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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## THE LAW IN RELATION TO HABEAS CORPUS

### REFUSAL TO DISCHARGE APPEALABLE. BUT NOT SO DISCHARGE

From the era of King John's Charter it must have been a clear principle of our Constitution that no man can be detained in prison without trial. Whether courts of justice framed the writ of habeas corpus in conformity to the spirit of this clause or found it already in their register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the statute of Charles II, but founded on the broad basis of Magna Carta, is the principal bulwark of English liberty ; and if ever temporary circumstances, or the doubtful plea of political necessity, shall lead one to look on its denial with apathy, the most distinguishing characteristic of our Constitution will be effaced.  
 —Hallam's History of England.

We are alarmed by the Attorney-General's argument in the Supreme Court on Mr. Maganlal Jivabhai Patel's habeas corpus petition (see p. ii.33 of the BULLETIN), that since Mr. Patel sued for habeas corpus in the Bombay High Court and failed in his suit, he could not thereafter make the same suit in a superior court ; and though the Supreme Court did not accept his argument but on the contrary rejected it, this opinion was not incorporated in the Court's finding as requested by the Attorney-General, and the matter is still left in some doubt. It is very necessary that the two rules which have now become an integral part of the constitutional law of England in respect of habeas corpus in the process of its evolutionary development should be affirmed in India by the highest judicial authority, viz., first, that if in an application for habeas corpus the decision of one court was unfavourable to the detained person, he might renew the application to the higher courts until each jurisdiction had been exhausted, and, second that if once he was granted the writ, this decision would be final, not capable of being challenged on appeal by the Executive. We must confess that we would feel even greater concern for the second rule than for the first after this is established, and we are certain that if a case of that kind arises the Attorney-General will plead with vehemence (and there would be some amount of plausibility in that pleading also) that if the prisoner is entitled to proceed from

court to court in seeking his release, the Executive too by parity of reasoning must be enabled to go on appeal to the highest court in order to prove that his imprisonment was in accordance with law. But this rule is just as important as the other for the purpose of giving full efficacy to the writ of habeas corpus and securing the inviolability of the liberty of the person.

We propose therefore in this article to give a brief account of two leading appeal cases that were decided by the House of Lords in England. The specific question raised by the Attorney-General in the Maganlal Patel case is not dealt with in either of these cases. That the prisoner, if unsuccessful in one court, can go to another till he becomes successful has been too firmly established in England to be ever challenged. The cases deal rather with the second rule which appears at first sight to be more open to doubt, but incidentally the judgments in the two cases state the law in regard to the first rule also in most unambiguous terms, which effectively disposes of the contention that was advanced by the Attorney-General. In Cox v. Hakes (1890) 15 A. C. 506, Lord Halsbury, L. C., said :

For a period extending as far back as our legal history, the writ of habeas corpus has been regarded as one of the most important safeguards of the liberty of the subject. If upon the return to that writ it was adjudged that no legal ground was made to appear justifying detention, the consequence was immediate release from custody. If release was refused, a person detained might make a fresh application to every judge or every court in turn, and each court or judge was bound to consider the question independently and not to be influenced by the previous decisions refusing discharge. If discharge followed, the legality of that discharge could never be brought in question. No writ of error or demurrer was allowed.

The right to an instant determination as to the lawfulness of an existing imprisonment and the twofold quality of such a determination that, if favourable to liberty it was without appeal, and if unfavourable it might be renewed until each jurisdiction had in turn been exhausted, have from time to time been pointed

out by Judges as securing in a marked and exceptional manner the personal freedom of the subject. It was not a proceeding in a suit but was a summary application by the person detained.

Lord Herschell said in the same case :

The law of this country has been very jealous of any infringement of personal liberty, and a great safeguard against it has been provided by the manner in which the Courts have exercised their jurisdiction to discharge under a writ of habeas corpus those detained unlawfully in custody.

The mode in which the Courts have administered the law ( in relation to the writ of habeas corpus is as follows. ) It was always open to an applicant for it, if defeated in one court, at once to renew his application to another. No Court was bound by the view taken by any other, or felt itself obliged to follow the law laid down by it. Each Court exercised its independent judgment upon the case, and determined for itself whether the return to the writ established that the detention of the applicant was in accordance with the law. A person detained in custody might thus proceed from court to court until he obtained his liberty. And if he could succeed in convincing any one of the tribunals competent to issue the writ that he was entitled to be discharged, his right to his liberty could not afterwards be called in question. There was no power in any court to review or control the proceedings of the tribunal which discharged him. It is sufficient to say that no person could be detained in custody if any one of the tribunals having power to issue the writ of habeas corpus was of opinion that the custody was unlawful.

The discharge could never be reviewed or interfered with ; the refusal to discharge, on the other hand, was always open to review ; and although the review was not, properly speaking, by way of appeal, its practical effect was precisely the same as if it had been.

It will be seen from the above quotations that a detained person is regarded in England as having an indisputable right to apply successively to every court for the issue of a writ of habeas corpus, but the other point whether, if an order granting the writ is made by one court an appeal against the order will lie to a superior court, was in question in Cox's case. One Rev. Mr. Cox had been arrested on a charge of contumacy and was imprisoned by an ecclesiastical court for contempt. He applied for a writ of habeas corpus to the Queen's Bench Division which granted the writ, and Mr. Cox was discharged from custody. But an appeal against the order was subsequently made to the Court of Appeal on the strength of sec. 19 of the Judicature Act of 1873, which says that " the said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned of Her Majesty's High Court of Justice." The Court of Appeal decided that under this

section it had power to set aside an order made under habeas corpus like any other order and in fact reversed the order for the liberation of Mr. Cox. Thereupon the case went up to the House of Lords on appeal. The House admitted that sec. 19 was so widely drawn as even to cover habeas corpus cases in which a writ of habeas corpus had been granted. But it pointed that the section in any case gave no power to the Court of Appeals to retake in custody Mr. Cox who had already been set free by the order of the High Court. It further took note of the fact that it was the practice of centuries not to allow an appeal from a decision to issue a writ of habeas corpus and decided that the general provision of the 1873 Act could not be interpreted as giving the right of appeal, which would effect a sudden revolution in the practice consistently followed so far. It therefore reversed the decision of the Court of Appeal and restored that of the Queen's Bench Division.

