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Editorial Committee :

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

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



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[A MONTHLY REVIEW]

*Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
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The writ (of Habeas Corpus) is rendered more actively remedial by the Statute of Charles II, but, founded upon the old basis of Magna Charta, it is the principal bulwark of English liberty. And if even temporary circumstances or the doubtful plea of political necessity should lead men to look on its denial with apathy, the most distinguished characteristics of our Constitution will be effaced.—Hallam's "Constitutional History."

legislation will provide those safeguards which Regulation 18 B of England provided in this respect during the last war. We shall in due course suggest * what provisions will have to be made in this legislation so that it may approximate to the provisions of that British Regulation and, what is equally important, what conventions will have to be established in order that the Advisory Boards contemplated by sub-clause (a) of clause 4 of article 22. But in the meantime we wish to give the reader some idea of the circumstances in which Regulation 18 B was made in England in World War II and Regulation 14 B in World War I, the categories of persons against whom alone the power of detention or internment conferred by these Regulations could be enforced, and the extent to which in fact the power was brought into operation. Without this background it will be almost impossible to institute any proper comparison between the safeguards that were introduced in England and those that will come to be introduced in India.

ARTICLES

LIMITED SCOPE FOR IMPROVEMENT in Central Legislation regarding Detention

[*This editorial, written before the Preventive Detention Bill was moved and passed in Parliament on 25th February, sets forth the extremely narrow limits within which it is at all possible to impose any restraints by Parliamentary legislation contemplated by article 22 (7) of the constitution on the power of preventive detention which article 22 (3) (a) confers on the States and the wide area which would still be left in which this power would be without any kind of check, even if Parliamentary legislation sought to afford and did afford all such safeguards as were consistent with a policy of preventive detention. At the time the editorial was written, we had entertained some hope that an honest attempt would be made so to devise Parliamentary legislation as to provide some kind of safeguards, but, as the succeeding editorial which examines the provisions of the Preventive Detention Act shows, this our optimism was wholly groundless, inasmuch as the States' power of preventive detention has been left absolutely unrestrained in every respect in this Act. Still we have left the editorial as we wrote it.*]

The utmost that we think we can ever hope to achieve (that is to say, make the present Parliament concede) by the legislation to be enacted under clause 7 of article 22 intended to impose some kind of restrictions on the laws that may be passed by the legislatures of provinces (or States in the newly adopted nomenclature) authorising preventive detention for a period longer than three months (in regard to detention for three months no restraints by central legislation are at all contemplated) is that the

Regulation 14 B, 1915

It is of course well-known that both these Regulations were made in the time of war and were intended as war measures necessitated by the overmastering exigencies of national defence. The need for the earlier Regulation arose in this way. At the outbreak of war there were naturally a large number of Germans of German nationality in England. They could be dealt with by the executive without taking any extraordinary power of internment without trial. Under the common law the executive already had the power, in order to secure the safety of the State, of internment those who belonged to a country with which England was engaged in war, and the power was freely exercised. A considerable number of Germans were straightway interned. But there were a number of Germans who had acquired British nationality and who were in law British subjects but who were equally a source of possible danger. These persons could not be similarly dealt with. For the Naturalization Acts of England specifically provide that a person once naturalized shall be placed upon the same footing as a British subject. The privilege of the writ of habeas corpus is not confined to a British subject but is available for all persons

* In view of the passing of the Preventive Detention Act, it would be futile now to make any suggestions. — Ed.

including foreigners who are within the jurisdiction of the British courts. For the internment mainly of such persons who were Germans for all purposes as far as concerned the safety and security of the State though they had changed their ostensible allegiance, special power was required and that was taken by Regulation 14 B.

It was not intended of course that all persons born in England of German parents, for instance, were to be interned. What was intended was that the executive should be armed with power to intern them only, as the Prime Minister, Mr. Asquith, declared, "in cases of proved necessity of danger." How was the necessity proved? First, persons against whom such action was thought necessary must be reported to the Home Secretary by the military or naval authorities. The Home Secretary was then to give his personal consideration to such cases. A further safeguard was that the persons to be so dealt with must be "of hostile origin or associations." "It is not the case," as Mr. Herbert Samuel, Home Secretary of the time, said, "that the Home Secretary has power to pick any British subject or alien and whisk him off into internment regardless of circumstances." They must be persons whose remaining at large, because of their hostile origin or associations, by being, e. g., spies or agents of the enemy, is, in time of war, considered perilous to "the public safety or the defence of the realm." The Regulation was first passed in June 1915, but about three years later its scope was so extended as to make it applicable in relation to any person who was suspected "of acting, or having acted or of being about to act" in a manner prejudicial to the public safety or the defence of the realm. [Mark these carefully selected words and compare their limited scope to the wide sweep of words such as "likely to act" in our present Public Security Acts.] In order to ensure full and unbiassed consideration being given to all cases of both these types, the Regulation provided for the constitution of an Advisory Committee, to whom every interned person who was not an enemy subject could, as a matter of right, make a representation against the internment order. The Committee was presided over by two serving judges of the High Court and consisted, as to the other four persons, of members of the House of Commons. It was a thoroughly independent body, with power to frame its own procedure and method of inquiry. Before the Committee interned persons could personally appear; they were assisted by solicitors of their choice in presenting their case, and they were allowed to call witnesses. Finally, the Home Secretary, though not legally bound to follow the advice of the Committee and though endowed with a discretionary power in the matter, usually acted upon the advice. As Sir John Simon, who as Home Secretary framed the Regulation, said: "There has been no case in which the Home Secretary has ever departed from the advice of the Advisory Committee, if the Committee has advised that a man should be released" (House of Commons Debates, vol. 80, col. 1264).

