its policy, and how could an officer acting in this way be tolerated? But the Custodian General's reply to this charge was that he was not concerned with policy; his job was to administer the Act as he found it. If the Act did not correctly reflect the Government's policy, it was for the Government to amend the Act. In a public statement issued after resigning, the Custodian General supplied the answer thus :

Where there is an Act of Parliament dealing with any subject, it is not open to the Government to take any action relating to that subject not warranted by the provisions of the Act, merely on grounds of policy. A tribunal, whose duty it is to administer the law as embodied in the Act, must, while interpreting the Act, be guided solely by the language used by the legislature and cannot allow its decision to be influenced by any considerations of Government policy. If the Government finds that the provisions of the Act are not wide enough to enable it to carry out its policy or otherwise they hamper the implementation of its policy decisions, it ought to go to the legislature to secure suitable amendments rather than chide or find fault with the tribunal.

If the Custodian General's interpretation of the effect of the Government of India's no-objection certificate was felt to be wrong, the Government could have referred the matter to the Supreme Court, but instead of doing so, it thought fit to ask him to vacate office. And here lies the importance of the case on the basis of principle. A joint statement issued by some prominent men among whom two are former High Court judges and four are members

of Parliament put the matter very clearly. The statement said :

What is of basic importance is the question: Can Government thus dismiss at its sweet will those entrusted with important duties of a judicial character if any of their conclusions on a question of law or fact appear to the executive as being "wayward" or "unsatisfactory"? It is true the constitutional safeguards are restricted to judges of the Supreme Court and of the High Courts; but it is obvious that the independence of the rest of the judicial organ is also of vital importance and cannot be lightly sacrificed. We have no hesitation in saying that the decision regarding Mr. Achhru Ram (the Custodian General) augurs ill for the independence of the judicial or quasi-judicial tribunals of the State. The implication, let us get it clear, of the action taken against Mr. Achhru Ram is nothing less than this, that any tribunal, whether it functions under labour laws or under taxation laws, should it give findings unpalatable to the executive, can be told that it has created an embarrassing situation and any of the members might be unceremoniously dismissed from office. No one can deny that such would be a most deplorable state of affairs, and yet we cannot shut our eyes to the fact that the Achhru Ram affair is a clear indication that we are moving in that direction.

It has since been represented that the demand for the resignation of the Custodian General was not due to any desire on the part of the Government to interfere with his judicial decisions but that it was due to the Government's dissatisfaction about his conduct in regard to administrative matters. If so, the Custodian General denies knowledge of any differences with the Government in the matter of executive affairs, though he knows of several instances (and has recited some of them publicly) of interference on the part of the executive with work which is of an essentially judicial nature. That the Chhatriwala case was the primary reason for the Custodian General's enforced resignation becomes clear from the Prime Minister's own statement in Parliament. He said :

The Chhatriwala case had been considered by a Cabinet sub-committee of six or seven members. It had been considered very carefully and on five or six occasions. Every aspect of the matter had been gone into. *Government interfered because it was considered a hard case, just as Government interfered even in hard cases of judicial decisions by commuting sentences and so on.*

This at any rate contains an admission that the Government sought to interfere in the Chhatriwala case, and that the interference was with what the Government itself recognised was somewhat of a judicial decision. That the Custodian's decisions are of such a nature cannot of course be denied. There are judicial pronouncements on the subject. For

instance, when in the Punjab High Court Mr. S. Karam Singh applied for a writ of prohibition against the order of the Custodian for the Delhi Province, the Court per Weston and Khosla JJ. said that "wherever any person or tribunal has to perform judicial or quasi-judicial acts and the authority conferred upon it by law is exceeded, the High Court can interfere by issuing a writ of certiorari or a writ of prohibition," and held that in the particular case the Custodian had not complied with the requirements of law and that "as his (the Custodian's) functions are of a quasi-judicial nature," the petitioner was entitled to a writ of prohibition against the Custodian.

