

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

Editorial Committee :

N. M. JOSHI,
S. G. VAZE,

*Vice-President and
Secretary respectively of
the All-India Civil
Liberties Council*

*Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
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THE RIGHT OF PUBLIC MEETING WHEN CAN GATHERINGS BE FORBIDDEN OR DISPERSED ? ANGLO-AMERICAN LAW ON THE SUBJECT

In view of the Punjab High Court's holding that sec. 144 of the Criminal Procedure Code which gives unfettered power to a magistrate to forbid a public meeting in case of an apprehended danger to the public peace is valid and is not contrary to the Right of Assembly conferred by art. 19 (1) (b), it would be useful to consider here in some detail what the Anglo-American law on this subject is. Professor Chafee has summarized it in "Free Speech in the United States" at p. 422. He first poses a question and then answers it.

Does the right of reasonable regulation of public meetings which ... officials must possess in the interests of public welfare — traffic in streets, recreation in parks, and so on — also include the power to forbid in advance a meeting which, in their opinion, threatens disorder? The alternative view obliges the officials to let the meeting go on until disorder actually occurs or is just around the corner — the "clear and present danger" test once more. ... This latter view is part of the English and American law of assembly; previous restraint is forbidden by the common law. ... The meeting must not be forbidden or broken up until a real disturbance of the peace arises and a magistrate "reads the Riot Act."

A riot involves "a tumultuous disturbance of the peace" and "the occasion on which force can be employed, and the kind and degree of force which it is lawful to use in order to put down a riot, is determined by nothing else than the necessity of the case" (Dicey, p. 290).

1.—ENGLISH LAW

In England, as Dicey has explained in his "Law of the Constitution," no "special privilege" of a public meeting is recognised as it is for instance in Belgium. The right of assembly is not constitutionally provided; it is only an indirect outcome of the exercise of individual rights to liberty of person and liberty of speech, since the police has "no special authority to control open-air assemblies." The same idea was expressed by Lord Hewart, C. J., when he said in *Duncan v. Jones* (1936) 1 K. B. 218: "English law does not recognise any special right of public meeting for political or other purposes." But the right is nonetheless real. Where no obstruction to traffic is in question, the right cannot be interfered with, provided the law be not broken.* As Dicey puts it:

The object of a meeting may be to commit a crime by open force, or in some way or other to break the peace, in which case the meeting itself becomes an unlawful assembly. The mode in which a meeting is held may threaten a breach of the peace on the part of those holding the meeting, and therefore inspire peaceable citizens with reasonable fear; in which case, again, the meeting will be unlawful. In either instance the meeting may lawfully be broken up, and the members of it expose themselves to all the consequences, in the way of arrest, prosecution, and punishment, which attend the doing of unlawful acts, or, in other words, the commission of crimes.

CIVIL LIBERTY IN INDIA

REFERENCE IN INTERNATIONAL LEAGUE'S REPORT

In the report of its work in 1951 the International League for the Rights Man thus describes the action taken by it on measures in India affecting Personal Liberty and Freedom of the Press :

Supported the activities of our affiliated body, the All-India Civil Liberties Council, in opposing the detention of thousands of alleged Communists without trial, and the laws virtually suspending habeas corpus. No results.

Supported its further unsuccessful efforts to defeat the Government's press gag amendment to the Constitution.

* Two statutes prohibit offensive conduct at public meetings. In addition, sec. 5 of the Public Order Act, 1936, prohibits the use of threatening abusive or insulting words or behaviour with intent to provoke a breach of the peace. ("Actually this does not seem to add much to the existing state of the law"—Wade.) The Public Meeting Act, 1908, forbids disorderly conduct at meetings.

If the organizers and supporters of a meeting held for a lawful purpose, conduct themselves in an orderly and peaceable manner and do not indulge in provocative language, the gathering cannot become unlawful merely because third persons, disliking its presence, threaten a breach of the peace. This principle was established by the case of *Beatty v. Gillbanks* (1832) 9 Q. B. D. 308. The case is thus stated by Dicey :

The Salvation Army met together at Weston-super-Mare with the knowledge that they would be opposed by the Skeleton Army. The magistrates had put out a notice intended to forbid the meeting. The Salvationists, however, assembled, were met by the police, and told to obey the notice. X, one of the members, declined to obey and was arrested. He was subsequently, with others, convicted by the magistrates on a summary charge of unlawfully assembling in breach of the peace in a public thoroughfare and bound over to keep the peace. It was an undoubted fact that the meeting of the Salvation Army was likely to lead to an attack by the Skeleton Army, and in this sense cause a breach of the peace. The conviction, however, of X by the magistrates was quashed on appeal to the Queen's Bench Division.

The judgment in this case is a landmark in the history of England in the matter of free assembly and we therefore give below long extracts from it. Upholding the contention of the appellants' counsel that "to constitute an unlawful assembly, there must be either an illegal object, or if the object be legal, the mode of carrying it out must be tumultuous," neither of which propositions was made out against the appellants, Justice Field said :

Before they (the appellants) can be convicted it must be shown that this offence (of unlawful assembly) has been committed. There is no doubt that they and with them others assembled together in great numbers, but such an assembly to be unlawful must be tumultuous and against the peace. But it is said that the conduct pursued by them on this occasion was such as, on several previous occasions, had produced riots and disturbance of the peace and terror to the inhabitants, and that the appellants knowing when they assembled together that such consequences would again arise are liable to this charge.

Now I entirely concede that everyone must be taken to intend the natural consequences of his own acts, and it is clear to me that if this disturbance of the peace was the natural consequence of acts of the appellants they would be liable, and the justices would have been right in binding them over. But the evidence set forth in the case does not support this contention; on the contrary, it shows that the disturbances were caused by other people antagonistic to the appellants, and that no acts of violence were committed by them.

In Hawkin's Pleas of the Crown, s. 9, it is said, "An unlawful-assembly according to the common opinion is a disturbance of the peace by persons barely assembling together with the intention to do a thing, which if it were executed would make them rioters, but neither actually executing it nor making a motion toward the execution of it." On this definition standing alone, it is clear that the appellants were guilty of no offence, for it cannot be contended that they had any intention to commit any riotous act. The paragraph, however, continues thus: "But this seems to be much too narrow a definition. For any meeting whatever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly, as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no man can foresee what may be the event of such an assembly." Examples are then given, but in each the circumstances of terror exist in the assembly itself, either in its object or mode of carrying it out, and there is the widest difference between such cases and the present.

What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition, and the question of the justices whether the facts stated in the case constituted the offence charged in the information must therefore be answered in the negative.

In support of the principle established by *Beatty v. Gillbanks* Dicey cites the Irish case of *The Queen v. Justices of Londonderry* (1891) 28 L. R. Ir. 440, in which Holmes J. says :

The principal underlying the decision (in the case of *Beatty v. Gillbanks*) seems to me to be that an act innocent in itself, done with innocent intent and reasonably incidental to the performance of a duty, to the carrying on of business, to the enjoyment of legitimate recreation, or generally to the exercise of a legal right, does not become criminal because it may provoke persons to break the peace, or otherwise to conduct themselves in an illegal way.

Dicey then draws the moral. He says :

Nor is it in general an answer to the claim of, e. g., the Salvationists, to exercise their right of meeting, that whilst such exercise may excite wrongdoers to break the peace, the easiest way of keeping it is to prevent the meeting.

This sentiment was echoed by the United States Supreme Court in 1939 in the case of *Hague v. C. I. O.* (vide p. ii:63 of the BULLETIN):

The prohibition of all speaking will undoubtedly "prevent" such eventualities (viz., riots and disturbances). But uncontrolled official suppression of the privilege (of the freedom of assembly) cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.

And Dicey quotes the following statement from the judgment of O'Brien J. in the above mentioned Irish case to support repudiation of the policy of stopping a lawful and peaceful meeting in order to prevent a possible breach of the peace on the part of opponents:

If danger arises from the exercise of lawful rights resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights.

Professor Chafee uses almost identical language in driving home this lesson. He says in "Free Speech in the United States" at pp. 160-1:

Since any gathering of radicals is likely to be attacked, the easiest way to preserve the peace is to forbid and break up such gatherings. Therefore, it may be contended that a meeting which is not otherwise illegal may become so solely because it will excite violent and unlawful opposition. (Referring to the *Beatty v. Gillbanks* case, Mr. Chafee proceeds.) Obviously, they (the Salvationists) must be released. Their guilt cannot be determined by the intolerance of wrongdoers. . . . The police cannot treat a meeting as unlawful simply because it may probably or naturally lead others to attack it. (Otherwise) a small number of intolerant men by passing the word around that they intend to start a riot can prevent any kind of meeting, not only of radicals who want a revolution, but of socialists, of moderates. . . . The proper remedy for these emergencies is police protection, to which men are entitled in public places, whether they are there singly or in groups.