The same question arose again in the case of the Secretary of State for Home Affairs v. O'Brien ( 1923 ) A. C. 603 in the House of Lords, and here the prisoner, Art. O'Brien, had not even been discharged as Cox in the earlier case, so that if the grant of a writ of habeas corpus could be reversed on appeal there was not the problem of a released prisoner having to be taken back into custody. In this case also sec. 3 of the Judicature Act of 1876 apparently gave power to the House of Lords to reverse an order for liberation made under habeas corpus by the court below. ( The Divisional Court had refused Mr. O'Brien's application for habeas corpus but the Court of Appeal had decided to grant it. ) The House of Lords therefore had to face the question squarely whether it had jurisdiction to entertain an appeal against an order granting the writ and it decided that it had no such jurisdiction. The judgment rendered by the Earl of Birkenhead in this case is memorable and is regarded as the last word on the law of habeas corpus. He said :

It ( the writ of habeas corpus ) is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I. It has through the ages been jealously maintained by Courts of Law as a check upon the illegal usurpation of power by the Executive at the cost of the liege.

In the course of time certain rules and principles have been evolved ; and many of these have been declared so frequently and by such high authority as to become elementary. Perhaps the most important for our present purpose is that which lays it down that if the writ is once directed to issue and discharge is ordered by a competent Court, no appeal lies to any superior Court. Correlative with this rule, and markedly indicative in itself of the spirit of our law, is that other which establishes that he who applies unsuccessfully for the issue of the writ may appeal

from court to court until he reaches the highest tribunal in the land.

It was established (in *Cox v. Hakes*) that if upon the return to the writ it was adjudged that no legal ground was made to appear justifying detention, the consequence was immediate release from custody, and if discharge followed, the legality of such discharge could never again be brought in question. Lord Halsbury, L. C., summarized the matter in the following sentence. "It is the right of personal freedom in this country which is in debate, and I for one should be very slow to believe, except it was done by express legislation, that the policy of centuries has been suddenly reversed, and that the right of personal freedom is no longer to be determined summarily and finally, but is to be subject to the delay and uncertainty of ordinary litigation, so that the final determination upon that question may only be arrived at by the last Court of Appeal."

The discharge of him who sued for the writ denied any further appeal.

The lacuna, if there was one, in the decision in *Cox's* case, has been happily filled by the present decision.

The lacuna that Lord Birkenhead had in mind was due to the fact that in that case the House of Lords had not directly decided that an appeal against the issue of a writ of habeas corpus was not competent. In the *O'Brien* case, however, the House did so.

A quotation will now be given from the judgment of Lord Shaw of Dunfermline. He said:

I think the law of England to be long settled to the following effect, i. e., that when once a legally constituted court has determined that a subject of the

Crown, who is an applicant for the issue of a writ of habeas corpus, is entitled to his liberty, such a judgment cannot be overruled either by any other Court or by any Court of review or appeal.

To sustain jurisdiction (in the case of a decision granting the writ) would be to claim a right to circumvent or destroy that finality of liberation which has been long affirmed as a part of English constitutional law. It would, in short, be a usurpation by this House of a right and power to destroy a liberty already properly affirmed as a matter of right in one of His Majesty's subjects. Your Lordships are thus determined not merely in the present case to decline a jurisdiction, but to decline a usurpation. That usurpation is forbidden.

And beyond finality, I repeat that the point of urgency, an essential point, would also be violated by our assertion of a power to review a liberating judgment. The procedure of our Courts in vindicating the right that "No freeman shall be taken or imprisoned or disseised . . . or in any way destroyed, nor will we pass upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land," is established. In the procedure in reference to the writ of habeas corpus this thirty-ninth chapter of *Magna Carta* has been interpreted in the spirit of the fortieth chapter: "To no one will we sell, to no one will we refuse or delay, right or justice." An appeal against an unwarranted destruction of liberty is not to be refused or delayed. Promptitude is guaranteed, because without promptitude the illegal loss of liberty would be continued and enlarged.

These two principles which have made habeas corpus (in the words of Lord Birkenhead) "a swift and imperative remedy" against illegal restraint must be made applicable in India in their full scope.

## THE FACTUAL SITUATION IGNORED THIS MAKES JUDICIAL REVIEW INCOMPLETE

We have a feeling that while our courts, in cases of complaints of the violation of a fundamental right, closely examine the law under which any particular case arises, they do not always give sufficient attention to the circumstances in which the right may be claimed to have been violated, although the determination of the case may turn on an inquiry into these circumstances. Violation of a fundamental right may result from the application of a law which is void on its face. In such a case it is enough to examine the constitutionality of the provisions of the law in question; it then becomes unnecessary to go into the facts of the case. But a law may be fair upon its face and yet may become void in its application. In a case of this type the circumstances concerning the application of the law which is valid becomes all-important; and if the

court neglects properly to assess the facts, the vital factor which should determine the issue is left unconsidered. Questions like those relating to restrictions on the freedom of movement, for example, belong to this category. The Constitution lays down that such restrictions must be "reasonable." The unreasonableness of any restrictions may arise from the fact that the law under which they are imposed is in itself repugnant to the Constitution; or it may arise from the fact that though the law is not bad, its actual enforcement is such as to make the restrictions unreasonable in the circumstances. Obviously, in the latter class of cases the facts must be thoroughly inquired into if a sound conclusion is to be reached.

The statement that we have made above that the factual aspect of the cases that come before the courts

sometimes fails to receive the attention due to it may be illustrated by the treatment of *Dr. Khare v. the State of Delhi* (AIR [37] 1950 Supreme Court 211) by the Supreme Court. In this case Dr. Khare had made an application praying for the quashing of an externment order made by the district magistrate of Delhi directing him to remove himself immediately from the Delhi district and not to return to that district so long as the order remained in force, and the order was to be in force for three months for the time being. The application was dismissed by the Court by a majority decision, two Justices, Messrs. Mukherjee and Mahajan, dissenting. These Justices, after examining the legal issues involved in the case, reached the conclusion that sec. 4(3) and sec. 4(6) of the East Punjab Public Safety Act under which the order was passed, inasmuch as they permitted imposition of restrictions which could not be said to be reasonable, "became void and inoperative after the Constitution came into force, and consequently the order made by the district magistrate in the present case cannot stand." On that view of the statute in question, they naturally were not called upon to consider whether in the circumstances prevailing at the time, of which they had the Government's version before them, the application of the statute empowering the Executive to issue an externment order was justified, which would have been a pertinent question if they had held that the statute was not unconstitutional.