Regulation 18 B, 1939

The Regulation made in World War II, Regulation 18 B, also was of a similar nature. The power of detention without trial which it conferred on the executive could be brought into use only against certain specified categories of suspects, viz., (1) persons of hostile origin or associations, (2) persons who are members of, or are active in the furtherance of the objects of, organizations subject to foreign influence or control or in sympathy with the government of any enemy state, and (3) persons who "have been recently concerned" [mark, again, these words] in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts. A person to be detained must first answer to this description and further it must be proved, to the satisfaction of the Home Secretary no doubt, that he is engaged in activities which render his detention necessary because of the danger they involve to national security. There was again an Advisory Committee of independent-minded persons, to which was given full right to devise its own method of carrying on its investigation. Because fear was expressed lest the Home Secretary should act on secret information supplied to him by the Security Services and yet withhold it from the Advisory Committee, the duty was cast on the Home Secretary to furnish all material to the Committee, and a paragraph was inserted (para. 5) to the effect that "it shall be the duty of the Chairman (of the Committee) to inform the objector of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case." The Committee got all the information from the Home Office and passed on to the detenu such of it as was relevant to his case, so that his defence may not be prejudiced because of lack of necessary particulars. The facilities of being afforded legal advice and of calling witnesses were of course continued. The Committee, being master of its procedure, could give these facilities irrespective of the wishes of the Home Office. To the Committee's advice the Home Secretary was expected to give that deference which its very composition demanded. The Committee was under the chairmanship of a judge of the High Court in 1941. A further safeguard was added in paragraph 6 of the Regulation, that "the Secretary of State shall make a report to Parliament at least once in every month as to the action taken under this Regulation (including the number of persons detained under orders made thereunder) and as to the number of cases, if any, in which he has declined to follow the advice of any such Advisory Committee as aforesaid." The limitation of detention to the specific categories mentioned above and the additional safeguard of a monthly report to Parliament led the late Professor Berriedale Keith to conclude that the Regulation "can hardly be seriously called in question" (vide "Journal of Comparative Legislation and International Law," vol. 22, p. 77).

Precautions against Injustice

It is generally conceded that the Regulations were on the whole administered with self-restraint, and that the power of internment or detention without trial was brought into use by the authorities only against those who were centres of the gravest suspicion. And the fact that all persons against whom the authorities took action were called before an impartial body under the guidance of a judge and were furnished every opportunity in a sympathetic spirit to defend themselves gave the public an assurance that no gross injustice could have been done in any large number of cases, though, the facts not being known or capable of being known to the people at large, no one could be positively certain about it. One of the typical cases of persons interned under Regulation 14 B which the Home Secretary cited may be given here :

Case A is a young man of military age, British-born of German parents. His father, who was a German subject, was repatriated some time ago, and when he was going back to Germany he was detected smuggling a number of letters which he was endeavouring to carry with him. Amongst them was one from his son which included passages stating that he was longing to help the Germans, that his dearest wish was to join the German Army, that he was confident Germany would win the War, and he said in the course of his letter to his friend in Germany that he was a German now and always would be. When they examined him before the authorities he quite frankly and courageously and honestly made the same profession.

Though obviously, the Home Secretary explained, such a person could not be left at liberty in time of war, no indictment could be framed against him on the strength of the letter and that in any case no evidence amounting to strict, precise, elaborate proof such as was required in a court of law could be produced. Again, he said, the matter must be considered from the point of view of witnesses too where these were required. "The source of information must be in these cases frequently of a most secret character, and to bring the witnesses before a tribunal would destroy all possibility of their future usefulness." To intern a man without trial and without writ of habeas corpus was of course a very serious departure from British notions of justice, but, said Sir John Simon, the requirements of national security come far in front of the risk of injustice being done in individual cases, and, if it be granted that in time of war we must be prepared to forego some portion of the full legal protection which exists in time of peace, then it must be further admitted that subject to proper and carefully devised safeguards, power must be given to the executive, in the interests of the State, to put under some surveillance persons who might not have committed any crime but who had aroused grave suspicions. "Which," Sir John added, "I agree is a most dangerous thing to do

and a thing which the House of Commons is entitled to watch;" but the power must be conferred, there could be no escape from it in the situation which the country had to face. Regulation 18 B of a later date was also directed against such dangerous characters. Not much of their activities is known or can be known, but in the case of *Greene v. Secretary of State* which came up on appeal before the Privy Council in 1942 we know what were the charges that were brought against Greene. In the November, 1949, issue of the BULLETIN, at p. 14, we have quoted in full from Lord Atkin's opinion the particulars supplied by the Home Office in the first instance, i. e., without waiting for a demand from the Advisory Committee for any more material, and we have seen how complete was the statement that was given to him, which alone makes it possible for a detainee to make a proper defence.