On the Prime Minister's statement Mr. P. R. Das's answer, published in the "Hindustan Times" of 23rd October, is conclusive. The answer is :

The Prime Minister's recent speech in Parliament in support of the virtual dismissal of Mr. Achhru Ram is singularly unconvincing. If the order passed by Mr. Achhru Ram was quasi-judicial, as is practically admitted by the Prime Minister, then the reversal of the order by the Government constitutes an interference by the executive in a judicial matter. The Prime Minister advanced an extraordinary argument to support the action taken by the executive. He said : "The Government interfered because it was considered a hard case just as the Government interfered even in hard cases of judicial decisions by commuting sentences and so on." Surely, the Prime Minister must know the difference between exercising the prerogative of mercy in criminal cases and interfering with judicial decisions in regard to property rights. I must confess that I do not understand how Mr. Chhatrivala's case was "a hard case." The question is a question of fact, namely, had Mr. Chhatrivala returned to India prior to a particular date and had settled down in India? If the answer be in the affirmative, he was entitled to an order in his favour. The Prime Minister's reference to the case as "a hard case" suggests that the answer to the critical question is, in the view of the Prime Minister himself, in the negative. Altogether the controversy has not enhanced the reputation of the Government and lends support to the view that the Prime Minister is more concerned with giving relief to the Muslim evacuees in "hard cases" than meeting the viewpoint of the unfortunate Hindu refugees who have lost everything in Pakistan. But then I forget that ours is a secular State!

We are not concerned here with the Government's policy but solely with the fact clearly established that in carrying out the policy it is interfering in a sphere in which there should be no interference on the part of the executive. We would not have referred to this matter at all but for this aspect of it.

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## SPECIAL ARTICLE

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### EXCESSIVE BAIL

The U. S. Supreme Court on 5th November delivered an important judgment interpreting the prohibition contained in the Eighth Amendment that "excessive bail shall not be required." This prohibition appears to be very simple, so simple in fact that it seems to have given rise to no adjudication so far by the Supreme Court.

But the practice that indicted and convicted Communists have been following consistently of late of going into hiding, after securing release on bail, to evade judgment has created difficulties in determining the proper limits of bail. The Supreme Court on the present occasion had to consider the question in respect of the bail bonds of \$50,000 each on which twelve persons accused in California of a Communist conspiracy to overthrow Government were freed. These persons petitioned the Supreme Court against the bonds on the ground that they were excessive and prayed for the bail being reduced.

The Government's argument had been that four of the eleven Communist leaders convicted under the same Act (i. e., the Smith Act) in New York had forfeited bail of \$20,000 each, in order to escape serving their sentence. Only one of these fugitives has since been arrested. The Government said this showed how dangerous it was to set bail too low in such cases.

The Supreme Court rejected this contention.

It held that there was no proven connection between the persons convicted in New York and the persons accused in California and that it could not accept the Government's invitation "to depart from the norm" by assuming without the introduction of evidence that each petitioner is a pawn in a conspiracy and will, in obedience to a superior, flee the jurisdiction. "To infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act. Such conduct would inject into our own system the very principles of totalitarianism, which Congress was seeking to guard against in passing the statute under which the petitioners have been indicted."

The same question had arisen in the Federal Court of New York when four of the eleven Communist leaders whose conviction under the Smith Act was upheld by the Supreme Court in June last had vanished after giving bail in order to escape the sentence. Judge Ryan who was on the bench inquired as to the persons who had put up the money for the bail-jumpers and, finding that the Civil Rights Congress had been running a bail fund for such persons, called upon the trustees to disclose the names of individuals who had subscribed to the fund. The trustees refused to supply the information, standing on their right to be protected against self-incrimination under the Fifth Amendment. The Judge thereupon sentenced them to jail.

for contempt and ruled that the bail had come from an illegal source. The Civil Rights Congress then appealed to the Court of Appeals and the late Judge Learned Hand reversed Judge Ryan's decision on the ground that he had failed to hear the defence arguments at sufficient length. But this is by the way. The Government thereafter suggested to Judge Ryan that bail ought to be very substantially increased; "eighty hundred and seventy-five thousand dollars, they thought, would be more appropriate in the circumstances than \$185,000 previously set." This was too much for Judge Ryan, who said with forceful brevity:

Our Constitution dictates that the ( Government's ) motion to increased bail be denied.