Then, in another place (pp. 425-6) the author says:

The real question at issue is whether *any* disorder, even though only by opponents of the speakers, excuses the suppression of open-air meetings. . . . Such a doctrine could only mean that a constitutional right is subject to destruction by an arbitrary official decision, notwithstanding that a basic object of the Bill of Rights is to protect citizens from arbitrary action of that very character.

The sound constitutional doctrine is that the public authorities have the obligation to provide police protection against threatened disorder at lawful public meetings in all reasonable circumstances. It is their duty to make the right of free assembly prevail over

the forces of disorder if by any reasonable effort or means they can possibly do so.

In no other way can the right of free assembly be made a reality. Surely it must be clear that in order to "secure" the rights of free speech and assembly against "abridgment," it is essential not to yield to threats of disorder. Otherwise these rights of the people to meet and of speakers to address the citizens so gathered, could not merely be "abridged" but could be destroyed by the action of a small minority of persons hostile to the speakers or to the views they would be likely to express.

"The right of the people peaceably to assemble" cannot mean that the right ceases unless everybody present, including opponents of the speakers, is certain to be peaceable. Law-abiding speakers and their supporters should not be deprived of the great American institution of assemblage in the open air because other persons are intolerant and ready to violate the law against assault and battery. Such a doctrine would mean that a citizen loses his constitutional rights because his opponent threatens to commit crimes.

Surely a speaker ought not to be suppressed because his opponents propose to use violence. It is they who should suffer for their lawlessness, not he. Let the threateners be arrested for assault, or at least put under bonds to keep the peace.

At this point in the consideration of the English law, we may examine the case of *Duncan v. Jones* (1936) 1 K. B. 218, which seems to go against the principle established by the decision of *Beatty v. Gillbanks*. Mrs. Katherine Duncan, when about to address a street meeting, was asked by a police officer, Jones, to move to a place some 175 yards distant, and on refusing to do so, was taken into custody, convicted under the Prevention of Crimes Acts of 1871 and 1885, and fined 40s. It was not alleged that Mrs. Duncan or any of the persons present at the meeting had either committed, incited or provoked any breach of the peace. But she was prevented from speaking at that particular place because previously a disturbance had taken place after a meeting addressed by her. Lord Hewart found that there was "clearly a causal relation" between this meeting and the disturbance which occurred after it; "that the disturbance was not only post the meeting but was also propter the meeting."

Dicey then states two limitations on the application of the general principle that "an otherwise lawful public meeting cannot be forbidden or broken up by the magistrates simply because the meeting may probably or naturally lead to a breach of the peace on the part of wrongdoers." The first limitation is:

If there is anything unlawful in the conduct of the persons convening or addressing a meeting, and the

illegality is of a kind which naturally provokes opponents to a breach of the peace, the speakers and the members of the meeting may be held to cause the breach of the peace, and the meeting itself may thus become an unlawful meeting.

This limitation is illustrated by Dicey by a reference to the decision in the case of *Wise v. Duncan* (1902) 1 K. B. 167. Wise, a Protestant lecturer, when addressing large crowds on the streets of Liverpool, "used gestures and language which was very insulting to the religion of the Roman Catholic inhabitants, of whom there is a large population in Liverpool. The natural consequence of his words and conduct on those occasions was to cause, and his words and conduct had in fact caused, breaches of the peace to be committed by his opponents and supporters, and he threatened and intended to hold similar meetings in the town, and to act and speak in a similar way in the future." He was therefore bound over to be of good behaviour. His appeal was dismissed by the Divisional Court, Lord Alverstone, C. J., holding that though the appellant did not directly incite to the commission of a breach of the peace, the natural consequence of his conduct was such as "to produce an unlawful act by others." Darling, J., recalled the judgment of O'Brien, C. J., in *The Queen v. Justices of Londonderry* that "the defendants were bound over in respect of an apprehended breach of the peace; and in my judgment, there was no evidence to warrant that apprehension," and added in his own judgment: "The question is one of fact and evidence."

The second limitation is :

Where a public meeting, though the object of the meeting and the conduct of the members thereof are strictly lawful, provokes a breach of the peace, and it is impossible to preserve or restore the peace by any other means than by dispersing the meeting, then magistrates, constables, and other persons in authority may call upon the meeting to disperse, and if the meeting does not disperse, it becomes an unlawful assembly. . . . But the only justification for preventing the Salvationists (as e. g., in the Beatty case) from exercising their legal rights is the *necessity of the case*. If the peace can be preserved, not by breaking up an otherwise lawful meeting, but by arresting the wrongdoers—in this case the Skeleton Army—the magistrates or constables are bound, it is submitted, to arrest the wrongdoers and to protect the Salvationists in the exercise of their lawful rights.

Prof. E. C. A. Wade, in his addenda to Dicey's book, summarises the conclusion in this way :

The remedy (for threatened or actual breaches of the peace) is clearly the presence of sufficient force (whether of police or private stewards) to preserve order. Only in the last resort, as *O'Kelly v. Harvey* (1883) 14 L. R. Ir. 105 shows, should the step of dispersing the meeting be taken by magistrates or

the police — that is if all other means, such as the arrest or dispersal of interrupters, the strengthening of the numbers of stewards or of the police present, have failed; then, and only then, should a lawful meeting be dispersed. If the promoters and their sympathisers have already come to blows with the opponents the meeting can at once be dispersed, for it has ceased to be lawful. But it is obvious that the mere presence of the police will normally reduce the prospects of such a conflict. If it does not, the armoury of the criminal law . . . provides a choice of weapons, though none of these will mend the broken heads and frayed tempers.

Finally, we might give a recent instance of how the right of free assembly is regarded by the executive in England. When the Government was charged with being over-indulgent to the Mosleyists in not banning their meetings or suppressing their speakers, the Secretary of State on 29th April 1948 answered in the House of Commons :

I have not the power to prohibit the holding of any meeting. It will be the duty of the police to take such steps as are reasonable and necessary to preserve public order and to maintain the peace. . . . I have not the power to prohibit any person from speaking at a meeting, but if any person makes a provocative speech within the meaning of the law of the realm my Hon'ble friend can rest assured that the necessary proceedings will be taken. — *Hansard*, vol. 450, coll. 599-600.

2.—AMERICAN LAW

In the United States, where the First and Fourteenth Amendments guarantee the right of peaceable assembly to all citizens and indeed even to aliens, the law was stated in broad terms to be as follows: The authorities cannot exercise previous restraint (the decision in the case of *Hague v. C. I. O.* [1939] 307 U.S. 496 has secured that); they must let meetings take place, keeping a force of police in attendance to maintain order. When disorder occurs or is imminent, then the police can order the assembly to disperse. But the danger to the public peace must be very real to call for interference; it is only when a "clear and present danger" is actually created by a meeting that it can legitimately be forbidden or broken up. Judicial decisions point this way. For instance, in *State v. Butterworth* (1928) 142 Atl. 57 (N. J.) which arose out of the Paterson strike, strikers holding a meeting were arrested and charged with an unlawful assembly. There had been no show of violence. The supreme court of the state quashed the conviction on the ground that the evidence showed no real danger of a breach of the peace.

The proper scope of the right of assembly will be best understood from a thorough discussion of the subject which is contained in the brief which the Bill of Rights Committee of the American Bar Association, of which

Professor Chafee was a member, filed as friends of the court in the Hague case. The reasoning in the brief has won universal acceptance, so much so that in *Sellers v. Johnson* to which we have already referred at p. ii:64 as the most important case after the Hague case the Circuit Court of Appeals founded its memorable judgment as much on this brief, quoting largely from it, as on the finding in the Hague case itself. It will be remembered that the Hague decision held the ordinance in question void upon its face because it enabled an official "to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage' (and can thus) be made the instrument of arbitrary suppression of free expression of views on national affairs." In the brief the question is considered on the basis of permits, but the arguments adduced apply equally well to cases where no such preliminary permits are required, but power is given to officials to forbid a meeting because of apprehended disorders. The Supreme Court declared the ordinance to be invalid upon its face, but the Bill of Rights Committee had also considered "an intermediate solution of the problem," the officials being permitted to "prohibit a proposed meeting if and only if this is necessary to avoid a clear and present danger of real disorder." This solution would leave the officials with some power to disallow meetings when there was a genuine and well-founded fear of disorder with which the authorities might be unable to cope." The brief proceeds:

Suppose that the Jersey City ordinance were interpreted so as to remove some of the previous objections by adding what the italicized words say—that the official is authorized to refuse the permit *for the time being* when, after investigating all the circumstances, he *reasonably believes on the basis of substantial evidence* that such refusal is *necessary* for the purpose of preventing disturbances, etc., *of so serious a character as*

to be beyond control. Would this conflict with freedom of assembly? There would still be serious doubts. For one thing, an official could always refuse the permit and let the prospective speaker kick his heels until after the date set for the non-existence of the italicized conditions.