Extent of Application of Regulations

What was the extent of the action taken under the Regulations? About a year after Regulations 14 B came into force, the total number of persons interned thereunder was 69, most of whom were natural-born British subjects of German or Austrian origin or naturalised Germans, and only 8 of British origin and British nationality (House of Commons Debates, vol. 80, col. 1245]. About two years after Regulation 18 B was brought into force, the total number of persons detained at one time or another under it was larger, the Nazi technique of Quislings having been brought to perfection by then. It was 1,779. Of these roughly 800 were members of an organization "subject to foreign influence or control" and about the same number were of hostile origin. Thus the number detained as "having been recently concerned in acts prejudicial to the defence of the realm" was comparatively small. Out of the 1,779 persons detained altogether, the number of those still held in detention in July 1941 was 762 (*ibid.*, vol. 373, col. 946). Considering the risk which the State had to undergo from the machinations of Nazi agents, it will be felt, we believe, that the Regulations were after all of limited application, though no one who abhors the setting aside of due process of law can look with equanimity even on a small number of detention cases. By the way, one may compare these figures with the figures of communists alone detained in India under the existing Public Safety Acts, which were brought into force under infinitely less severe provocation.

Regulation must be Compared with Emergency Provisions

It is only at this point that we come to our main topic. We began by saying that the maximum good that we can ever expect from our Parliament is that the legislation which the constitution authorizes it to make imposing some restrictions on the statutes which the States will pass concerning preventive detention for a period longer than three months will contain all the safeguards that Regulation 14 B and especially Regulation 18 B contained.

Assuming this happens (which of course is very problematical), all we can claim is that our future Safety Acts will be no more objectionable than Regulation 18 B. But ought we not rather to compare the regime of these Regulations in England with the situation that will arise in India as regards personal freedom under Emergency Provisions in Part 18 of our constitution? In England the subject was deprived of his cherished right to a writ of habeas corpus, the basis of all human liberties, by Regulation 18 B because England was at the time engaged in the most terrible of wars known to mankind and it was clear to her statesmen that the defence of the nation could not be efficiently secured except by putting temporarily in abeyance their ancient privilege. When a situation half as serious arises in India, we shall not be tinkering with Public Safety Acts in the States, but we shall most certainly be under the rule of a proclamation of emergency which the President will declare in virtue of the power given to him by clause 1 of article 352. This article gives him power to issue such a proclamation not only when a war is on but when it is threatened and even when internal disturbance causes in his (i. e. his Ministry's) opinion a danger to the security of the country or a part of the country. There can therefore be no doubt that in a situation even remotely resembling the one which England had to meet in 1939 we shall be operating not under the normal provisions of the constitution like article 22, but under its emergency provisions. And we may be pretty certain that under clause 1 of article 359 the President will issue an order abolishing the right to a writ of habeas corpus.

Our Emergency Provisions Compared with those in England and U. S. A.

Regulation 18 B must therefore be compared with this order, and not with any revised Public Safety Acts (which we started to consider). What will be the safeguards that the President's order above referred to will afford? Will the detained person be placed before an Advisory Committee to hear the charges he has to meet? Will he be given full opportunities of making his defence? Will the Home Ministry as a matter of practice follow the Committee's advice? The constitution is quiet about all this; it merely says that the President will be able to direct that no one shall have the right to move for a writ of habeas corpus. The proclamation of emergency will be in operation for two months at the least unless the President himself chooses to revoke it earlier, and during these two months even Parliament's voice will not count. Parliament may be of the opinion that an emergency has not arisen, and even then the proclamation of emergency will remain in operation! Parliament must give way to the executive—which is something unknown to constitutional law anywhere in the world. In England it is well known that when a proclamation of emergency is issued the occasion of it must be communicated to Parliament within five days thereafter (in India there is no limit of time in this respect) and the emergency regula-

tions must receive the assent of Parliament within seven days after such communication is made (in India the emergency regulations may last for two months in spite of Parliament's dissent). In the United States the writ of habeas corpus can be suspended by Congress (not by the President) only in cases of rebellion or invasion (actual and not threatened) and even then such suspension is subject to judicial control as to whether the conditions laid down by the constitution did in fact exist or not. In India not only is the judiciary kept out but even the legislature for a period of two months. And during the state of emergency which with the legislature's approval may last for an indefinite period the writ of habeas corpus is capable of being abolished—without any kind of safeguards whatever. It is the possibility of such a situation arising which we must compare with the state of things that prevailed in England under Regulation 18 B. Even in a real emergency and not a fancied one, the provisions which our constitution allows are so drastic. But leaving that point, in itself of great importance, on one side for the present, we are certainly entitled to urge that, with such emergency provisions there is no need whatever for separate provisions authorising preventive detention.