It must be added that the Communist practice of jumping the bail and fleeing the jurisdiction has imported serious difficulties into the interpretation of when bail becomes "excessive" within the meaning of the Eighth Amendment. The rule that in the past was followed was that a presiding judge should take into account the seriousness of the crime charged, the apparent financial status of the defendant, and his past record and behaviour. But these factors have on account of the Communists' new technique proved insufficient. For the legal position is that a bail-raiser, i. e., one who provides the bail, has no legal obligation to produce a bail-jumper; the courts cannot compel him to find the missing man. Traditionally the courts have accepted a bail-raiser's money in good faith as a proof of his willingness to see his beneficiaries submit to legal procedures. But when the beneficiaries do not so submit and a bail-raiser regards that he is under no further obligation in regard to the man for whom he stands security after he has once put up the money, it becomes necessary to consider whether there was a collusion between the bail-raiser and the bail-jumper, and in order to prevent such a collusion the courts are naturally tempted to heed the demand of the Government to raise the bail to a very large amount. The question that then arises is at what point the bail exceeds the limit set by the Constitution.

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## COMMENTS

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### "Life Less Free in India"

Writing particularly of Iran and Egypt, Mr. Hanson W. Baldwin, the military expert of the "New York Times," makes an incidental reference to India in his contribution to that paper of 27th October. He says:

In some of the nations now freed of British and United States "overseers"—Burma, even India, the Philippines—life for the average person today is less stable, less secure, less hopeful, and probably even less free than it was in the days of "colonialism."

How very true is this remark in its application to India so far as civil liberties are concerned!

What could be the reason for this? One for a long time ascribed the result to the coming into power of Congress leaders who are fervent nationalists but have no appreciation of the inner freedom which political freedom must bring in its train. One felt that Mr. Nehru, who cannot but be appreciative of this real freedom, was too busy with other matters to hold the Home Ministers either of his own Government or of the provincial Governments in proper check. But this supposition was falsified when Mr. Nehru himself, by proposing an amendment to art. 19(2), practically wrote off Freedom of Expression from our Constitution. He can no longer be regarded as a passive and helpless spectator of the repression that is going on in the country but must be regarded as the principal instigator thereof.

But again the question arises: How could the founder of the first Indian Civil Liberties Union suddenly transform himself into the originator of coercion, maybe, in the national interests as he conceives them? The only explanation of this riddle that we can suggest is the explanation which Mr. Nehru gave some time ago of some prominent Congress leaders, who should be above all sectarian feeling, being dominated at heart by such feeling and sometimes even openly stirring it up. He complained bitterly that many a Congress leader paid lip homage to Congress principles without understanding them. This is of course true of a number of Congress leaders in respect of civil liberty, but it now appears that it is true even of Mr. Nehru himself!

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## The International Press Institute

### INDIAN NATIONAL COMMITTEE TO BE FORMED

This newly formed Institute (Münstergasse 9, Zurich 1, Switzerland) promises to be a good instrument for ventilating in the press of the world the grievance of the Indian press that its freedom has been gravely imperilled by our Press Act and that it has been deprived of all constitutional protection by the amendment of art. 19(2). The acting Director of the Institute, Dr. Urs Schwarz, has explained the objects which the Institute has in view and the practical measures which it proposes to take in an article in the November issue of the "Swiss Review of World Affairs." Its primary purpose is "to defend the Freedom of the Press," and it is said in the article that in order "to help defend and advance the Freedom of the Press, the Institute will gather, process and transmit to its members all reports on attacks against the Freedom of the Press and on measures taken to protect it," so that "world public opinion can be quickly mobilized for the defence of any particularly threatened position."

We have no doubt but that the Institute will, after a study of our Press Act and the Constitution Amendment Act, will come to the conclusion that the Indian press is in a "particularly threatened position" and deserves all the aid the Institute can give it by arousing the opinion of the international press. Indeed we know that our



Press Act has caused deep concern to the Institute, who is planning a seminar on the problems of the press in India. Moreover, the Institute intends to establish shortly an Indian National Committee, which will advise the Institute of the infringements that take place in India of the right to the Freedom of the Press.

#### **No Release of Detenus for Elections**

The Madras Government has announced (see the BULLETIN, p. ii:10) that it would release on a four-month parole persons held under detention in its jails in order to enable such of them as wished to participate in the forthcoming general election to do so. No other Government has seen fit to provide similar facilities for its detenus yet. The Chief Minister for West Bengal said on 11th November that while detenus would be enabled to cast votes and stand for election, they would not be released even on any conditions in order that they might carry on their election campaign. It would be for the Government of India, he added, to take any such decision. This also is in effect the policy of the Bombay Government, which in its press communique of 7th November explains in what manner the detenus while in prison could offer themselves as candidates for election. The Governments of most other States like Assam, Orissa, the Punjab, Pepsu, etc. have announced that they would not follow the Madras Government's policy and release the detenus on parole but would only enable them to stand as candidates for election if they so wished.