But the most curious part of the Supreme Court's decision was that even the Justices (Kania C. J. and Fazl Ali and Patanjali Sastri JJ.) who, being in a majority, rendered the decision, concerned themselves exclusively with the legal issues involved in the case and, after ruling that the statute was valid, they left the matter there, bypassing the question that then arose for determination, whether or not the circumstances prevailing at the time were such as to justify the enforcement of the order under the statute. A decision rendered without a consideration of this further question would obviously be a very imperfect decision, and this is exactly what happened in this case. That part of the Supreme Court which was responsible for the decision apparently thought that consideration of the legal issues alone was necessary and that there was no need to pay attention to the factual situation as it was at the time, on which in reality its decision should have rested after it decided the legal issues in favour of the Government.

Nor were the Court's reasoning and conclusion on the legal issues convincing. Look, for instance, at the way in which it disposed of the petitioner's contention that the period of three months for which a district magistrate may order externment was in itself unreasonable as the externee had no remedy if the order was for this period. The Court meets this argument by bringing in the analogy of the Preventive Detention Act. It says:

In this connection it may be pointed out that in respect of preventive detention, which is a more severe restriction on the right of the citizen, the Con-

stitution itself under art. 22(4) to (7) permits preventive detention for three months without any remedy. The period of three months therefore prima facie does not appear unreasonable.

The Court might as well have said that as detention orders are altogether excluded from the jurisdiction of the courts except in regard to the question as to whether they satisfy statutory provisions, so externment orders also should be and were beyond judicial inquiry. The analogy is false. And if it is to hold good, the Supreme Court would now have to hold, when the remedy of an Advisory Board is made available for preventive detention even for a period of three or less than three months, an externment order intended to be in force for three months but left without a remedy of any sort is decidedly unreasonable and therefore repugnant to the provisions of the Constitution. If a similar order came now for adjudication, would the Court hold the statute invalid? Again, the Court goes out of its way to observe:

Under the proviso to sec. 4 (5) the Provincial Government is not permitted to direct the exclusion or removal from the province of a person ordinarily residing in the province, and similarly the district magistrate is not permitted to order the exclusion or removal of a person ordinarily resident in his district from that district. This is a great safeguard provided under the East Punjab Public Safety Act.

And this remark is made in dealing with the externment from the province of one who does not belong to that province, as if in such a case no safeguard is required and that a law which does not provide a safeguard of even some kind of inquiry would still be a law imposing reasonable restrictions!

But we are not concerned here with the Supreme Court's treatment of the legal issues, unsatisfactory though it appears to us. Our point is that, having found nothing in the Act which would make it unconstitutional, the Court does not go on further to consider whether there was anything in the application of the Act which would make the imposition of restrictions on the freedom of movement of Dr. Khare unjustifiable in the circumstances. The Court ignores this aspect of the question altogether. It knows what the Government has to say about the matter, viz, that the Government considers that Dr. Khare's "activities . . . have been of a communal nature tending to excite hatred between communities," and that in the conditions then prevailing his "presence and activities in Delhi are likely to prove prejudicial to the maintenance of law and order." One would expect the Court to ask Dr. Khare for his version and to judge between it and the version of the Government. It does nothing of the kind. It merely says that the grounds advanced by the Delhi Government for serving an order of externment on Dr. Khare, "if honestly believed, can support the order." But what reason had the Court to believe these grounds implicitly? It dealt with an order of externment just as it would deal with an order

of preventive detention. In cases of the latter kind the courts are precluded by law from considering the adequacy or the truth of the reasons which the detaining authority urges; the authority says that a person's activities are likely to be prejudicial to the maintenance of law and order and the courts have to take this on trust. But is the subjective satisfaction of a district magistrate that a certain person's activities are likely to be prejudicial is also to be taken as final in the matter of an externment order? Are the courts as powerless in such cases as in those of preventive detention? Have they no authority to inquire whether there was really any serious threat to the maintenance of the public peace? We are not concerned here to assert that in this particular case there was no such threat. The point is that the Supreme Court proceeded as if it was unnecessary or even beyond its competence to look into that aspect of the question. On such a treatment of externment orders the right to freedom of movement would become as insecure as that to freedom of the person, though the Constitution itself treats these two rights differently.

Dr. Khare's case is dealt with here only as an illustration of what we believe frequently happens in courts. Our Constitution invests the judiciary with a formal authority to adjudicate on the question of the validity of any statute, which makes the law courts the guardians of the Constitution. It is not so in the United States; there the power of reviewing legislation as to its conformity with the Constitution was first asserted by the courts and has since been rigorously maintained. An express provision in our Constitution for the judicial review of laws is a great advantage, but it will not be utilised to the full unless the judiciary not only pronounces on the constitutional validity of laws but also examines the circumstances where such examination is required in order to find out whether a law, which is valid in itself, has been applied in such a way as to render the whole proceeding invalid. For this purpose it may often be necessary even to re-examine the evidence that has been examined before. In the United States questions concerning encroachments, either by the executive or by the legislature, on the liberty guaranteed by the Constitution come before the Federal Supreme Court only after they have been passed upon by the state courts, which is not the case in India. Even so, the Supreme Court is not concluded by the decision of the lower courts, not only in regard to issues of law but even in regard to questions of fact. The state courts' findings of fact are liable to be inquired into afresh by the Supreme Court where invasion of constitutional rights is claimed. It is only by following this procedure that the rights can be fully safeguarded. In our next issue we shall give a number of instances in which the United States Supreme Court has asserted this right of reviewing the findings of fact of the lower courts and arriving at an independent conclusion on the basis of the facts so determined by the Court independently. This procedure must be adopted in India if judicial review is to be given the fullest scope for

the maintenance of the fundamental guarantees of civil liberties.

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## COMMENTS

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### The late Mr. Deshbandhu Gupta

The civil liberty movement has suffered a grievous loss by the untimely death of Lala Deshbandhu Gupta in a recent air crash near Calcutta. He had not formally enlisted in the movement (he could hardly have done so, being under Congress discipline), but this only adds to the admiration which those who are in the movement feel for the great work that he did for the preservation of freedom of the press in particular—in opposition to the declared policy of the Congress.