Areas Excluded from Consideration

It is in non-emergency situations that these provisions of art. 22 come into force. The "Times of India" says, in its issue of 15th February :

It has given no little pain to democratic conscience that the dawn of freedom in India should have been accompanied by the enactment of measures giving to the executive extraordinary powers to restrict personal and civil liberties [here the reference is to the renewal of Bombay's Public Safety Act] and that the constitution should have authorised preventive detention without reference to the existence of an emergency.

These provisions ought really to go, lock, stock and barrel. There can be no need for them when emergency provisions, which are themselves of an unjustifiably drastic and sweeping character, are there to take care of any really dangerous situation in which preventive detention may become inevitable. But this again becomes only an academic contention for the present. For we are not thinking of changing the constitution now, which has assumed final shape. To make an attempt to alter the constitution just when it is made would be like beating the air. At the moment we are considering how, within the framework of the constitution as passed, we can improve provisions concerning preventive detention. We intend later to make concrete suggestions for improvement. But even if success is attained in this effort (and, as we have said, the highest success that it seems to us is capable of practical attainment is that the safeguards provided by Regulation 18 B will be made available by central legislation in this country, our ambition does not soar higher), we must point out first, in order to avoid subsequent disillusionment, what little scope for improvement will be left after the

large areas in which something like a regime of *lettres de cachet* will be possible under the other provisions of constitution are excluded from our consideration, as they must be excluded at this time. The areas that have to be so excluded because they are already covered by the constitution and will not be affected by the central legislation contemplated by clause 7 of article 22 are :

- (1) all emergency situations governed by emergency provisions; and
- (2) all legislation authorising preventive detention for a period not exceeding three months, which will not be affected by any central legislation.

In the class of cases mentioned in item 2 above all that the constitution requires under clause 5 of article 22 is that the detained person shall be told of the grounds on which the order for detention is passed against him and that he shall be given the earliest opportunity of making a representation against the order. There need not be even an Advisory Board to consider the representation, much less a requirement that full particulars about the causes of detention should be supplied to the Board. These matters will be governed by State legislation, and if this legislation fails to provide the only safeguard against unjust detention, viz., an appeal to an independent tribunal, neither any provision in the constitution nor any check imposed by central legislation can be invoked to set matters right. Preventive detention, even if limited to three months, at the uncontrolled discretion of the executive and the legislature is a terrible thing. The constitution itself having provided for it, there are no constitutional remedies that can be employed. In the circumstances, all that we can do (this is the only sphere left in which improvement can be attempted) is to try and get proper controls established by central legislation over detention in non-emergency situations for a period longer than three months—which is but a very small fraction of the whole area covered by preventive detention. And one last point to remember is that assuming that in this exceedingly limited sphere we achieve complete success now, there is no knowing when the second or third or any later Parliament, which may be more reactionary, will pass thoroughly bad legislation, leaving it to State legislatures to deal with preventive detention even of a longer duration than three months just as they please. This is the import of the resolution that the All-India Civil Liberties Council passed on the subject saying that "personal liberty will under the provisions of these articles (articles 21 and 22) be completely at the mercy of the legislatures, provincial or central;" that "personal liberty, to whatever extent it may in fact be allowed, will be a statutory right and not a constitutional right;" and that "personal liberty is not at all guaranteed in the new constitution, either when a state of emergency exists or otherwise."

PREVENTIVE DETENTION ACT : an Outrage and a Fraud

No one should know better than Pandit Nehru, the Indian Prime Minister, whom the British kept in prison for sixteen years that the new law giving the Government power to detain without trial those who endanger public order, interfere with national defence or harm India's relations with foreign powers will not rid him of a revolutionary movement which, as he himself has always asserted, arises out of the mass misery of India.—The "New Statesman and Nation", 3rd March.

In the preceding article an attempt has been made to show what, within the framework of article 22 of the constitution, Parliamentary legislation could have done to soften the rigours of preventive detention and what, we had thought at the time, it might do in that direction. But, on examining this legislation which was adopted on 25th February at one sitting, we have to record our considered opinion that it has done nothing to restrain the States' power of preventive detention. There is absolutely nothing in the Preventive Detention Act which makes it even slightly more difficult for the States to make arbitrary use of this power now than before the Act was passed or makes it incumbent upon them to act with greater self-restraint or discretion. There will be not only no improvement, because of this Act, in the present position in any respect whatever, but there will be a definite setback, and a setback brought about, it must be said, in a disingenuous manner, as will be shown in the course of these remarks.