#### **"Dangerous Thought in America"**

Under this caption the "New Statesman" in its issue of 13th October states that 17 persons are being prosecuted in the United States for "conspiring to publish and circulate . . . books, articles, magazines and newspapers advocating the principles of Marxism-Leninism" under the Smith Act. Among these persons is Mr. Alexander Trachtenberg of International Publishers, New York, which firm publishes "Communist works of Marx, Engels, Lenin and Stalin, as well as those of Diderot and other non-Communist authors." Commenting on this, the paper says:

Is the United States public really prepared to accept a situation in which whole categories of books are to be banned, in which every publisher—including many non-Communist ones—who has published books that may be brought into this category must search his stock and destroy them as criminal literature? Are students in the United States to be denied acquaintance with revolutionary theory? What remains of the Bill of Rights in the U. S. Constitution?

Every liberal in the United States ardently desires repeal of the Smith Act which, passed in 1940 under the influence of war psychosis, can possibly lead to the consequences envisaged by the "New Statesman." While we condemn the Act no less strongly than that paper, we would like to point out that the practical effect of the legislation

will depend upon the answer to the question which the "New Statesman" itself has raised. Would the courts consider publication and distribution of Marx-Lenin literature per se as "advocacy," meaning incitement to unlawful acts? We for our part feel that they will not.

Sec. 2 (2) of the Smith Act, under which apparently proceedings referred to by the "New Statesman" have been taken, makes it unlawful for any person

With intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, or desirability or propriety of overthrowing or destroying any government in the United States by force or violence.

In such proceedings mere publication and distribution of Marxist-Leninist literature would not be sufficient to obtain conviction. The prosecution will have to prove "intent" to destroy the government and advocacy of the duty of forcible overthrow.

In the action taken against the eleven Communist leaders for conspiring to advocate overthrow of the government by force and violence, both these points arose. The prosecution's case was that the teaching of the Marxist-Leninist principles was meant as a guide to action and that the methods used by the Bolsheviks in Russia in the 1917 revolution were intended to be followed as a blue-print of a revolution in the United States when the time for it arrived. And the trial Judge in his charge to the jury expressly put the point thus:

Books are not on trial here nor are you concerned with the philosophical validity of any mere theories. . . . You are concerned with the intent of those defendants and what these defendants . . . did and said. The books, pamphlets and so on come into the case only to the extent that you may be satisfied beyond a reasonable doubt that these books and pamphlets were used by the defendants . . . as instruments, apparatus or paraphernalia for the propagation of teaching and advocacy of the overthrow or destruction of the government by force and violence.

In further construction and interpretation of the statute I charge you that it is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and advocacy of action for the accomplishment of that purpose by language reasonably and ordinarily calculated to incite persons to such action.

Distinction has to be made, as was said by Justice Jackson of the Supreme Court in his concurring opinion when this case went up in appeal to that Court, between "teaching or advocacy in the sense of incitement" and "teaching or advocacy in the sense of exposition or

explanation," or as was stated by Judge Learned Hand of the Court of Appeals in *Masses Publishing Co. v. Patten*, 244 F. 535, between words which are "the keys of persuasion" and words which are "the triggers of action." Justice Frankfurter, in his concurring opinion in the Communist case, also insisted upon the distinction between "exposition of ideas" and "advocacy," and wrote:

Even though advocacy of overthrow deserves little protection, we should hesitate to prohibit it if we thereby inhibit the interchange of rational ideas so essential to representative government and free society.

In the light of such judgments (and we have particularly quoted from the judgments of those Justices who joined in upholding the validity of the Smith Act in the above case) we should be very much surprised if mere propagation of the Marxist-Leninist doctrine were to be held an offence under the Smith Act by the courts in the United States.

[See the letter of Principal Sri Ram Sharma on the last page.]