Gupta was an ardent Congressman, having gone to jail at least half a dozen times at the bidding of Congress leaders. There was no sacrifice which this young man of very high promise was not prepared to make in the national interest. He was also a great social worker and did much valuable work in the cause of social reform. The measure of autonomy which the Delhi province enjoys under the new Constitution is almost solely due to the earnest efforts he made in the constituent assembly. He was the founder and managing director till his death of the "Daily Tej" in Urdu, which under his sage guidance has become a very powerful paper. A forceful writer, he was an equally effective speaker and keen debater, and these qualities of his were never shown to better advantage than when he had to meet the subtle arguments of the Home Minister when the latter was defending his obnoxious Press Bill.

The yeoman service he rendered, as President of the All-India Newspaper Editors Conference, to the cause of the freedom of the press in making onslaughts first on the Constitution Amendment Bill and then on the Press Bill cannot be sufficiently praised. Even if he were an independent member of Parliament, this service would rank very high, but being a loyal member of the Congress, he deserves particular gratitude of all who feel for civil liberty. It is only those who know how difficult it is for anyone who wishes to retain his position in the Congress to oppose a repressive measure proposed by it who can fully appreciate the independence of late Deshbandhu Gupta in offering the most uncompromising opposition to the law which the International League for the Right of Man in its Bulletin fittingly describes as a law for policing the press. The civil liberty movement owed very much to him.

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### Nehru and Civil Liberty

Mr. Nehru as President of the Congress is carrying on a country-wide tour to canvass support for the Congress in the forthcoming general election, and while he was in Travancore State, which, in addition to deprivation of civil liberties in other respects, is under the operation of a law banning Communist organizations, he received a

telegram from a Communist requesting an interview for the purpose of discussing the question of civil rights. Referring to the telegram, Mr. Nehru said in a public speech that "civil liberties were more fully granted in this country than in any other country in the world."

We were quite accustomed to hear such a claim from the former Home Minister, Mr. Rajagopalachari, who would go down in history as the author of the Press Act. During the discussions on this Act he frequently stated that India enjoyed as much individual liberty as England and U. S. A., for instance, if indeed the measure of Indian liberty was not greater than that in those countries. But we must confess that we were not prepared to see a similar claim being put up by Mr. Nehru. The least one would have expected of him was to plead that coercive measures were necessitated by the troublous times through which India was passing, and though the plea would be unconvincing in any case, such an apologetic gesture would have been at least more worthy of the Prime Minister. Some allowance is no doubt due to the fact that the statement was made as part of an election propaganda, in which no one expects strict adherence to truth, but even after making the fullest possible allowance for this fact, we cannot help saying that his statement does no credit either to his intellectual integrity or to the firmness of his political principles.

#### Banning of Organizations

##### IS THE SUPREME COURT SEIZED OF THE LAW ?

One wonders what has happened to the appeal which it was reported the Governments of Madras and West Bengal were going to prefer to the supreme Court against their High Court decisions declaring the provisions of the Criminal Law Amendment Act which give unfettered power to the executive to ban political organizations. It cannot be that either of the Governments has made an appeal and the Supreme Court has not yet found time to dispose of it. One suspects that the Court has not been seized of the matter at all. If so, it is possible that the Government of India has instructed these Governments not to take the question to the Supreme Court at this time. The India Government may have very reasonable apprehension that, instead of the Madras or West Bengal Governments profiting by such an appeal, the Governments of some other states, e. g., Travancore-Cochin, in which the Act is in force for outlawing Communist organizations, may have to raise the ban. If the Government of India is instrumental in persuading the Madras and West Bengal Governments not to seek a final and authoritative decision of the highest judicial authority on this subject, it must be said that such a proceeding does not reflect credit on it, for in a way it amounts to defiance of judicial authority.

In this connection the reader may be reminded of what the Government of India did in the matter of art. 19(2) of the Constitution. It took advantage of a majority decision of the Patna High Court to the effect that even

encouragement of the offence of murder comes within the permissible limits of free press in order to apply the widest possible curbs to free expression by amending the article in a most drastic manner. It is quite likely that if the article were referred to the Supreme Court for an interpretation, the Court would have said that art. 19(2), even as it stood at the time, already prohibited incitement to any such thing as murder, and the Government of India would then have been left without any colourable excuse to widen restrictions on free speech and free press by proposing the kind of amendment it did propose to the article. In these circumstances the Government thought it best to let the Patna High Court's decision stand unchallenged so that under its cover it might effect a sweeping amendment of the Constitution and practically score out the basic right of freedom of expression from the Constitution.

It is our fear that the Government of India is following the same none too honest policy in regard to the Criminal Law Amendment Act in the hope of saving for those states the arbitrary power which they are using to put Communist organizations out of the pale of law. One cannot condemn the policy too strongly.

#### The Right to Organize

The judgment of the Nagpur High Court in the matter of the Hindustan Co-operative Insurance Society's application for registration of their trade union, given on a later page in this issue, must be read with this knowledge in the background, that such attempts to have the trade union registered were being made from 1947 and every time these efforts have come to naught, the plea being put forward every time that necessary inquiries were being made from the district authorities and the police. It is the conviction of the trade union that this was merely an excuse to delay the registration of the union in order to favour the unions affiliated to the unions of the Intuc (i.e., the Indian National Trade Union Congress) which are merely Government-sponsored unions. But the registration law, if properly worked, does not allow of such favouritism as the High Court's decision shows, and it is hoped that the Trade Unions Act will in future be enforced honestly in the Madhya Pradesh and in every other province, so that all trade unions, whether affiliated to the Intuc or not, will derive the benefit which the Act seeks to confer. We understand that the trade union of the Hindustan Co-operative Insurance Society has not yet been granted a certificate of registration. If our information be correct it would be very unfortunate indeed, but we hope that the Registrar will soon carry out the High Court's order to perform the duties laid down in sec. 8 "immediately."

#### "Travesty of Judicial Procedure"

A plea that was recently put forward by the President in his speech in the Orissa High Court for a simplification of the laws of evidence and procedure so that the "law's

delays" may be reduced has elicited from Dr. N. C. Sen Gupta some constructive suggestions in this field, e. g., the adoption of the pre-trial method followed by the federal courts in the U. S. A. and the Third Party procedure also in vogue in that country. Such methods he says would be helpful in preventing multiplication of litigation.

While Dr. Sen Gupta is all for real reform, he would deprecate short-circuiting of legal procedure which only results in curtailment of the liberty of citizens. He has given two instances (in the "Statesman" of 30th November) of how this happens. He says :

During the last half a century there have been many tinkering with the Laws of Procedure and Evidence in relation to certain classes of cases for which special tribunals with special rules of procedure and evidence have been evolved. On the whole, they have not been a success. They have unduly curtailed the privileges of citizens under trial but have not generally succeeded in expediting decisions. And now we have got a set of laws which have abolished trials altogether under the guise of Preventive Detention.