The argument for its constitutionality would be that it is reasonable to allow denial of a permit as a necessary means of preventing rioting so serious as to be uncontrollable, having in mind that (except in case of outright insurrection) such denial would amount only to a postponement pending arrival of the militia or other forces necessary to protect the meeting. The contrary argument would be that, even when so construed, the ordinance would empower an administrative official to impose a previous restraint upon a meeting merely in anticipation of an uncontrollable riot that in fact might not occur. In support of such a contention, it can be argued that the instances in which the police force of a city, properly warned and organized, would be unable to suppress any attempted disorder at a public meeting would be so rare as to furnish no justification for arming any official with power to pass judgment *in advance* to the effect that the police force of the city would be unable to cope with the situation.

In view of the actual decision of the Supreme Court, there was no need to consider the "intermediate solution" about which the Bill of Rights Committee had itself serious doubts, and the law that is actually in force does not partake to any extent of the compromises suggested in this solution. The law therefore is to the effect that a meeting cannot be forbidden because of official apprehension of disorder, however genuine and well-founded, unless a "clear and present danger" to the public peace has arisen.

DETENTION LAW EXTENDED

The provisional Parliament, before giving place to a regular Parliament elected on the basis of a universal franchise, extended the life of the Preventive Detention Act for six months. It was explained that this did not necessarily mean that the power to detain without trial would be given up after this period was over, and the public was warned that this extension might be followed by a longer extension or that the country might even be presented with a permanent measure of detention. The Home Minister, Dr. Kailas Nath Katju, treated the present temporary extension as but a formality, saying that it was "a very harmless" measure and did not consider it necessary or even relevant to deal with those basic principles of Freedom of the Person, of which detention without trial which is being resorted to for the last five years and over is the very antithesis. This is

rather surprising because he was expected to show greater concern for these principles than his predecessors, either the late Mr. Vallabhbhai Patel or Mr. Rajagopalachari, ever felt. It was enough for Dr. Katju that if, as a result of this extension, the succeeding Parliament chooses to continue depriving Indian citizens of personal liberty, such deprivation will be the outcome of a democratic process.

This reference to democracy puts one in mind of the ever enduring words of Lord Justice Scott when he delivered the judgment of the Court of Appeal in *Leachinsky v. Christie* (1946) 1 K. B. 124 in which he dealt with the discretionary power of arrest and detention. Denying that there was any such power, he contrasted the normal law with Regulation 18 B of 1939 which gave "unfettered arbitrary discretion" to the executive to

detain persons on suspicion, though even this discretion was regulated as to the kind of persons to be detained and the circumstances in which they were to be detained, as is not the case in India. This was the only exception England has known since the Star Chamber days to freedom from arbitrary detention which English citizens enjoy, and the exception only proves what Sir Leslie Scott called "the general rule of the freedom of the individual within the realm as recognized by our law in peace time." And he added :

The English nation has been wont in the past to speak of autocracy in any form as the enemy of personal freedom, but it is equally true that the good working of democracy depends upon the rule of law. . . . Arrest by the executive, uncontrolled by the courts, has happened in past times in English history, and it needed the intervention of the courts to curb the executive (referring to the Wilkes cases). The *lettres de cachet* of eighteenth century France afford another illustration. The Gestapo in Germany in recent years affords a third. And finally it is the fear of a repetition of that vast, insidious, and progressive evil of encroachment by the executive on the proper sphere of the judiciary which is paramount in men's minds when they say they fear and therefore hate bureaucracy.

It was left to the Opposition to invoke the principles of personal liberty which are observed in all democratic countries. Mr. Velayudhan of Travancore-Cochin characterized the Home Minister's description of the Act as a harmless measure as a cruel joke. "Such a Bill," he said, "could have been understood during a period of crisis or war, but not at the present time." Dr. Syama Prasad Mookerjee, who presided over the last session of the Indian Civil Liberties Conference and is a vice-president of its executive, the All-India Civil Liberties Council, said that the principle of detention without trial was detestable and abhorrent to democracy and could be justified only in times of grave national emergency. Bad at all times, he showed that it was particularly bad now when political conditions in the country were distinctly improving. Referring to the Home Minister's contention that the next six months might prove to be a testing time in the history of India, he merely said :

History gives us numerous examples where the executive, once it is armed with large and arbitrary powers, becomes extremely reluctant to give them up. The executive invents excuses and pleas for the continuance of such powers.

He also exposed the hollowness of the Government's contention that the safeguard of the Advisory Board had removed all traces of arbitrariness from the operation of the Act by pointing out the grave defects in procedure laid down for the working of the Advisory Board. In spite of the Advisory Board, he said that the fundamental defect remained, "viz., that one had to proceed on the uncorro-

borated evidence of so-called accomplices, spies or police informers."

Dr. Mookerjee made an eloquent plea to the Government to give up the Bill, set free all the detenus and start the new regime which the elections will bring into being on a clean slate. He said :

After all, time must come in the history of India when these laws must disappear from the statute book. In my humble opinion there is no time more propitious than just the present moment, when all parties and groups, after the tempo of the elections, have offered to work the Constitution and co-operate with the Government in the manner Government and Opposition should function in the country.

And he drew pointed attention to the fact that it was just "in areas where the Preventive Detention Act was put into operation with greater vigour than elsewhere that the Congress met with reverses" He said : "The reason was that if the Government placed people under detention, immediately they created in the minds of the people a psychology of lurking sympathy for the sufferers of the wrath and the fury of the Government of the day." Mr. Sarangadhar Das, a Socialist leader, also made the same point, and it is remarkable that both these men pressed for the release of detenus, knowing fully that such a gesture would benefit the Communists, to whom they are as opposed as anyone could be. They admitted that there was indeed some risk in restoring to freedom people who were unwilling to abjure the use of violence, but they pleaded that that risk must be taken and the Government was strong enough to take it. On the other hand, they said, the good that would be done by dropping the measure would be tremendous. But the Government was adamant.

Mr. P. R. Das, President of the All-India Civil Liberties Council, has issued the following statement on the revival of the Detention Act :

While moving in Parliament consideration of the Bill to extend the Preventive Detention Act by a further six months, Dr. Katju is reported to have said that "a short period of extension will not harm anyone." This is surprising, coming as it did from so benevolent a man. Every hour of illegal detention (and every detention is illegal if there is no intention to bring the person concerned to trial) must necessarily harm the person detained.

I have not the slightest doubt that the election victories of the Communists in West Bengal, Orissa and Madras are due in no small measure to the sympathy felt by the people for those they regarded as victims of governmental oppression. Some Communists returned to the Assembly have been sent back to prison on the ground that there is evidence against them of subversive activities. If there is evidence, they ought to be put on trial. But if the evidence will not bear scrutiny in a court of law,

the inference is irresistible that there is no evidence against them, although there may be strong suspicion. My democratic conscience revolts at the suggestion that any person can be detained, even for an hour, at the instance of an official. That way lies absolutism.

May I remind Dr. Katju that there have been many acts of sabotage in England on an extensive scale? Yet the British Government refused to consider preventive detention. There was an explosion in Portsmouth on July 14, 1950, which blasted buildings for more than a mile along Portsmouth dockyard; the explosion was preceded by other outrages which damaged three destroyers. Mr. Attlee admitted in Parliament that the July 14 explosion was due to sabotage. Other cases of sabotage were suspected, one in connexion with the 23,000-ton aircraft-carrier "Illustrious."