#### Liberty and Security

In order to enlist public support for countering anti-Communist hysteria which prompted some people to propose wild measures utterly destructive of civil liberty, President Truman, it will be recalled (vide the BULLETIN p. 248), appointed last January, under the chairmanship of Admiral Nimitz, a Commission on Internal Security and Individual Rights to advise as to how "a free people can protect their society from subversive attack without at the same time destroying their own liberties." But unfortunately, owing to certain legal technicalities which are peculiar to the U. S. A., the Commission could not get on to its work, and the President has, much to his regret, now been compelled to disband it. The Commission was "to make a thorough examination of the laws, practices and procedures which protect our nation against treason, espionage, sabotage and other subversive activities," and it was "to consider these matters from the standpoint of protecting the rights of our individual citizens as well as the security of the United States." But the Commission is still-born and the inquiry cannot start. The President is naturally very sorry that he has thus been deprived of the guidance he could have had from the Commission's recommendations in "the task of keeping our democratic standard high at home while we are engaged in resisting the thrust of Soviet Communism," so as "to make sure that the Bill of Rights is not undermined in our eagerness to stamp out subversive activities." And we in India too should have profited a great deal from a study (if it could have been undertaken) of what has now become a world-wide problem—how individual rights may be preserved while an effective fight is being pressed against Communist treason and sabotage.

#### Detenus in Madras State

It was stated in the Madras Legislative Council on 26th October in answer to an interpellation that there were at present 127 persons under detention in the Madras State. Further, it was stated that 240 cases were reviewed by the Government *suo moto* and 349 cases by the Advisory Boards, since the Preventive Detention Amendment Act came into force on February 22, 1951; 82 detenus had been released by the Government of their own accord and 109 detenus on the recommendation of the Advisory Boards; 30 detenus were released as a result of habeas corpus applications allowed by the High Court. One detenu was released as a result of the decision of the Supreme Court.

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## HABEAS CORPUS PETITIONS

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#### Detention for Criminal Offences

Cases are frequent in which the Governments first charge a person with some criminal offence and then, after the proceedings have gone some way, dispense with the judicial process by locking up the person in jail by executive action under the Preventive Detention Act. This practice of riding in double harness received a check at the hands of the Hyderabad High Court on 2nd November.

Their Lordships Sripatraso Palnitkar and A. Srinivasa-chari JJ. quashed the detention order served on Marepalli Panayya of Chandupatla, Nalgonda district, on the ground that a person who was charged with committing criminal offences could not be detained under the Preventive Detention Act. Their Lordships observed that once a charge-sheet was filed against a person he was entitled to all the privileges under the Criminal Procedure Code. They directed that the detenu be placed in judicial custody.

#### No Sufficient Material

The same bench on the previous day allowed the habeas corpus petition of Mr. T. V. Ramanarasiah, a Communist leader, and passed orders for his release. Their Lordships held that sufficient material had not been placed before them.

Their Lordships on the same day dismissed the habeas corpus petition of Mr. Vattikonda Nageswararao who was arrested in Madras on 11th February on a detention order passed by the Hyderabad Government.

Relying on the decision of the Madras High Court in the case of Mr. Mohan Kumaramangalam, counsel for the detenu stated that the Madras Government had no jurisdiction to arrest a person and detain him in respect of his activities alleged to have been carried on in an area within the jurisdiction of Hyderabad State. But Their Lordships said that under section 3 (a) of the amended Detention Act, a detention order could be executed in any place.

There was nothing illegal about the arrest. That no detention could be held invalid on the ground that the person to be detained was residing outside the territorial limits of the State was provided by section 5 of the amended Detention Act.

#### Requirements of Law not Complied with

The cases of two detenus, Mr. Lakhmal and Mr. Mukatlal, of Delhi were heard by the Advisory Board, which rejected their representations. The Home Secretary thereupon informed them of the Advisory Board's opinion, but the Government did not duly pass an order confirming the detention order passed by the district magistrate as, the detenus contended, was required by the provisions of sec. 11 of the Preventive Detention Act, which runs:

In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

Bhandari and Falshaw JJ. of the Punjab High Court, who heard the habeas corpus petitions of the detenus, held (23rd October) that what the Government did in this case was not sufficient compliance with the provisions of law and accordingly allowed the petitions.