This is a most drastic "reform" of the Law of Procedure by which the fundamental right of a citizen to a proper trial before being sent to jail has been taken away altogether. The law provides for "Preventive Detention." But under cover of it, all detenus are sent to jail and subjected to jail discipline for breach of which they have been punished. There is provision for giving an opportunity to a detenu to meet charges against him, which, by the way, may not be offences under the law, and for an examination by judges of the evidence against him. But the protection given by these privileges is illusory, for the evidence against him is never disclosed to the detenu and the judges who examine it do not see the witnesses and cannot have their evidence tested. It is a travesty of judicial procedure.

#### Communists and Civil Liberties Unions

The Irish Association of Civil Liberty, which, like the All-India Civil Liberties Council, is affiliated to the International League for the Rights of Man, is considering the question whether, like the League itself and the American Civil Liberties Union, it should refuse to admit to its membership Communists who see in the Association only a useful weapon with which to fight their own political battles. The Association's report for the mid-year ending June 1951 has the following on the subject :

Recently the Council discussed whether an application for membership from a known Communist sympathizer ought to be accepted. Some members took the line that the personal opinions of applicants for membership were none of our business : and that the Association would cease to be worthy of its name if it attempted any such "screening." Others argued

that to permit the introduction of members whose avowed object was to use the Association (as similar associations have, regrettably, been used elsewhere) to further their own political purposes and who made no secret of the fact that the first act of their party, should it attain power, would be to suppress freedom of speech as it is known in the Western World, would be a suicidal policy. It would be impossible to give all the arguments here : suffice to say that the majority of Council members present agreed that "screening," however obnoxious in principle, had been proved necessary in practice, as the lesser of two evils. The old rule still holds good, that anybody who subscribes to the Association's aims is welcome as a member. But we want to be quite satisfied that new members really believe in the objects for which we are working and are not just taking advantage of the Association for personal or party ends.

Whatever the Association's decision may in the end be as to admitting Communists as its members we have no doubt that the Association, like the League and the Union, will always strive for the preservation of the civil liberties of Communists as of all others.

#### Release on Parole

Following the Madras Government's example, the Hyderabad Government released from detention four Communist leaders who are contesting seats in the House of the People on parole for three months "in the interest of fair elections." The Government has declared that there are no other detenus who are desirous of participating in the general election. The ban on the Communist Party and the Andhra Mahasabha has not been raised.

It is worthy of note that the Supreme Court went out of its way to recommend release of a detenu in order to enable him to take part in the election. A Communist detenu from Amritsar, Mr. Achchar Singh, made a habeas corpus petition to the Court, and the Court issued a rule nisi, calling upon the Punjab Government to show cause why Mr. Achchar Singh should not be released. While considering the petition, Mr. Justice Chandrashekhar Iyer said to the Advocate-General :

Please convey to the Punjab Government that this Court would like it to consider the question of releasing Achchar Singh on parole because he wants to contest the election.

#### Government Employees and Elections

The Government Servants' Conduct Rules of the Madras Government (vide p. 41 of the BULLETIN) had so far forbidden not only its servants in all grades to participate in elections to the legislature, but also members of their families, and the latter were even forbidden under the Rules to canvass or use their influence in connection with the elections, they being made liable to punishment

for contravention of the Rules. Now the Government has relaxed these Rules: the ban against Government employees of all grades participating in elections will continue, but their wives and dependent relatives will be free either to contest or participate in the elections.

## REPETITION OF MR. A. K. GOPALAN'S CASE

### Arrested after being Released

An order for detention, thereafter an order for release by the court, and re-detention immediately after the court's decision - these were the characteristics of Mr. A. K. Gopalan's case (vide p. 239 of the BULLETIN). All these were reproduced with exact parallelism in the case of another Communist detenu, Mr. Makhan Singh Tarsikka of the Punjab—only the case was dealt with this time, not by a division bench of the Madras High Court, but by the Constitution Bench of the Supreme Court presided over by the acting Chief Justice.

Mr. Tarsikka was detained by the district magistrate of Amritsar on 30th July under sec. 3 of the Preventive Detention Act. It appears that a fresh order for detention was served on him on 6th August, wherein he was directed to be detained till 31st March 1952. Mr. H. J. Umrigar, who had first appeared as *amicus curiae*, presented as counsel a petition to the Supreme Court for a writ of habeas corpus. He contended that specification of the period of detention in a detention order even before referring the case of the detenu to an Advisory Board rendered the order illegal. The Court on 5th December ordered the release of Mr. Tarsikka "forthwith," stating that the reasons for the order of release would be given later.

It cannot be said that the petitioner was not released in pursuance of the Court's order, as that could not be said in the case of Mr. Gopalan either. Soon after the release order was received and release effected, he was re-arrested and served with a fresh order for detention (the Supreme Court has made an order for release just before rising for lunch and the order for detention was served at 1-25 p. m.)—precisely what had happened in the Gopalan case. The unfortunate part of the affair was that the fresh detention order was dated 3rd December—two days before the earlier one had been set aside by the Supreme Court, no doubt in anticipation of what the fate of it would be. Mr. Umrigar brought the re-arrest and re-detention of Mr. Tarsikka to the Court's notice and argued: here was a clear and gross case of contempt of court, because the detaining authorities had all the time a detention order ready in their pocket which they did not disclose to the Court—just a replica of the Gopalan's case. The Court said that it would take the contempt aspect of the matter into account when a formal petition came in this behalf.

It did not take long for such a petition to be made. For, before the Court rose for the day at 4 p. m., Mr. Tarsikka was brought back to the Court hand-cuffed, since he had another petition before the Court pertaining to denial to him of certain facilities to which a prisoner is entitled. Then he told the Court of his re-arrest and re-detention and his intention to take contempt proceedings against the Advocate-General of the Punjab, the district magistrate of Amritsar and two police officers who were the persons concerned in his arrest and detention. And for that purpose, Mr. Tarsikka said, he would request Their Lordships to give a direction that he should not be taken back to the Punjab but kept in Delhi District Jail, so that he might take further steps expeditiously. The Court gave the necessary directions in this behalf and directed notice to be issued to the officials against whom contempt proceedings were to be initiated.