On July 12, 1949, Britain was officially in a state of emergency because of the London dock strike which involved 10,000 men and caused 112 ships to be idle at a time of acute food shortage. Troops were

employed at the docks; but Parliament did not pass a Preventive Detention Act to meet the situation. The "Statesman's" issues of February 12-13, 1951, reported that "a nation-wide unofficial strike threatened to cripple Britain's ports when 20,000 dockers failed to report to work." More than 200 ships were idle in the London, Liverpool, Birkenhead and Manchester docks, "most of them with vital cargoes waiting to be unloaded, including food-stuffs." Mr. Arthur Deakin, General Secretary, Transport and General Workers' Union, said that Communist saboteurs were trying to create nation-wide industrial unrest. Mr. Attlee was asked to introduce anti-Communist legislation on the lines of that in India and Pakistan. He refused; in answer to a question put by Sir Waldron Smithers, he said: "I do not know whether Sir Waldron has studied the somewhat drastic measures that are being taken by provincial Governments in India and whether he and his party generally support the power to detain without trial on suspicion of subversive activities, and a number of other things which are generally regarded as rather dangerous here."

FREEDOM OF THE PRESS IN RUSSIA

Filled to the full with admiration of our criticism of the new Press Act, a correspondent in very high position cannot bear our reference at every turn to the First Amendment of the American Constitution as setting a standard which all freedom-loving countries should follow in the matter of freedom of speech, press and assembly, and indignantly asks us: "Why do you constantly keep on invoking the U. S. Constitution as if it were the only Constitution in the world which guarantees freedom of the press? Are there no other Constitutions which at least equally guarantee this right which is basic to democracy? Why don't you ever by any chance invoke the Constitution of the U. S. S. R., which is a people's democracy? Are you among those prejudiced people who treat everything connected with Soviet Russia as so unclean that a mere touch of it is contamination? Or do you believe, like some others I know, that though the Russian Constitution in respect of freedom of the press may look fair on its face the Government there rigidly controls what appears in print and imprisons and sentences to fearful forms of torture those who use unlicensed presses?"

We must frankly confess we have a great partiality for the United States Constitution in so far as fundamental rights are concerned. We must also confess we have never been enamoured of Soviet Russia's Constitution in this respect. As to the practice of the Russian Government, it is best to say nothing of our own except this: the circumstance that all newspapers in Russia speak with one voice, whereas in other countries where not a people's democracy, but a mere democracy as ordinarily understood,

prevails, the newspapers speak in a multitude of voices, creates the suspicion that in Russia the Government controls the press, and this circumstance is directly traceable to the provision in the U. S. S. R. Constitution relating to the press. No doubt the Russian Constitution guarantees freedom of the press! like that of the United States, but, unlike the latter, the Russian freedom (under art. 125) is contingent upon its use in "conformity with the interests of the working people, in order to strengthen the socialist system." And who decides what is fit to print in the interests of the people? The Government.

This means that the Russian press is made to serve as the handmaiden of the Communist ideology. The result was well described by Mr. Gannett at the seventh Commonwealth Press Conference held in Canada in June 1950. He said:

If the men in control of the Russian Government believe it is in the interests of the people to be told only one side of the story, only that side is told. If the Government decides it is in the interests of the Russian people to be told nothing, then the people are told nothing. And if they believe it is in the interests of the Russian people to be protected from the curiosity of the outside world about how they live and what they do, then an Iron Curtain is lowered which denies access to such information by the people who live on the other side of that curtain.

Freedom of the press in Russia, then, means freedom from all control of the press, except the complete control exercised by government. . . . It (this theory) is associated with every form of dictatorship.

whether it is Communist or Fascist, or whether the dictator sits in Belgrade, Madrid or Buenos Aires. That is because no dictatorship can function efficiently unless it uses the press as an agency of government and controls what is printed.

This is a popular description of the all-out control of the press in the Soviet Union. For a more scientific treatment of the subject we may turn to "Authoritarianism and the Individual" by Metz and Thomson (The Brookings Institution, 1950). The authors say of the freedom of the press such as exists in Soviet Russia:

Most emphatically it is not a genuine freedom for any individual or organization to publish what he pleases short of criminal libel or public indecency. Nor is it free of state control both of the content of publications and of the provision and manner of use of the material requisites therefor.

The latter control, viz., over access to printing equipment and materials is particularly to be noted, for the latter part of art. 125 of the Soviet Constitution says that freedom of the press is "ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper ... and other material requisites for the exercise" of this civil right. There is a main office, the "Glavlit," which rations printing materials.

Facilities for printing are in fact confined to the (Communist) party, to the government and to the controlled organizations. Printing offices of any kind, including mimeographing or hectographing processes, "may be opened only by government agencies, co-operatives, and public organizations;" and only such organizations may trade in printing equipment. All agencies, including government agencies, except the Communist party, "Izvestia," and the Academy of Sciences, are controlled by the "Glavlit" and must account strictly for all paper and typemetal used. . . . An author may not publish his own work nor may he employ a private publisher to do it for him. He is forced to turn to the state-licensed enterprise. . . .

As to the control of the content of publications, the "Glavlit" is given power to exercise pre- and post-publication censorship, "in order to limit works to those which actively contribute to current government purposes." But far more stringent control is exercised by the party machine.

In the Soviet totalitarian system, no writer can ever safely take his eyes off Stalin. His views set the sacrosanct limits to the treatment of anything to which they may conceivably apply. No writer can transgress them save at his professional and personal peril. Stalin's words are dutifully and immediately echoed and reiterated by every organ throughout the

land, and used as final authority on every conceivable topic. Immediately below Stalin are a number of pundits, such as Molotov and Zhadanov (before his death), whose words are of almost equal authority and whose pronouncements are always scanned for the correct interpretation of what Stalin has said. Comparable in influence are the authoritative publications "Pravda" (Truth—organ of the Communist party) and "Izvestia" (organ of the All-Union Government).

We will now give a recent instance very much talked about. In the Social Committee of the U. N. General Assembly, the United States charged on 30th January that the trial and sentence of ten years' imprisonment of William Oatis, correspondent of the Associated Press in Prague for publishing news of the conditions as he found them in Czechoslovakia was "one of the most flagrant violations of freedom of information in recent times." Thereupon the Soviet delegate in his speech in effect served notice that the Soviet "regards all American correspondents working abroad as spies who may face death for reporting on 'political, economic and military matters' in countries behind the Iron Curtain." On this speech the "New York Times" made the following comment, and we see no reason to change even a word of it, proceeding as it does from an American newspaper supposed to be prejudiced against Soviet Russia:

The Soviet statement must be read in the light of the irreconcilable difference between the Communist concept of the status and function of the press and that of the free world. In the latter, where public business is public, a free press has the right and the duty to report under constitutional guarantees and on its own sense of responsibility everything of public interest, barring only military and diplomatic matters affecting the security of the nation. In the Communist world, however, the press is an organ of the state under the command of the Communist party, and all its representatives are agents of the state. Since the Communist party imposes a totalitarian dictatorship which can thrive only on total secrecy, the press is permitted to report nothing that is not "authorized" by the party. In these circumstances the press, like all other media of expression, is converted into a propaganda instrument tied strictly to the party line.

This was also the concept of the press entertained by the Nazis and the Japanese militarists. The Soviet attitude toward reporters behind the Iron Curtain confronts the free world with a problem which will have to be faced with measures more effective than attempts to arrive at a press code that tends to play into Soviet hands.

SPECIAL COURTS IN SAURASHTRA

Provision in the Ordinance Held Intra Vires

In the wake of the West Bengal Special Courts Act being declared ultra vires of the Constitution (see p. ii: 69 of the BULLETIN), a similar question came up for decision in respect a law of the State of Saurashtra.

The full bench of the Supreme Court presided over by the Chief Justice, Mr. Patanjali Sastri, and consisting of all the seven Judges held on 27th February, by a majority of four to three, that the provisions in the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, which authorizes the State Government to constitute special criminal courts with jurisdiction in certain areas to try certain classes of offences in accordance with a simplified and shortened procedure, were intra vires of the Constitution.

The jurisdiction of the special court was questioned by Mr. Kathi Raning Rawat who was sentenced to death on a charge of murder by a special court constituted under the Ordinance. The State High Court upheld the sentence on appeal. The appellant preferred an appeal to the Supreme Court against his sentence.

The preliminary objection raised was that the section of the Saurashtra Public Safety Measures Ordinance as well as the notification issued by State Government on February 9, 1951, which empowered the trial by a special court, was void as it infringed article 14 of the Constitution guaranteeing equal protection of the laws to all persons.

Seven separate judgments were delivered by Their Lordships. The Chief Justice, Mr. Patanjali Sastri, Mr. Justice Fazl Ali, Mr. Justice Mukherjea and Mr. Justice Das held the Ordinance valid, while Mr. Justice Mahajan, Mr. Justice Chandrasekhara Aiyar and Mr. Justice Vivian Bose gave a dissenting judgment.