The Act was not intended to affect and does not affect the States' power of detention, if it be limited to three months. Nor does it affect the power of detention which they or the Union will enjoy when the President sees fit to proclaim a state of emergency. The area thus left out of the scope of the Act is exceedingly wide; and the exclusion will have results the enormity of which we have already dealt with in our first article. But within the area that comes within the ambit of the Act a great deal could have been done to mitigate the effects of preventive detention which our constitution, unlike any other in the world, provides for. The Act could have prescribed a proper procedure for the inquiry to be made by the Advisory Boards into cases of detention, so that those persons at any rate who have been detained for longer than three months would have a real chance of being saved from possible injustice. It could also have prescribed a maximum period of detention, beyond which at any rate no detentions without trial would be possible. We must confess that it was our fond hope that, in these two respects and particularly in the former respect, Parliament would do something to show its regard for democratic liberties. We had also hoped that if some classes of cases of detention were to be excluded, under article 22 (7) (a) of the constitution, from the purview of the Advisory Boards, which is the only kind of tribunal provided, these classes would at any rate be defined in so precise and stringent a manner that no one who is not

obviously a danger to the community will ever suffer from arbitrary detention. But the legislation that has now been passed does nothing of the kind. Indeed it is plain that the authors of the Act never intended to do anything of the kind.

Categories of Detenus

Under this statute the States have been given the power (and the Union also receives the power) of detaining without charge or trial three categories of persons suspected of acting prejudicially in respect of:

- (i) the defence of India, the relations of India with foreign powers, or the security of India;
- (ii) the security of a State or the maintenance of public order therein; and
- (iii) the maintenance of supplies and services essential to the community.

[We shall for the present omit the fourth category also provided, viz. the category of foreigners.] Of these three it is only the last category that has anything to do with the Advisory Boards. Cases of detention of persons belonging to this category will alone require endorsement by the Advisory Board of the order for detention passed against them if the detention is to last longer than three months. Cases of the other two categories of detenus need not be referred to the Advisory Board at all. And it should be remembered that it is only cases of persons in the second category that normally come under the detention provisions of the Public Safety Acts. Defence of India, etc., is not within the province of the authority of the States' Governments. Nor has the Central Government had any occasion for any of these purposes to bring the power of detention into play. And yet, without there being any necessity to possess the power of preventive detention in this respect, the Union Government has newly taken that power to itself and also endowed the States' Governments with it. And the security of a State or the maintenance of public order therein, for which the States have made extensive use of the power of preventive detention, is a matter in respect of which cases of detention on suspicion (even if the detention is longer than three months) are excluded from the jurisdiction of Advisory Boards altogether. Even the Union Government may now go into a State and detain a resident there on its own, which the Central Government never did so long. The only cases therefore of which the Advisory Boards can take cognisance are of persons detained, for a period of more than three months, for being suspected of acting in a prejudicial manner in respect of the maintenance of supplies and services essential to the community. The States' Public Safety Acts contain provisions which bear on this subject, but not one of these Acts provides for detention for the attainment of this purpose, and no State has yet felt the need for the use of this power for maintaining essential supplies and services. Even so, it is only such cases of

detention which never take place that will hereafter be placed before the Advisory Boards for their sanction.

Cases of Detention Practically Removed from Advisory Boards

The final upshot of the provisions concerning Advisory Boards is, therefore, this: that all of those cases in which power of preventive detention is actually used, and used on a wide scale, are removed from the jurisdiction of the Advisory Boards, and only those cases in which the power is never used will be referred to these Boards. We can only surmise that the third category relating to essential supplies and services has been newly created for the purpose of detention in order to create the impression in quarters where little is known about this subject, e. g., in foreign countries, that though power of detention without trial is expressly provided for in the constitution, its use in fact has been made subject to stiff safeguards. Foreigners will no doubt think that it is a great blemish on the Indian constitution that detention up to a limit of three months is left to the wholly uncontrolled discretion of the executive. But they will also think that detention beyond that limit is made subject to safeguards which should prove effective. For not only has an appeal to an independent tribunal been provided for considering such cases, but their verdict, if favourable to the detained person, is made binding on the executive. Nowhere else (these foreigners will say to themselves) is such a safeguard found. In the procedure of the Advisory Committee working under Regulation 18 B in England, there were several precautions taken for the purpose of minimising the risk to the personal liberty of innocent persons; and though the Committee's advice was usually followed, the Home Secretary had legal power to set aside the advice of the Committee if he so chose. But the provision in the Indian constitution making it obligatory on the executive Government to act upon the advice of the Advisory Boards is unique (they will say) and highly to be commended. Unless this was the motive of the framers of the Preventive Detention Act, we cannot conceive why this third category has at all been created. They wanted to remove real cases of detention from the scope of the Advisory Boards' inquiry, but something must be left for these Boards to work on in order to vindicate the claim that India's constitution goes farther than that of any other country, and therefore the framers of the legislation must have created this new category, a category of persons belonging to which never undergo detention on this account at present.