#### No Fresh Grounds for the Second Order

Mr. Prakash Singh Lambardar on 24th October, Messrs. Santokh Singh and Chuhar Singh on 6th November and Mr. Swaran Singh on 12th November (all from the Punjab) were ordered to be released by the Supreme Court on habeas corpus petitions, the reason in each case being that the detenus were not supplied with fresh grounds of detention following the second order of detention, which made the detention illegal.

Mr. Lajpat Rai and Mr. Charan Singh, both from the Punjab, were also ordered to be released by the Supreme Court on 12th November, the former because the particulars in the grounds of detention supplied to the detenu were not enough to warrant preventive detention and the latter because the Advisory Board to whom the detenu's case was referred had given its opinion before the detenu had made a representation.

#### D'Mello's Detention Held Valid

Holding that the detention order passed by the Commissioner of Police under the Preventive Detention Act on Mr. D'Mello, General Secretary of the Bombay Dock Workers' Union, was valid, Their Lordships Mr. Justice Baydekar and Mr. Justice Dixit, at the Bombay High Court, dismissed (16th November) the petition filed by Mr. K. R. Prabhudesai on behalf of Mr. D'Mello.

Mr. D'Mello, it was alleged in the grounds for detention, had threatened dock workers between March 24 and August 29 last with injury to their person if they did not desist from working in the docks.

The arrest was made at 1 a. m. on September 1 last while Mr. D'Mello was returning home from a cinema show. The next day, he was served with the order of detention. Mr. Prabhudesai challenged the order on the ground that it was passed mala fide and for a collateral purpose to prevent Mr. D'Mello from contesting the forth-

coming elections to the State Assembly on the Socialist ticket.

The Commissioner, in his affidavit, denied the allegations and said the order was passed bona fide.

Their Lordships held that the order was validly passed and dismissed the petition.

#### Scope of Art. 32

A constitution bench of the Supreme Court on 23rd October delivered judgment in the habeas corpus petition filed under article 32 of the Constitution by Mr. Maganlal Jivabhai Patel, challenging his detention under the Preventive Detention Act, in which the question was raised as to the competency of a petition under article 32 in the Supreme Court after the High Court has decided the matter under article 226.

Mr. Patel, a trade union leader of Ahmedabad in Bombay State, was arrested on July 14, 1950, and detained under the Preventive Detention Act. He moved the High Court of Bombay under article 226 of the Constitution for a writ of habeas corpus, but his petition was dismissed on October 10, 1950. Thereafter, he filed in the Supreme Court a petition under article 32, challenging his detention.

When the petition came up for hearing the Attorney-General of India, on behalf of the State, took a preliminary objection that the present petition of the detenu could not be gone into since he had already applied to the High Court under article 226. Then arguments on the maintainability of the petition were advanced by Mr. A. S. R. Chari, counsel for the detenu, while on the other hand, Mr. Setalvad, Attorney-General of India, represented the point of view of the State. After arguments on the preliminary question, counsel for the detenu was allowed to go into the merits.

In their judgment Their Lordships, in dismissing the petition, said that in their opinion the petition failed in any event as ground no. 3 in the order of detention was admitted to be not vague and mala fides had not been proved.

After delivering the judgment the Chief Justice told the Attorney-General, that as regards the preliminary objection they had, to be frank, held against him.

Mr. Setalvad: It would have been better, My Lords, if you gave the judgment on the point.

The Chief Justice observed that the Attorney-General, on behalf of the State, was the only person who could raise such a preliminary objection. No petitioner could raise any such objection. "You know," His Lordship added, "our mind on the question."

Mr. Setalvad said it was a matter of general importance and a decision would have cleared the position. There was no point in escaping the problem.

Mr. Justice Sastri: We are not. We do not want to pronounce a judgment on the point in this case. Since we hold that the petition fails on other grounds, we do not think it necessary to give a judgment on the preliminary objection raised. Let a case come up where a petition is likely to succeed but for the preliminary objection. Then we will consider the question.

The Attorney-General said that Their Lordship should not wait for such a case to come up. Every day hundreds of petitions were being disposed of by the High Courts. A judgment on that point would be of guidance to all.

## ANTI-BIGAMY ACT HELD VALID

### Madras High Court's Decision

Holding that the Madras Hindu (Bigamy Prevention and Divorce) Act of 1949 was valid, Their Lordships Satyanarayana Rao and Rajagopalan, JJ., of the Madras High Court delivered judgment on 24th September, dismissing a batch of applications in which the validity of the Act was questioned.