Another preliminary objection, namely, that the Ordinance suffered from excessive delegation of legislative authority and that the Rajpramukh had exceeded his powers in amending the provisions of the Criminal Procedure Code was also disallowed by the majority judgment.

Counsel for the appellant placed reliance upon the majority decision of the Supreme Court on the West Bengal Special Courts Act (vide pp. ii:69-71 of the BULLETIN) where a similar question arose as to the validity of section 5 (1) of the Act. The Supreme Court held the West Bengal Act unconstitutional by a majority judgment of six to one on January 11, 1952.

MAJORITY JUDGMENT

Mr. Justice Fazl Ali drawing distinction between the West Bengal Act and the Saurashtra Act said that while the former was "discriminatory without reason" the latter was "discriminatory with reason."

Pointing out that the notification specified certain areas in the Saurashtra State over which only the special court could exercise its jurisdiction, Mr. Justice Fazl Ali said: -

It will be going too far to say that in no case and under no circumstances can a legislature lay down a special procedure for the trial of a particular class of offences and that recourse to a simplified and less cumbersome procedure for trial of these offences even when abnormal conditions prevail will amount to a violation of article 14 of the Constitution.

The Chief Justice, Mr. Patanjali Sastri, referred to an affidavit filed by the State which said that "the security of the State and public peace were jeopardized and it had become impossible to deal with the offences that were committed in different places, in separate courts of law expeditiously." The impugned Ordinance had thus been passed to combat the increasing tempo of certain types of regional crime. The Chief Justice added:

The two-fold classification on the lines of type and territory adopted was reasonable and the degree of disparity of treatment involved was in no way in excess of what the situation demanded.

Mr. Justice Mukherjea, agreeing with the Chief Justice, said:

If special courts were considered necessary to cope with an abnormal situation, it cannot be said that the vesting of authority in the State Government to select offences for trial by such courts is in any way unreasonable.

Mr. Justice Das justified the classification of offences to be tried by the special court and said that the affidavit filed by the State made it clear that the situation in certain parts of the State was—

sufficient to add a particularly sinister quality to certain specified offences committed within those parts and the State Government legitimately grouped them together in the notification.

DISSENTING JUDGMENTS

The dissenting Judges—Mr. Mahajan, Mr. Chandrasekhara Aiyar and Mr. Bose—held that the Saurashtra Act, like the West Bengal Act, suggested no reasonable basis for classification either in respect of offences or in respect of cases.

Mr. Justice Mahajan held that section 11 of the Ordinance was unconstitutional and the conviction of the appellant under the Ordinance by the special judge was bad and must be quashed. "There will have to be a retrial of the appellant under the procedure prescribed by the Code of Criminal Procedure."

Mr. Justice Chandrasekhara Aiyar said:

The circumstance that the deviations from normal procedure prescribed in the Ordinance are not so many or vital as in the Bengal case does not affect the result as the defect of the absence of a reasonable or rational classification is still there.

Referring to the affidavit of a State official, Mr. Justice Chandrasekhara Aiyar said :

It may be that the frequency and locale of the particular offences are true. But no such grounds for the classification are indicated either in the impugned Ordinance or notification. This is certainly not a legal requirement; but a wise prudence suggests the need for such incorporation, as otherwise the ascertainment of the reasons for the classification from extraneous sources may involve the consideration of what may be regarded as an after-thought by way of explanation or justification.

Mr. Justice Bose held that the differentiation was of a "substantial character and cut deep enough to attract the equality clauses in article 14."

In view of the majority opinion on the validity of the relevant provisions of the Saurashtra Ordinance which had been argued as a preliminary point, the appeal was ordered to be posted for further hearing on merits.

LAND REQUISITION ACT

Administration Involves Discrimination

Government's policy of allotting flats to first informants of suppressed vacancies was held to be a policy of discrimination by the Chief Justice and Mr. Justice Bhagwati at the Bombay High Court on 25th February.

Their Lordships observed, requisitioning a flat for the purpose of accommodating a first informant was not requisitioning for a public purpose within the meaning of the Land Requisition Act.

Their Lordships characterized the institution of public informants as infamous, and added that "an informant often thrives on the troubles and difficulties of members of the society." They suggested that Government should devise some method whereby they could consider the interest of the whole public which was in need of housing accommodation and not of a section of first informants alone.

Their Lordships were disposing of an appeal filed by Bhanji Munji and another, who are occupants of a block at Matunga. Government requisitioned the block on March 24 last as it had become vacant on or after May 1950. The order did not state the purpose of the requisition. Subsequently, Government issued a supplemental order stating that it was for a public purpose, namely, housing a person without accommodation.

Bhanji Munji challenged this order by a petition in the High Court. Mr. Justice Tendolkar dismissed the petition, and an appeal was preferred against this decision.

In allowing the petition and setting aside the requisition order, Their Lordships observed that the question for determination was whether the premises were requisitioned for a public purpose. Government had contended that inasmuch as there was considerable scarcity of housing

accommodation, it was necessary to regulate distribution of premises which fell vacant on an equitable basis.

Purpose Defined

Public purpose, Their Lordships said, had been defined by the Privy Council, and that was that that purpose only was a public purpose which had for its primary object the general interest of the community. It might be that for achieving the public purpose, an individual or individuals might be benefited, but the benefit to the individual or individuals must be indirect. The object to be aimed at must be the general interest of the community.

Government must, *prima facie*, be the best judges of what public interest is. The courts would ordinarily be reluctant to take a different view from that taken by Government. But if the court was satisfied that the view of Government was wrong, or was arrived at on an entirely unreasonable basis, the court had ample jurisdiction to interfere.

It was important to see that Government servants were housed properly, but it was equally important to see that members of the public were also given reasonable accommodation. The policy of Government could only be justified if in fact it was found that what Government were doing was distributing available accommodation equitably.

In this connection, Their Lordships referred to the press notes issued by Government. The last press note confined the activities of Government so far as the Land Requisition Act was concerned to finding accommodation for Government employes and allotting suppressed vacancies to first informants.

The question therefore was whether, in view of the policy enunciated by Government, it could be said that the premises of the appellants had been requisitioned for a public purpose, namely, for allotting them to a first informant of a suppressed vacancy.

Their Lordships had realised that in the present state of affairs it might be necessary, however unfortunate it might be, to utilise the services of first informants in order to detect suppressed vacancies, but it was a far cry from utilising the first informants, and if necessary rewarding them properly, to the position taken up by Government that the first informants should be rewarded by the allotment to them of the premises which they had found to be suppressed vacancies.

Therefore, in this policy of Government of allotting accommodation to Government employes and to first informants the needs of the public were completely ignored and brushed aside except for the infinitesimal minority represented by the first informants. Their Lordships added:

This policy results in this, that Government look only to the section of the public which has been looked upon by these courts as an infamous section.

It is indeed strange that Government by their policy asked the members of the public not to represent to them their needs at all. No application can be received from any member of the public, however great his need may be. Therefore, Government have deliberately put themselves in this position, that they would only consider the needs of the first informants and of nobody else.

Their Lordships failed to understand how it could be urged on behalf of Government that this was a reasonable basis of equitable distribution of available accommodation. Government should at least satisfy themselves as to what the needs of the public were. But by Government's policy they had made it impossible for members of the public to inform the authorities of what their needs were. Their Lordships found that they could not support this policy on any principle whatsoever.

There was obviously discrimination in this policy; there was obviously classification in this policy; and there was obviously an attempt to rule out a large section of the public from the benefits of the Land Requisition Act.

So far as the present petition was concerned, there was no dispute that the premises were allotted to the first informant. This was not a public purpose as defined in the Act.

Their Lordships said that Government could administer the Act and investigate into suppressed vacancies and bring them to light with the assistance of first informants without necessarily giving the informants the reward of the premises. In the administration of the Prohibition Act and the Prevention of Gambling Act, a pecuniary reward was often found sufficient reward and the informants were not paid out of the subject-matter of their discovery. Similarly, Government in this case should get suppressed vacancies reported and find out some method whereby they should consider the needs of the public which required accommodation.

Their Lordships therefore reversed the decision of Mr. Justice Tendolkar and set aside the requisition order.

RIGHT TO CARRY ON TRADE

Supreme Court's Judgment

On a petition made under article 32 of the Constitution by Mohamad Yasim, a wholesale dealer in vegetables carrying on his business in Jalalabad, U. P., for the enforcement of his right to carry on trade guaranteed by article 19 (1) (g), the Constitution Bench of the Supreme Court presided over by the Chief Justice Mr. Patanjali Sastri on 27th January declared certain bye-laws framed by the Town Area Committee of Jalalabad to be ultra vires of the Constitution.