The matter came up again before the Supreme Court on 7th December. Mr. Umrigar argued that the petition raised two questions: one related to the illegality of the detention order of December 3 and the other contempt of court. The fresh order under which Mr. Tarsikka had been detained, Mr. Umrigar submitted, suffered from the same defect as the previous one since in the fresh order the period of detention had been fixed as three months even before the matter of detention had been gone into by an Advisory Board, which would make the order illegal on the face of it. By reason of this the detenu was entitled to the order of release immediately.

On the question of contempt Mr. Umrigar submitted that the existence of the detention order of December 3 was within the knowledge of the Advocate-General and the other persons concerned when the habeas corpus petition of the detenu came up for hearing on December 5 and by not disclosing it they had committed contempt of this Court.

Intervening at this stage, Counsel for the State of the Punjab informed the Court that he had received intimation from the Secretary, Home Department, Government of the Punjab, that the order of detention of December 3 made by the District Magistrate of Amritsar had been revoked since it was defective, having been made while the previous order of detention was still in force and a new order of detention, a third one, had been made. He had been told now, Counsel said, that the new order of detention was served on the detenu this morning. To this Their Lordships said that they were not concerned with anything else except the petition before them.

The fresh grounds supplied to Mr. Tarsikka in the order for detention served on him on 3rd December were almost similar to those supplied to him in his earlier detention, and alleged *inter alia* that he was a firm believer in the disruptive and violent programme of the Communist Party, that he had bad characters working with him with unlicensed weapons, that he resisted the arrest of Communists by force and that he was a saboteur.

The order of the Court was:



This petition prays for two reliefs: (1) Contempt proceedings to be taken against the respondents and all others found guilty of contempt; (2) The petitioner be set at liberty forthwith and given protection of this Court against the highhandedness of the Police of the State of the Punjab. So far as the second relief is concerned, we find that the order of the District Magistrate dated December 3, 1951, purporting to direct the petitioner's detention for three months from the date of his arrest, suffers from the same defect on account of which we quashed the earlier order for detention dated July 30, 1951 and directed the petitioner to be set at liberty forthwith. This order of December 3 also purports to be a fresh order under Section 3 of the Preventive Detention Act and must be quashed on the same grounds. Therefore we order that the petitioner be released forthwith.

As for the first point we direct the issue of notice to the person impleaded as respondents and will consider later whether a *rule nisi* should be issued against them.

## HABEAS CORPUS PETITIONS

### Re-Arrest after Release

The Orissa High Court allowed, on 21st November, a habeas corpus petition by the Communist detenu, Mr. Brajkishore Patnaik, and ordered his immediate release. Mr. Patnaik submitted to the Court that the grounds of his detention were not supplied to the Advisory Board within six weeks of detention and the Board had not therefore reported to the Government on grounds of detention within ten weeks as required by law.

After orders were passed by the High Court, the Government arrested him under a fresh order of detention.

After he was re-arrested he made a fresh application for habeas corpus, which was allowed by the High Court and he was ordered to be released on 3rd December for the second time.

Mr. Patnaik is a candidate of the Communist Party for election to the Orissa Assembly.

[See the "Times of India's" editorial comment quoted on the last page.]

### "Without the Satisfaction" of the Detaining Authority

Mr. Bhola Nath Tandon, a partner in the firm of Munnalal Sidhgopal in Kanpur, who had been detained by virtue of an order of detention by the district magistrate of Kanpur, was ordered to be released on 12th November by Mr. Justice Bhargava of the Allahabad High Court on a habeas corpus petition.

An informer of the deputy magistrate brought news that the petitioner was selling cloth at prices above the control rate, and the district magistrate issued an order detaining the black-marketer and had him arrested. Though the order was directed against the petitioner, it

was in fact made out in the name of Mr. Shiv Nath Tandon, the brother of the petitioner. When this mistake was discovered, the district magistrate cancelled the order he had issued and passed another directing the detention of Mr. Bhola Nath Tandon. But before sending him to jail, the district magistrate took care to see on an investigation by the deputy magistrate that the petitioner was the man who indulged in black-marketing practices.

In dealing with the habeas corpus petition, His Lordship came up against the question whether the district magistrate was satisfied, when cancelling the order against Mr. Shiv Nath Tandon and passing one against Mr. Bhola Nath Tandon, that the petitioner was the person whose detention was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of essential supplies. On this point His Lordship said:

There was no doubt that the district magistrate could have been satisfied on the report of the informer alone and if it had been contended before His Lordship that he was fully satisfied on that report, he would not have been competent to see whether the materials available to him for being satisfied were adequate or inadequate. The adequacy or inadequacy of the materials, on which the satisfaction of the district magistrate was based, could not have been enquired into by this Court.

However, in the present case the circumstance that the district magistrate had himself thought it necessary to identify the petitioner as the person who was to be detained, before enforcing the order of detention he had passed on the previous day (i. e. on 18th August), showed that when the order was passed he was not "fully satisfied" that the petitioner was the right person whose detention was necessary.

His Lordship said that the order of detention, under which the applicant was being kept in jail, was passed on Aug. 18, and it necessarily followed that the order was passed by the district magistrate without full satisfaction about the identity of the applicant. Consequently the order of detention was passed without compliance with the provisions of sec. 3 of the Preventive Detention Act, 1950, which required full satisfaction of the district magistrate.

### Petition Disallowed

Mr. P. Ramamurthi, recently appointed Secretary of the Tamil Nad Communist Party, was arrested on 16th November and detained in the Cuddalore jail the same day on a detention order dated 17th February 1951. It appeared from the grounds of detention that he was an accused in the Tiruchirapalli conspiracy case and that after his release from detention in August 1947, he remained underground from 1948. The conspiracy case in which he was indicted was now awaiting trial after the committal order before a special judge.

Mr. Ramamurthi in his habeas corpus petition contended that the detention order served on him was for the

purpose of preventing him from approaching the electorate as a member of the Communist Party which was now a legal party and that the order was mala fide. Mack and Somasundaram JJ. of the Madras High Court disallowed the petition on 28th November. They said:

This petition is supported by a long affidavit by the petitioner to the effect that he has filed his election papers and is desirous of contesting the coming elections and for this purpose he should be speedily released. We are wholly unable to accept prima facie this ground which would even justify our admitting this petition, or why we should give him a personal hearing. The procedure contemplated by the provisions of the Preventive Detention Act IV of 1951 is that the detenu should make his representations to the Advisory Board which the Act has clothed with full discretion to recommend releases in proper cases and such recommendations are binding on the Government. Nor can we see any reason why the petitioner should now try to hustle us into giving him his release, after evading the legal process for so long in some subterranean place of concealment. So far as we can see, the Constitution does not accord liberty to persons unless they come out into the open and not seek to circumvent the legal machinery of the law.