The petitioners, eight in number, were convicted of having committed bigamy, punishable under section 494, I. P. C., read with section 4 (2) of the Bigamy Act. They appealed against their conviction, contending that the Act contravened articles 14, 15 and 25 of the Constitution as it denied fundamental rights and discriminated between the followers of different religions. It was claimed that to that extent it should be held invalid and void, within the meaning of article 13 (1) of the Constitution.

Their Lordships stated that article 13 (1) did not help the petitioners in the five cases in which the marriage took place before the Constitution came into force, the reason being that it had now been authoritatively decided by the Supreme Court in a Bombay case that article 13 (1) had no retrospective effect but was wholly prospective in its operation. If an act was an offence at the time it was done, before the commencement of the Constitution, and contravened the provisions of any law which became void after the Constitution came into force, the inconsistent law was not wiped out retrospectively so as to make the act not an offence. There was no fundamental right that a person should not be prosecuted and punished for an act which was an offence before the Constitution came into force.

Referring to the contention that the impugned piece of legislation infringed the rights recognised under article 15 on the ground that it discriminated on the basis of religion and religion only, Their Lordships observed that the essence of that classification was not religion. Hindus had all along been preserving a personal law peculiar to themselves which was derived from the smritis, commentaries, customs and usage, in the same manner as Muslims were subject to their personal law. It was that personal law which was now sought to be affected by the Act to the extent of modifying or abrogating the rule that a Hindu was entitled to marry any number of wives without restriction. If the argument of the petitioners was to be accepted, most of the personal laws of Hindus might have to go, as there were fundamental differences on various matters between the personal law of Hindus and the personal law of Muslims.

Their Lordships next dealt with the contention that for the purpose of protecting the religion it was essential, under Hindu law, that a man should have a son for the performance of religious ceremonies and to discharge other debts, and that if he was not able to have a son by his first wife he should be allowed to marry again. They observed that it was rather difficult to accept this argument because, if a man had no natural son by his wife, the law recognised his right to adopt a son to perpetuate his lineage. The freedom to practise religion was not an

absolute right, and, as article 25(1) itself stated, it was "subject to public order, morality and health." Article 25 (2) empowered the legislature to enact laws providing for "social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus." The practice of religion might, therefore, be controlled by legislation by the State in the interests of social welfare and also reform, if necessary.

Their Lordships held that it, therefore, followed that the Act was valid and dismissed the petitions.

## CORRESPONDENCE

### " DANGEROUS THOUGHT IN AMERICA "

To The Editor, Indian Civil Liberties Bulletin

Sir,

I have always held that arguing from examples elsewhere is rather a two-edged weapon. Apropos your remarks on the recent press legislation in India, I enclose herewith an editorial note from the "New Statesman and Nation" which states the restraints to which liberty of expression has been subjected in the United States. I share the concern of the "New Statesman and Nation" about the attitude to dangerous thought displayed by the government in America and consequently deplore the recent press legislation in India as well. But let us keep the record clean. Let us not say that the Government in India is doing what the Government in the United States dares not do.

SRI RAM SHARMA

[ On an earlier page we have given relevant extracts from the paragraph in the "New Statesman" to which Mr. Sri Ram Sharma, Principal, Dayanand College, Sholapur, refers and have offered, because of this communication, a more elaborate comment on it than we should otherwise have done. We condemn wholeheartedly the peace-time Sedition Act in the U. S. A., on which the present prosecution of publishers is based. But while condemning the Act, we must not lose sight of the fact that the restrictions on publications imposed by the Press Act in India are far more severe than any which the U. S. Government is apparently seeking to impose in that country. This should be said because the reaction in the mind of the average Indian when he hears of repression in an advanced country like the U. S. A. is that after all things are about as bad there as in India. This of course does not apply to Mr. Sharma, but we must guard against such complacency. Apart from the fact that in the U. S. A. there is no special Press legislation, and legislation to boot which empowers the taking and forfeiting of security from publishers and confiscation of the press, there is a very stiff guarantee in the Constitution which can be invoked when attempts are made by the Government to infringe upon the Freedom of the Press. In India the amendment of art. 19 (2) makes this impossible as it has practically deprived us of all constitutional protection against legislative curtailment of the Freedom. — Ed. ]