The Committee had given by auction the contract for sale of vegetables and fruits and for collecting the commission for the current year to one Bishambar. It had not

set up any market nor had it framed any bye-laws for the issue of licences to the vegetable and fruit merchants and therefore it was contended on behalf of Mohamad Yasim that by granting a monopoly of the right to do wholesale business in vegetables and fruits to Bishambar, the Committee had in effect totally prevented him from carrying on his business and had thereby infringed his fundamental right under article 19 (1) (g) of the Constitution. It was also argued that the Committee had no legal authority to impose a tax of the kind it had sought to do and the imposition of a tax calculated at one anna in the rupee was in the nature of a sale-tax and could not be regarded as a licence fee and such unauthorised impost constituted an illegal restraint on his fundamental right under article 19 (1) (g).

Mr. Justice Das, who delivered the unanimous judgment of the court, said that in their opinion the bye-laws which imposed a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street, were obviously ultra vires of the powers of the Committee and therefore the bye-laws could not be said to constitute a valid law which alone might, under article 19 (6) of the Constitution, impose a restriction on the right conferred by article 19 (1) (g). In the absence of any valid law authorizing it, such illegal imposition would undoubtedly operate as an illegal restraint and would infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which was guaranteed to him by article 19 (1) (g) of the Constitution.

His Lordship directed the Jalalabad Town Area Committee not to prohibit Mohamad Yasim from carrying on the business of a wholesale dealer in vegetables and fruits within the limits of Jalalabad until proper and valid bye-laws were framed.

On the basis of the decision in Mohamad Yasim's case Their Lordships of the Supreme Court allowed the petition filed under article 32 of the Constitution by Sri Ram, a vegetable trader of Khatauli, Uttar Pradesh, raising points similar to those in the previous case. They passed the same orders as in the above case.

HABEAS CORPUS PETITIONS

"Court cannot Go behind Detention Order"

At the Allahabad High Court Mr. Justice Bhargava on 11th February dismissed the habeas corpus application of Noor Mohammed alias Akhru alias Sabra, who was detained on 22nd August 1951 in virtue of an order of the district magistrate under sec. 3 (ii) of the Preventive Detention Act, 1950. The ground of detention was that on 3rd August 1951 he preached the establishment of Pakistan in India by force and violence. This case had been referred to an Advisory Board who reported that in

its opinion there was sufficient cause for the detention. In his application the detenu alleged that the charges levelled against him were baseless and false, and that he was neither a Pakistani nor a sympathiser of Pakistan. His Lordship observed :

It was for the detaining authority to be satisfied of the necessity of passing the order of detention and once the detaining authority was so satisfied, the court could not go behind the order. In the present case, apart from the satisfaction of the detaining authority, there was the opinion of the Advisory Board, acting whereupon under sec. 11 of the Act, the Governor had confirmed the order of detention. It was not open to the High Court to entertain the pleas now raised by the detenu and to examine them. There was nothing wrong or illegal as far as the order of detention was concerned. The application was, therefore, rejected.

Detention "Not Proper"

The district magistrate of Kanpur on 11th December 1951 cancelled the licence of Mr. Kishan Gupta, a cloth merchant, for blackmarketing practices in cloth. Although this cancellation would prevent him from procuring any cloth from the mills for sale, the district magistrate on the same day issued another order detaining him under sec. 3 of the Preventive Detention Act. Against this detention order an application for habeas corpus was filed in the High Court, and on 20th February Mr. Justice Harish Chandra allowed the application and ordered the applicant to be set at liberty. His Lordship observed :

No doubt, the act alleged to have been committed by the applicant in the said order was prejudicial to the maintenance of supplies essential to the community. But that itself could be no ground for detaining the applicant. The applicant could only be detained if the district magistrate was satisfied that it was necessary to detain him in order to prevent him from doing something in future which might be prejudicial to the maintenance of supplies and services essential to the community and not otherwise. A perusal of the grounds furnished to the applicant by the district magistrate of Kanpur on Dec. 14, 1951, showed that the order was passed on the basis of the prejudicial act which was alleged to have been committed by him between Nov. 21, 1951, and Dec. 10, 1951, and for no other reason. The order of detention was, from this point of view, therefore, not a proper one at all.

Three Communist M. L. A.'s Released

The Chief Justice and Mr. Justice Panigrahi of the Orissa High Court set aside orders of detention on three detenues of the State and ordered the cancellation of their bail bonds as the petitioners had been released on bail earlier.

Their Lordships were passing orders on three habeas corpus petitions on behalf of Mr. Govind Chandra Pradhan (now leader of the Orissa Assembly Communist Party), Mr. Ramachandra Misra and Mr. Haribar Das, Communist M. L. A.'s, which came up for hearing on February 21.

The petitioners contended that detention orders were passed in the absence of the Chief Minister who had not applied his mind to the papers and the orders were issued by the Secretary concerned.

On behalf of the Government it was stated that Mr. Somanath Mahapatra, Home Secretary, had issued orders of detention.

The Court held that the orders were illegal and invalid inasmuch as the Home Secretary was not the proper authority contemplated in the Preventive Detention Act to pass detention orders.

Their Lordships delivering the judgment ordered the issue of a notice on the Home Secretary calling upon him to show cause why he should not be proceeded against for contempt of court for passing fresh orders of detention on Mr. Govind Pradhan during the pendency and in anticipation of the Court on the original petitions.

"Detaining Authority's Satisfaction Alone Mattered"

All the three applications filed by the Communist detenus, Dalip Singh, Kaur Singh and Bachan Singh, challenging their detention under the Preventive Detention Act, were rejected by the Chief Justice of the Pepsu High Court on 22nd February.

In a brief order His Lordship said the defence contention that the grounds of detention were false carried no weight, for he had held more than once that it was the detaining authority's satisfaction that mattered.

Continuing, His Lordship ruled out the objection that the Deputy Commissioner of Sangrur, who had arrested the detenus on December 17, 1951, was not empowered to fix the period of detention, which was three months in each case, and the Government should have done it. He said it did not make the entire order illegal. The petitions were, therefore, dismissed.

CONTEMPT OF COURT

HIGH COURTS' POWERS TO PUNISH

Contempt of Subordinate Courts

The powers of the High Courts to punish contempt of courts subordinate to them were defined by the Constitution Bench of the Supreme Court in a unanimous ruling on 13th February in an appeal preferred by Mr. Bathina Ramakrishna Reddy, managing editor of "Praja Rajyam," a Telugu weekly published at Nellore, against the Madras High Court's judgment by which that court found the appellant guilty of contempt. In the issue of that paper of 10th February, 1949, it was stated that the stationary

sub-magistrate of Kovvur in cases tried by him had either taken bribes or had put the parties to undue harassment because they were obdurate enough to refuse the demands of his broker.

Counsel for the appellant had argued that the alleged contempt was of a court subordinate to the High Court and, therefore, the High Court could not take cognizance of the said contempt as such cognizance was expressly barred under section 2, sub-section 3, of the Contempt of Courts Act.

Section 2, sub-section 3, reads:

No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

It was argued that the act of the appellant was an offence punishable under section 499 of the Penal Code and hence the High Court was precluded from taking cognizance thereof.

Their Lordships held:

A libellous reflection upon the conduct of a judge in respect of his judicial duties may certainly come under section 499 of the Indian Penal Code and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a judge, but such libel may or may not amount to contempt of court.

Where it did amount to contempt of court, the Contempt of Courts Act (Act 12 of 1926) would apply. Their Lordships observed:

Although the powers of the High Courts in India established under the Letters Patent to exercise jurisdiction as superior courts of record in punishing contempt of their authority or processes had never been doubted, it was a controversial point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could punish contempt of court subordinate to it in exercise of its inherent jurisdiction. The doubt had been removed by the Contempt of Courts Act, 1926, which expressly declared the right of the High Court to protect subordinate courts against contempt, but subject to this restriction, that cases of contempt which had already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court.

In this case, section 2 (3) of the Contempt of Courts Act did not act as a bar to the High Court taking action because what was made punishable under section 499 I.P.C. was the offence of defamation as defamation and not as contempt of court. If the defamation of a subordinate court amounted to contempt of court, proceedings could certainly be taken under section 2 of the Contempt of Courts Act, quite apart from the fact that other remedies might be open to the aggrieved officer under section 499 of the Indian Penal Code.