With these observations we dismiss the petition *in limine*.

#### Release by the Supreme Court

Messrs. Arun Biswal and Upendra Pasa, detenues from Orissa, raised grounds similar to the Tarsikka case in their habeas corpus petitions, and the Supreme Court, allowing the petitions, ordered their release on the same day. The Court also ordered at the same time the release of Mr. Chanan Singh from the Punjab as it was found that the grounds of detention supplied to the detenu were vague.

#### Prosecution and Detention at the Same Time

We have already reported some cases in which a person who was being prosecuted for certain offences was also detained under the Preventive Detention Act while the prosecution was not yet complete for reasons similar to the charges on which proceedings in the Court had been started.

A case of this kind was before the Supreme Court on 5th December. Arguing on a habeas corpus petition for the petitioner, Mr. Lal Chand Sharma a detenu from the State of U. P., counsel contended that his client's detention was wholly illegal and mala fide because the grounds of detention supplied to the petitioner was the subject matter of a continuing prosecution and a person could not be subjected to what may be described as double jeopardy. Mr. Sinha said that when a regular prosecution was launched on the petitioner, the charges thereof cannot be made the grounds of preventive detention. Their lordships observed that the High Court at Allahabad had, on a

petition under Article 226, gone into the matter thoroughly and were satisfied that there were additional facts justifying the detention and therefore, they saw no reason to interfere with the High Court's order.

#### Sec. 12 of the Act Abused

Mr. Justice Khosla and Mr. Justice Harnam Singh of the Punjab High Court allowed the habeas corpus petition of Mr. Kaka Avtar Singh, an Akali worker of Amritsar, on 4th December.

Counsel for the petitioner submitted that the detenu was arrested and detained under the Preventive Detention Act on August 13, 1950, in connection with the resolution of the Shiromani Akali Dal containing directive to the Panthic M.L.A.s to quit the Congress Party in the Punjab Assembly. A previous petition for the release of the detenu was rejected *in limine* in September, 1950, and he was ever since confined in various jails in Punjab. The Advisory Board was, for the first time, consulted in April 1951 and the Board gave their report on April 4, 1951, and the district magistrate had been passing various orders of extension of detention from time to time, the last order being of March 28, 1951. Counsel maintained that under the law the district magistrate could not pass an order of detention for a period more than three months and that the State Government was bound to pass confirmatory orders within a reasonable time after the Advisory Board had given its opinion. No order having been passed by the Government confirming extension the detention was illegal.

Their lordships called upon Assistant Advocate-General, appearing on behalf of the Government, to show how the district magistrate could pass these orders.

The Assistant Advocate-General submitted that the district magistrate had passed these orders under Section 12 of the Preventive Detention Act and there was no bar in the Act for the district magistrate to order detentions for more than three months.

Their lordships pointed out that Section 12 only kept the old orders of the district magistrate alive, but did not give fresh powers to the district magistrate to extend previous detention period. Their lordships, therefore, allowed the petition, holding detention of Kaka Avtar Singh illegal and ordering his immediate release.

Sec. 12 of the Preventive Detention (Amendment) Act, 1951, declares that detention orders which were made before the old Act was amended but which were in force at the time it was amended shall have effect as if they were made under the Amendment Act.

#### Grounds "Vague"

A division bench of the Punjab High Court consisting of Mr. Justice Bhandari and Mr. Justice Khosla accepted (28th November) the Habeas Corpus petition challenging the detention under the Preventive Detention Act of Lala Amar Nath, a rich businessman of Hoshiarpur.

The detenu had been arrested and detained on October 15 last under the orders of the district magistrate, Hoshiarpur, on the following grounds: (1) that he was a notorious 'darabaz' and a gambler and in order to make maximum profit he was carrying on illegal trade in an organized manner through agents who gambled at the centres opened by him; the gamblers while returning from their centres after gambling committed thefts and created local brawls and annoyance to passers-by, when they were drunk; (2) that the petty shopkeepers who lost in 'dara' and gambling at his centres tried to make up their losses by selling controlled articles at higher prices and were thus prejudicial to the maintenance of the supplies essential to the community and public at large; and (3) that he was a patron and pivot of several evil-doers and criminals whose acts were detrimental to the public interest, and such sort of activities were prejudicial to the maintenance of public order.

Counsel for the detenu attacked the order of detention for three reasons. He contended that the grounds of detention were vague, indefinite and inconclusive. The order was mala fide inasmuch as it was an abuse of the Preventive Detention Act. The Act, he contended, was preventive and not punitive. The alleged vague transactions could not affect the maintenance of supplies and services essential to the community or the maintenance of public order.

The Assistant Advocate-General submitted that the grounds were sufficient for upholding the order of detention passed by the district magistrate.

Their Lordships, holding the grounds to be vague, ordered the release of the detenu.

#### Supplying Arms to Reds

Holding that "any person who actively supports the perpetration of violent and dangerous activities must be regarded as one acting in a manner prejudicial to the security of the State and therefore could be detained under the Preventive Detention Act," a division bench of the Hyderabad High Court dismissed the habeas corpus application of Jilania, a detenu, on 29th November.

According to the police, Jilania, a former Razakar who was in possession of arms and ammunition, supplied them to Communists after the police action.

Their Lordships rejected the applicant's plea that "mere supply of weapons to Communists could not justify his being detained" and dismissed the application.

### CIVIL COURTS AND ELECTIONS

#### High Court has No Jurisdiction

At the Bombay High Court applications for the issue of writs of certiorari and mandamus were made by eleven candidates for election (of these Mrs. Hansa Mehta was one), whose nomination papers had been rejected by the respective Returning Officers for one reason or another.

The applicants contended that their nominations had been wrongfully rejected and prayed that the Returning Officers' orders be quashed and their names included in the lists of valid nominations.