Conviction Replaced by Detention

The Public Safety Acts of most provinces (now States) contain provisions for controlling the supply and movements of essential commodities and the supply of essential services. But what these statutes do is to create new offences, making those who are convicted of any of these offences by a law court liable to specified punishment. In regard to the control of commodities, the Acts give power to the Government to prohibit by order any

person from removing a certain commodity from the province without the permission of the Government and to provide that if any person contravenes such an order he "shall, on conviction, be punishable" with imprisonment for a stated term. In regard to the control of essential services the Acts give power to the Government to notify by rule any class of employment as essential for public safety and to prohibit any person engaged in such employment from departing out of a particular area. The Acts further provide that if any person contravenes such an order, he "shall, on conviction, be punishable" with imprisonment for a stated term. The essence of all these provisions is that every person against whom proceedings are taken under them is put on his trial in a court of law and undergoes punishment if found guilty. In no Public Safety Act now in force is detention without trial provided for. And yet the Preventive Detention Act of the Union Government now says that such persons need not be haled before a court of law but may be shut up in gaol without trial either by itself or by the States' Governments and, what is worse, the Act further limits to this category of detained persons alone the opportunity of making an appeal to the Advisory Board.

Those who, till now at any rate, had no use for the Advisory Councils, because regular law courts were accessible to them, are now to be the only persons to whom the Advisory Boards are to be available, and the doors of Advisory Boards are to be shut in the face of those who alone could till now be detained and could make use of the Advisory Councils. This latter category consists of persons who are detained because of the suspicion attaching to them that they are acting prejudicially in respect of the security of the State or the maintenance of public order. The Public Safety Acts of all the States authorise detention on these very grounds ("the public safety and the maintenance of public order" are exactly the words used in the Acts), and they authorise detention on no other ground. These are the persons to whom alone the Advisory Councils were of use, and that was the only remedy open to them. But now the Preventive Detention Act cuts them off from access to the Advisory Boards. The net effect of the Act therefore is that, under the garb of liberalising the procedure of the Advisory Boards, detained persons will now be deprived of their right to some sort of appeal to the Advisory Boards, and the right will be confined to those persons who will hereafter be detained for reasons for which they never could be detained till now!

Availability of Information

When such is the truth about the Advisory Boards it is hardly necessary to examine the other provisions concerning them. But some defects may be pointed out. Our readers know how we are worrying about all the material being made available to the detained person, and we had hoped that on this point at any rate there will be no reason to complain hereafter. But things are left just in the position in which they are at present under the Public

Safety Acts. These Acts provide that the Government shall communicate to the detained person such particulars as are "in their opinion sufficient to enable him to make a representation" and that "the Advisory Council shall, after considering the materials placed before it and, if necessary, after calling for such further information from the provincial Government or from the person concerned, as it may deem necessary, submit its report to the provincial Government." The Preventive Detention Act reproduces this latter provision. That is to say, the Advisory Board "may call for further information" from the Government, but there is no obligation on the Government to supply it. And it is just because sufficient information was not supplied to the detenus that on habeas corpus applications High Courts held in many cases that a review by Advisory Councils, "the only safeguard against arbitrary detention" provided in the Acts, was not effective and set aside the detention orders for this reason. And in order to get round such judicial decisions the various Governments obtained amendments in their Acts providing that detention orders shall not be called into question "on the ground of any defect, vagueness or insufficiency" in the material that the Governments may choose to make available. We have pointed out before how very different both the law and the practice were in England in war time when preventive detention could be resorted to. Regulation 18 B cast on the Chairman of the Advisory Committee the duty "to inform the objector of the grounds on which the order (for detention) has been made against him and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case." We have seen that that the Home Secretary put the Committee in possession of all the material that the Home Office itself had and that through the Committee the detainee got it all.

Legal Representatives and Witnesses

We have similarly been worrying about the detained persons being allowed legal representatives. We knew of course that under the Public Safety Acts such legal help was not forthcoming, but we wrote in to all the Governments, asking them whether the detained person could appear before the Advisory Council himself. When we made the inquiry we had thought that this at any rate was invariably allowed in every province, and that their reply would be "Yes, of course." But how great was our pain and surpris that this is not the practice at all! The United Provinces Government say in their reply to us: "No detenu was allowed to appear personally or otherwise in any proceeding before the Detention Tribunal" because the Public Safety Act of the province does not allow it. The Orissa and the Madras Governments have replied in the same sense. Some other Governments that have cared to reply have avoided answering our query on this point, but we have no doubt that in no province is a detenu allowed

even to appear in person before the Advisory Council, not to speak of his being allowed to take legal aid. So what happens in an inquiry into detention cases is that the Advisory Council has some material which the Government chooses to place before it, and it has also the detenu's representation. On the basis of this the Council has to come to a decision, which is only recommendatory. It cannot even call the detenu to appear before itself in order to get any points explained, the detenu of course not being allowed to call witnesses in his defence. Can the inquiry in such circumstances be anything but a farce? But the same practice will be followed under the Preventive Detention Act, which expressly provides:

Nothing in this section shall entitle any person against whom a detention order has been made to attend in person or to appear by any legal representative in any matter connected with the reference to the Advisory Board.