COMMENTS

Bihar's Safety Act Renewed

The Bihar Maintenance of Public Order Act, 1949, has been renewed by the legislature, extending its life for two years. Detention provisions in it have been taken over by the central Preventive Detention Act, but other restrictive provisions have been retained.

Over 1,800 Persons in Detention

According to a statement in the "Gazette of India" of 23rd February, 1,865 persons were held in detention on 31st December 1951. They were distributed as follows among 17 States: 846 Hyderabad; 302 West Bengal; 199 Bombay; 127 Punjab; 122 Madras; 77 Saurashtra; 51 Pepsu; 34 Bihar; 33 Assam; 20 Travancore-Cochin; 15 Rajasthan; 11 each Uttar Pradesh and Tripura; 10 Orissa; 5 Mysore; and 1 each Madhya Pradesh and Delhi. Of these, the Union Home Minister declared in Parliament on 29th February, 1,170 were Communists, Hyderabad alone contributing 627 and West Bengal contributing "a large number" out of the remaining 543 Communist detenus.

Detentions in Saurashtra

A Congress member of Parliament, Mrs. Jaishri Rajji, sought to justify the necessity for the extension of the detention law by pointing to the fact that it had become necessary to have recourse to that law in Saurashtra in unearthing what looks like a huge conspiracy on the part of feudal chiefs of that State. This was a clever way of appealing to the emotions of law-abiding people in favour of a lawless law, but the argument has no substance because it could certainly not be maintained that but for resort to detention under this law the conspiracy such as it is could not be uncovered. Mr. Jamnadas Mehta, a sturdy champion of civil liberties, protests against the numerous detentions taking place in Saurashtra, although he is glad that the Government is at last taking stern action against wrong-doers. He says in a statement that he has issued that the welcome tracking of criminals

has taken a form which must cause the gravest anxiety to those who, while standing four square for law and order, are also anxious that the personal liberty of the citizens should not be lightly interfered with. . . . I am orthodox enough to stand for the civil liberty of all, whether a communist or a prince, a feudal landlord or a political firebrand. All of them are entitled to fundamental rights of the citizens of a free country. . . . In a free, democratic country, nobody, however high, should be beyond the reach of the law, and of course nobody, however humble, should be beyond the pale of its protection.

ENABLED TO WIN ELECTIONS, AND YET Held in Custody

When some of the States (but not all, Bombay being prominent among the exceptions) decided to release on parole all those Communist detenus who had intended to fight elections, it was widely felt that this wise policy would be carried to its natural consummation in that such of the detenus as were successful in winning the elections would be released in order to enable them to serve in the legislatures to which the suffrages of the electors had called them as their chosen representatives. To release a person temporarily for the express purpose of enabling him to contest the elections and yet to send him back to jail after he has proved that he is acceptable to the voters as a member of the legislature appears to us to be wholly meaningless and silly.

The Government of India and the Governments of the States now argue that while the desirability of releasing detenus would always be considered, it would be wrong to accord preferential treatment to those who had been elected to the legislatures. This argument is good enough as it goes. But having given preferential treatment to those of the detenus who had expressed a desire to offer themselves for election, one would think that the Governments were as a matter of sheer logic bound to continue this treatment after they had won the elections. If release depended upon the detenus ceasing to be a menace to the public peace, why were all detenus who intended to offer themselves for election released on parole, without reference to the possibility of their being able to endanger the security of the State? Only those should have been released who in Government's opinion were now impotent to do any mischief? But having given all such detenus a chance to contest the elections (and this was, as we have said, a very wise policy), they must all be given a chance, after winning the elections, to function in the legislatures as the elected representatives of their constituencies.

To follow any other policy now would lay the Governments open to the suspicion that, when they released Communist detenus on parole so that they might participate in the elections, they had believed that the detenus would surely be defeated and that they could thus prove to the world that the Communists had no hold on the electorates. But events have belied official expectations. Some of the Communists were released just at the time of the polling, without having any opportunity to approach their voters in person, and yet they succeeded. The Governments are now out of court in pleading that, though successful, they must go back to jail. Apart from any injustice that is involved here to the candidates, it involves injustice to the electors who were led to believe, from the temporary release of the candidates for whom they have voted, that those candidates would be free to serve them in the legislatures.

In West Bengal two Communist detenus who, being released on parole, have won the elections to the Assembly, have been permanently released, but three others in a similar position have again been locked up; also another who has been elected to Parliament. In the Punjab there are two such persons; they continue to be in jail. In Orissa there are two. In Hyderabad and Pepsu there are three and one respectively; they are still on parole and it is not known whether they will be set free or sent back to jail. Yet none of these persons, it appears to us, should be debarred from serving in the legislatures. It is too late for the Governments (to put the matter at the lowest) now to stand on the letter of the law.

Pledge to Restore Civil Liberties

Madras is one of the States in which the Congress party has failed to obtain a clear majority of seats in the Assembly in the recent elections. That party has won 152 seats out of a total of 375, and some of the other parties (viz., the Communist party with 61 seats, the KMPP with 35 seats, the Tamilnad Toilers with 19 seats, the Forward Bloc with 3 seats and the SCF with 2 seats) have launched a United Democratic Front for the purpose if possible of forming an alternative government. Whether this will materialise or not is a matter of doubt, but it is noteworthy that the KMPP which is very remote from the Communist ideology has joined the Communists in this venture. The Front has drawn up a sort of programme which it would carry out if it has a chance of assuming office. Among the guiding principles which it has pledged itself to follow the first is "to restore, introduce and maintain full civil and democratic liberties for all citizens," and the KMPP's active participation in the Front affords a kind of guarantee that the civil liberties will be interpreted in a liberal way. At a meeting held on 13th February under the presidency of Mr. T. Prakasam, the KMPP leader, Mr. P. Ramanurti, of the Communist party, explained this part of the agreed programme thus:

The principles relating to civil liberties had been put in the forefront of the programme, because that was essential for the "democratisation of the administration of the country." Detention without warrant, freedom of the press, speech and association and other civil liberties, were no doubt central subjects. At the same time, they were conscious that the State Government could do much to ensure these freedoms. The programme declared that if the UDF came into power, they would not use the enabling powers of any central enactment for the purpose of detaining anybody without trial or for curtailing the freedom of the press.

Civil Liberties in Pakistan

The Federal Court of Pakistan on 3rd March declared ultra vires the Pakistan Public Safety Ordinance, which was first promulgated by the Governor General on 8th October 1949 for one year. Its life was twice extended by a notification in the Gazette.

This judgment followed an appeal from a decision of the Sind Chief Court dismissing a habeas corpus application by Sobho Gianchandani, a detenus since April 1948 under the Pakistan Public Safety Ordinance. The Federal Court ordered the release of the appellant, Sobho Gianchandani, who was accordingly released from the Karachi District Prison on 6th March.

Following this decision, the Governor-General of Pakistan has issued a new Ordinance, which contains nearly the same provisions as the invalidated one except that it omits the provision which rendered the old one invalid. The Supreme Court declared that the power of extension provided in the proviso to the Ordinance of 1949 itself was ultra vires, since the Governor-General's power of issuing an Ordinance, being a delegated power of the legislature, could not be further delegated, and held that the Ordinance became invalid from the date when it was first extended by the Central Government on 8th October 1950. The new Ordinance omits the proviso in the previous one regarding extension and provides for a clause of indemnity for protecting authorities who have in good faith taken action under it. This Ordinance will have retrospective effect and will come into operation from 3rd March 1952—the day on which the Federal Court

delivered its judgment. It will in due course be placed before the Constituent Assembly during the coming session for conversion into an Act.

At the first annual conference of the Pakistan Federal Union a resolution was passed on 11th February expressing regret that "executive inroads into the freedom of the Press are being made in the name of an imaginary national emergency."

The resolution expressed concern that while normal Press laws of the country had not been modified with a view to adjusting them to the changing needs and requirements of a free country, "such undemocratic laws" as the Provincial Safety Acts and the Pakistan Safety Ordinance were still held to be applicable to the Press.

The resolution added: "While this state of affairs is most unsatisfactory, it is even more regrettable that new procedures and rules are being adopted by the Central and State Governments to still further restrict freedom of expression."

The conference stated that "new restrictions" had been imposed in regard to the grant of fresh declarations. Security deposits were demanded even before a journal had started publication and further difficulties had been created in the way of a newspaper for the change of its printing press.