The Chief Justice and Mr. Justice Gajendragadkar, who heard the applications, upheld the objection raised by the Advocate-General that art. 329 (b) of the Constitution barred interference by courts in electoral matters and dismissed (4th December) all the applications. Art. 329 (b) provides that "no election" to a legislature shall be called in question except by an election petition to the election tribunal. It was contended on behalf of the applicants that the exclusion of courts' jurisdiction under this article was restricted to questioning the result of the election by an election petition after the election was over, while what they challenged was the violation of their right to offer themselves for election. This argument was reinforced by another; viz. that it would not be enough for them to establish after the election was over that their nomination papers had been improperly rejected; they would further have to establish, under sec. 100(c) of the Representation of the People Act, that the election had been materially affected by such rejection, in order that the election could be set aside by the election tribunal.

Their Lordships recognised this difficulty, but, they said, "looking to the larger interests of the State and the proper functioning of a democratic Constitution, the interpretation which we are putting on art. 329 of the Constitution and the scheme of the (Representation of the People) Act is not inconsistent or contrary to the larger interests of the people of this country." And as to the interpretation of the word "election" in art. 329 (b), they said: "This word has a wider connotation than the mere restricted meaning of the result of the election or of counting of votes. 'Election' means all matters relating to election, from the time of the issue of the notification till the final result is declared. It is one whole, continuous, integrate procedure." The upshot of the decision is that the High Court has no jurisdiction to entertain a petition in connection with elections to the legislatures at any stage of the elections.

Their Lordships held, however, that under art. 227 the High Court could interfere in case the election tribunal were to act without jurisdiction or in excess of the power conferred on it by law.

Similarly, a number of petitions questioning the acceptance or rejection of nomination papers by Returning Officers were dismissed at the Madras and Calcutta High Courts on the ground that art. 329 was a bar against the High Court entertaining election petitions. Mr. Justice Bose of the Calcutta High Court, while dismissing the petitions, observed:

The provisions of the Representation of the People Act, 1951, should be suitably amended so as to provide for the final decision of the question relating to rejection of nomination papers before the polling began. Otherwise, the returned candidate would be deprived of the fruits of his election after he had incurred considerable worry in getting through the election, merely because the Returning Officer had come to an erroneous conclusion.

Moreover, the candidate whose nomination is rejected is debarred from participating in the election and is relegated to a future election, which may not be as advantageous to him as the present election.

## THE RIGHT TO ORGANISE

### A Case in Nagpur

Some employees of the Hindustan Co-operative Insurance Society Ltd., Nagpur, made an application on 27th December 1950 to the Registrar of Trade Unions of Madhya Pradesh for registration of their trade union under the Trade Unions Act, 1926. Whereupon the Registrar, being of the opinion that "there were certain shortcomings and anomalies in the rules" of the trade union, called for information regarding it from the district authorities in order to satisfy himself that the application complied with the provisions of sec. 5 and that the trade union was entitled to registration under sec. 6 of the Act. Feeling that this calling for information on the part of the Registrar was only an excuse to refuse or at least delay the grant of a certificate of registration to it and to deprive it of the privileges which a registered trade union enjoys, the employees filed an application in the Nagpur High Court against this proceeding under art. 226 of the Constitution.

The application was allowed by Mangalmurti and Mudholkar JJ. on 16th November. Admitting that the Registrar is empowered to call for further information relating to the trade union in order to satisfy himself that the requirements of secs. 5 and 6 are fulfilled and to refuse registration under sec. 7 "until the required information is supplied," Their Lordships said:

The latter provision itself shows that the information is to be called for from the trade union and not from any other source except the trade union itself... We are unable to find any provision in the Act which would support the procedure of the non-applicant—Registrar—of calling for further information "from the deputy commissioner and other sources." His powers in this respect are limited to the provisions of sec. 7 and he could not add to those provisions.

Furthermore, Their Lordships observed that the Registrar could not show "the shortcomings and anomalies in the rules of the proposed union" which necessitated calling for further information, and concluded thus:

We are, therefore, of the opinion that in the proceedings before the non-applicant—Registrar—the stage has been reached at which he is bound to perform his duties under sec. 8 of the Indian Trade Unions Act, which says: "The Registrar, on being satisfied that the trade union has complied with all the requirements of this Act in regard to registration, shall register the trade union."

We, therefore, direct the non-applicant, i. e., the Registrar, to discontinue "the practice of his office to call for further information from the deputy commissioner and other sources" and in the present case to perform his duties which are laid down in sec. 8 immediately.

[See the comment on this subject under "Comments."]

## RE-ARREST OF DETENUS AFTER RELEASE

### Reprehensible

*Under this caption the "Times of India" in its editorial of 30th November writes as follows:*

The practice of serving a fresh detention order on a person as the time of his release draws near or when he has secured his freedom from a court of law is repugnant to every code of civil liberty and every canon of civilized justice. It has been censured by several High Courts and during the hearing of the Gopalan case at least one of the Supreme Court judges was moved to characterise this administrative subterfuge as "very reprehensible." Yet this very reprehensible habit continues to be the rule rather than the exception in many States. In Orissa alone, during the past ten days, new orders of detention have been served in two cases where release was ordered by the State High Court. Nothing can be more disruptive of the rule of law than this deliberate undermining by the executive of the authority of the highest judicial tribunal inside the State. The fact that the detenus in these two cases happen to be candidates for election to the State Assembly cannot but arouse comment. The Congress enjoys no great reputation for integrity, political or otherwise, and in its own interests it would be well advised to move warily. The two Orissa cases illustrate, if further illustration is at all necessary, how the invasion of civil liberties makes a mockery of democratic practice.

If anything, the circumstances under which the released Orissa detenus have been re-detained fortify the apprehensions and suspicions of those who believed that the provisions of the Preventive Detention Act, even in its amended form, did not provide adequate safeguards against gross executive abuse of arbitrary powers. The nine months during which the new Act has been in operation reveals how vague and flimsy are the grounds on which persons may be and are detained in several instances. Numerous cases may be cited in which the executive had no solid ground for such detention unless mere suspicion may be considered as good cause. There are other cases in which the grounds were not even indicated to the advisory boards within the prescribed period of six weeks. It may be true, as the then Home Minister pointed out in his reply in Parliament to critics of the Preventive Detention Act (Amendment) Bill, that hard cases make bad law. But it is equally true that the existence of too many hard cases suggests that something is radically wrong with the law. In the case of the Preventive Detention Act the law has proved in practice to be inimical to the best interests of equity and democracy. It has another five months to run and we hope that its legislative demise will also mean its constitutional burial. In the meanwhile, the Congress administrations should not by too easy resort to this punitive enactment lay the authorities open to the suspicion that they are anxious to apply it on occasions when the foundations of the State are by no means threatened.