We need hardly remind our readers that under Regulation 18 B it was entirely left to the Advisory Committee to decide whether legal representatives should be allowed to appear for the detenus and whether the detenus should be allowed to call witnesses, and that in all suitable cases, i. e., in cases in which this would help the detenus to make better defence, both these facilities were in fact provided by the Committee.

Government itself to Review Detention Orders

It would have appeared altogether too bad to provide that those persons who are now detained for security reasons shall not have their cases looked into by the Advisory Boards and yet to provide no kind of inquiry for them. To keep up appearances, therefore, the Act allows an inquiry for them also. Those detained persons (provided their detention is longer than three months) who have been excluded from the scope of the Advisory Boards' inquiry will have their cases reviewed — not by an independent person, but by the Government itself "in consultation with" a person of a certain rank "within six months" (a pretty short period!) from the commencement of detention. When the Advisory Board's inquiry, under the procedure laid down for it, is itself apt to be utterly futile (apart from its extremely limited scope), we can well imagine what will be the effectiveness of this inquiry conducted by the Government itself with the help of a person who is obviously to have a very subordinate role to play therein. But the Home Minister, Sardar Patel, rather preened himself on this provision. The constitution has given us power, he said, to detain such persons without making any kind of inquiry into their cases and yet we provide an inquiry for them too. Look, how tender is our regard for personal liberty, he meant to say. Some people evidently require very little provocation for patting themselves on the back. The safeguards provided in England like personal satisfaction of the Home Secretary about the necessity of detention or a monthly report to Parliament are of course lacking in our

Act. In India even a district magistrate or a sub-divisional magistrate or a commissioner of police can make an order for detention which would be as final and definitive as that of the Home Minister if he is satisfied that such action is necessary in any particular case. No report about the number of detentions or of the number of cases in which the Advisory Boards' advice may have been set aside is required to be made to Parliament or to the States' legislatures. Further, the power of preventive detention confided to the executive is absolute and unconditional. In England stringent conditions were attached, e.g., a person must be of hostile origin or associations; there must be reason to suspect that he is "acting or has acted or is about to act" in a prejudicial manner [Regulation 14 B] or that he has been "recently concerned" in prejudicial acts [Regulation 18 B.] Under the Rowlatt Act in India too it was laid down that there must be reasonable grounds for believing that the person to be detained "has been or is concerned in any scheduled offence" of a very grave character. There are no such conditions provided in the Preventive Detention Act. The executive can exercise the power of preventive detention against any person "if satisfied that with a view to preventing him from acting in a prejudicial manner it is necessary so to do." This is the very worst form of words that can be used as it gives a wholly uncontrolled discretion to the executive. Sardar Patel does not believe in any such checks as were provided in England and even embodied in the hated Rowlatt Act, but Pandit Nehru too has apparently lost faith in them after exchanging the role of a critic for that of a responsible statesman.

No limit on Duration of Detention

We are aware that in some quarters great store was set by the provision in the constitution putting a limit (or rather enabling Parliament to put a limit) on the total duration of the detention period. It used to be said in these quarters, "Has anything like this ever been done in any other country? Everywhere the Government insists upon having power to hold people in detention quite as long as it considers such a step necessary. But we are going to make our Governments submit to a predetermined maximum limit of the detention period. Our constitution-makers deserve high praise for this." But if we study the Preventive Detention Act we shall find that it prescribes no limit whatever. Those who are detained on account of prejudicial acts in respect of essential supplies and services and who cannot be detained for longer than three months without the concurrence of the Advisory Boards can, if the Boards certify that detention for a period longer than three months is necessary, be detained by the Government "for such period as it thinks fit." The detention of such persons is wholly without limit of time. Other detained persons who will not be qualified to go before the Advisory Boards but whose cases will be examined by the Government with the assistance

of another person can be detained without trial for one year. Here a maximum period seems to be prescribed, but that is illusory. Their detention is limited to one year, only because the Preventive Detention Act itself is to be in force for a year. But Sardar Patel has himself notified that this Act will be replaced by another. Thus it comes about that in no class of cases of detention does the Act provide for a limit on the period of detention.