Jennings on our Bill of Rights

In one of the three lectures on the Indian Constitution which Sir Ivor Jennings, Vice-Chancellor of the Ceylon University, delivered to the University of Madras, he dealt with the Fundamental Rights in our Constitution. With all English constitutional lawyers, who proceed on the basis of the sovereignty of the British Parliament, Sir Ivor shares distrust of all constitutional limitations on legislative power, but more particularly he criticises the Indian way of protecting individual rights and would prefer the American way. As pointed out by him, the Fathers of the American Constitution selected a few simple fundamental propositions concerning civil liberty and left it to their judges to apply them in practice, whereas "in India the Constituent Assembly did not trust the judges so far; it tried to formulate (in 24 articles, some of them lengthy) not merely the general principles but also some of the details," "a general proposition (being) followed by a generic exception," and both inviting almost endless litigation. "Compared with the Indian Bill of Rights," he said, "the American Bill of Rights is a marvel of clarity and conciseness."

With this criticism many will be disposed to agree. In fact it was suggested in some quarters that our Bill of Rights should confine itself to a few really fundamental rights and not attempt to go too much into detail. For instance, Mr. Vaze had insisted in his brochure, "Fundamental Rights in the Draft Constitution of India," that all basic rights should be expressed in general terms, leaving it to the judiciary to define their exact scope and to evolve a code of exceptions and qualifications to which they must be subject. "The experience of the United States," he pointed out, "proves that the courts can be trusted to apply the test of civil liberty with discretion, though the liberty in the Constitution appears absolute." "The Hindu," in its comments on Sir Ivor Jennings' lecture, agrees with this part of his criticism. It says, "Bringing the Constitution into line with changing needs and ideals is a task that might be left at least as safely to the social conscience of an enlightened judiciary as to the exigent opportunism of party politicians."

When exceptions and qualifications to the fundamental rights are enumerated in the Constitution, they naturally tend to become too wide, the framers being anxious to give them such a form as not to exclude any possible contingency. Take, for instance, the right of free assembly, with which we have been dealing in particular in the last few issues. This right is made subject in our Constitution to restrictions "in the interests of public order." This was wholly unnecessary, for "peaceable assembly" necessarily implies that meetings which are not orderly cannot be immune from interference. But what is the actual result of specifically mentioning this exception? The Punjab High Court has declared that sec. 144, Criminal Procedure Code, giving untrammelled freedom to magistrates to prohibit meetings in order to prevent possible disorder is not invalid, for the words used in art. 19 (3) which deals with exceptions are that art. 19 (1) (b) conferring the right will not affect any law imposing any reasonable restrictions in the interests of public order, and because under sec. 144 some restrictions that could be imposed might be reasonable, the law itself must be pronounced constitutional!

Libel and Slander

We give below the comments appearing in the "Manchester Guardian Weekly" of 31st January on a private bill to be moved in the House of Commons for the purpose of giving effect to some of the recommendations made by the Porter Committee to amend the law of libel and slander as it stands at present in England. It is widely felt for a long time that this law is so rigorous as to deter honest newspapers from performing their legitimate function of independent criticism, especially in the matter of exposing scandals. The Porter Committee was appointed for the specific purpose of mitigating these rigours, and a bill is now being introduced to achieve this purpose in some measure.

The bill will have a special interest for us in India. For, as the Southern India Journalists' Association pointed out in connection with Rajaji's Press Bill (see p. ii5 of the BULLETIN), the law of libel in our country is far more oppressive to journalists than even the unamended English law on the subject. And instead of amending it suitably on the lines of the Porter Committee's recommendations, our Government has included defamatory or scurrilous writing among the press offences in its Press Act of last year, which will have a twofold result: it will enable the Government on its own initiative to set the law in motion against newspapers supposed to be indulging in defamation and in addition subject those guilty of the offence to the special penalties of a deposit and forfeiture of security for which the Act provides.

The "Manchester Guardian" comments as follows:

The private member's bill which Mr. Harold Laver is presenting to amend the law of libel and slander should be welcomed generally and not only by those who write and publish. If the bill becomes law in something like its original form the public should get a bolder but no less responsible press than it now has. People often fail to understand why editors are reluctant to expose obvious scandals or why they deal gently with proved scoundrels. The usual reason is that the libel law in its present form makes it risky to do so and a public-spirited newspaper may have to pay heavy damages. A minor error of fact in otherwise true and serious charges can sometimes wreck a newspaper's defence under the present law.

Mr. Lever's bill, which closely follows the recommendations of Lord Porter's committee, amends the law at this point. It allows the defendant to succeed if the untrue words do not materially add to the damage legitimately done by the true ones. Similarly the defence of fair comment, which at present also rests upon fragile foundations, would not necessarily fail because one of the facts on which the comment is based is inaccurate. These provisions, if they become law, should greatly help all newspapers and magazines but especially those which conceive it their duty to crusade and expose.

From the newspapers' point of view the most important proposals in the bill concern "unintentional defamation." Sometimes a defamatory statement made about one person—a report of a court conviction, for example—may defame a person of similar name. The bill proposes that where there has been no negligence the plaintiff is to be satisfied with an agreed apology and cannot claim damages. This clause would put an end to many dubious actions which newspapers found it cheaper to settle than to fight and win at the risk of being unable to recover costs from an impecunious plaintiff. An important change is proposed in the law of slander. At present a man may be grievously damaged in his occupation but unless the defamatory words refer to him in that occupation he can get compensation only by proving financial loss. The bill proposes to make proof of a special damage unnecessary in such cases.

Covenant on Human Rights

It will be remembered that the Human Rights Commission was charged by the General Assembly with the task of finalising the draft International Covenant on Human Rights in such a way as to give greater precision to the civil and political rights contained in the first 18 articles and to make them more effective than they were in the form in which they were presented to the Assembly. But we find that after all the scrutiny to which these articles were subjected at Paris, articles 6 and 14 relating to Freedom of the Person and Freedom of Expression respectively—articles in which India is specially interested at present—have undergone no change. They remain exactly in the form in which they stood at the end of the Commission's sixth session (see annex 1 of the Secretary-General's report on the session). That is to say, para. 2 of art. 6 still reads:

No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law,

with the result that the Covenant is incompetent to give relief in the case of legislative infringement of the right to personal liberty. We are not tired of pointing out that this form of the article was due at least in part to the Indian delegate's suggestion.

Similarly, art. 14 still makes the right to freedom of expression subject to such a vague restriction as a national legislature may consider necessary for the protection of "public order." The articles therefore contain even now all the grave defects which several progressive delegations condemned and of which they urged removal. On the convention on freedom of information nothing has been decided, it being postponed until the next Assembly. There was too much controversy to take it up.

It is well known that the United States has already rejected the draft-Covenant on Freedom of Information on the ground that the original United States draft of 1948, had been radically changed by writing into it restrictions which could not be justified and that on the whole the present draft would erect further barriers to press freedom instead of liberating it. And non-official opinion fully supports the Government. For example, the House of Delegates of the American Bar Association went on record on 26th February that the draft would result in imposing "hazardous restrictions" on the press.

The draft code for journalists which the U. N. Sub-Commission on Freedom of Information is considering in New York does not promise to have a better fate. It is evoking much opposition in the U. S. and the U. K., first because as many as six of the twelve-man Sub-Commission happen at the moment to be Government officials instead of professional experts as they should be, but mainly because a fear is entertained lest the code should be used by governmental authorities to justify the imposition of unnecessary restrictions on freedom of the press. Mr. Binder, the United States representative, has warned repeatedly that the code threatens to transform newsmen into "propagandists" or "evangelists," and the American Society of Newspaper Editors has raised the same objection, saying that the code puts the newsman in the light of an "indoctrinator."

A STATE IN THE U. S. A.

Outlaws the Communist Party

"Civil Liberties," the monthly bulletin of the American Civil Liberties Union, has the following in its December 1951 number:

Massachusetts has become the first state to outlaw the Communist Party by name. The Bay State legislature's new act declares the party a subversive organization and unlawful. Any person who remains a member of it knowing it to be subversive may be punished by a fine up to \$1,000 and imprisonment for as long as three years.

The act also makes subversive and criminal any other organization of three or more persons associated for the common purpose of advocating the violent or unlawful overthrow of the state or federal governments. The state Attorney General is required to bring action in court against any group he has reasonable cause to believe is subversive. If the court finds it subversive it may be dissolved and its assets turned over to the state. Continued membership in such a group is punishable the same way as is membership in the party.

The law also makes it a criminal offence knowingly to permit a meeting place to be used by the Communist Party or by any group ruled subversive. Contribution of money or other property to a subversive organization is also punishable.

The Civil Liberties Union of Massachusetts, long opposed to this kind of legislation, is now determining how it can best and most effectively challenge the constitutionality of the new law—through court action.