Not an Emergency Measure

That the life of the Act itself is limited to a year may lead some to suppose that after all Messrs. Nehru and Patel look upon this as an emergency measure to be brought into force only for a short time and abandoned thereafter, and that after a year at the most the country will begin to be ruled without the help of these extraordinary powers. Those who entertain such a notion must disabuse their minds of it. In one sense the Preventive Detention Act is an emergency measure, but the emergency which gave birth to it is not the kind of a grave national crisis that we think of when we speak of an emergency. The emergency which made Sardar Patel put forward a Bill hurriedly before Parliament and have it passed immediately (without giving those like us who are interested in the maintenance of civil liberties an opportunity of making any constructive suggestions) was the certainty that, without a measure like this being enacted at once, those who were already under detention for longer than three months would have to be set at liberty, in spite of the President's order (under article 373 of the constitution) extending their period of detention, because various High Courts had declared or were about to declare this Presidential order itself invalid. The necessity of immediately counteracting this evil was the emergency which prompted the "iron man," as Sardar Patel is called, to get the law passed without delay. But he does not regard this as an emergency measure in any other sense. He limits its duration to a year only because he would like it to be replaced later by another of "a more or less permanent nature." Let it be fully understood that this is going to be a permanent piece of legislation. It may be modified in certain minor particulars later, but there can be no question that our Governments, central and local, are to be permanently invested with power of preventive detention, for which the constitution itself provides. When an emergency in the larger sense arises, Emergency Provisions in Part 18 of the constitution will be applied, the President by order suspending habeas corpus. But measures like these will be in addition to the powers conferred by the Preventive Detention Act which is intended to be a normal law available even when there is no emergency.

Measure Uncalled for

Is the country now faced with a situation which calls for the use of such extraordinary powers? We refuse to believe it. The Irish Free State, immediately after attaining freedom, had to encounter the rebel forces of

the I. R. A., and it had to curtail the freedoms that it had so generously guaranteed in its constitution. One must sympathise with a Government placed in that position. Is our Government in a position even remotely resembling it? England suspended habeas corpus during both the last wars. Are we faced with dangers which can at all be compared to England's? Must we suspend habeas corpus "for the defence of India, relations of India with foreign powers, or the security of India"? Why, has Government yet found it necessary to detain any person for any of these purposes? We have of course problems like Pakistan and Kashmir on our hands. Pandit Nehru may solve them by conciliation or "by other methods" as he said the other day. But power of detention will certainly not contribute to the solution of the problems. At least the need for it has not yet arisen. Still the power was asked for as a permanent measure, under the head of defence etc., apparently with a view to creating an alarm so that legislators might agree to power being given for detaining persons under another head, viz., "for the security of a State or the maintenance of public order." Here the only plausible excuse that Sardar Patel puts forward is that of communist disturbances. We do not mind confessing that communist activities, carried on in the way they are, do create a problem. The Union Government and the State Governments will receive all the help they are entitled to in meeting any subversive movements in all legitimate ways. But why should our Governments have to ban communist organizations and to arm themselves with the power of preventive detention when in no other democratic country is it found necessary to take such measures? The Governments happen to be strongly entrenched in power, and they are in a position to get whatever legislation they want, however contrary it may be to the principles of democracy to which they do homage. But civil liberty organizations like ours cannot but raise their voice of emphatic protest when civil liberties which are the foundation of democratic freedom are violated without any compelling reason, though we know that for the present the Governments will not have the inclination to pay the slightest heed to it.

An Outrage and also a Fraud

But let us assume that there is as grave a danger to the defence and security of the country as there was in England when she had to engage in world wars. Let us assume that for this emergency power of preventive detention has to be taken (as a permanent piece of legislation such an act will always have to be ruled out). Even then, why cannot the safeguards provided by Regulation 18 B in England be provided here? It was just those whose activities were thought to imperil the defence of England in war who were allowed to go before an Advisory Committee which was empowered to frame its own procedure and which framed it in a way that helped the detainees in every possible way. Here whole batches of detenus are to be denied access to the Advisory Boards

which in themselves are only a mockery of the Advisory Committee. Our Preventive Detention Act is an outrage upon the country. It is also a fraud, because the provision in the constitution that the advice of the Advisory Boards shall prevail in certain cases and the provision that a maximum period of detention may be prescribed are provisions which sound very progressive, but they have in fact been made altogether meaningless by the Act. It is difficult to conceive of a more reactionary measure than the one that our Parliament has enacted, ostensibly for the purpose of controlling to some extent the States' power of preventive detention but with the consequence of freeing them from all control.

PUBLIC SAFETY ACTS in Bengal and Bombay

The Public Safety Act of Bombay, passed first in 1947, was about to expire and the legislature has now given it a new lease of life. Taking advantage of this opportunity to renew the measure, the legislature has also tightened it up in some particulars. The corresponding Act of West Bengal was last passed in the latter part of 1948 and in April 1949 the legislature had agreed by a resolution to extend its life by another year. But seeing that in the neighbouring province of Bihar the Patna High Court had decided in June 1949 that the period of operation of an Act could not be validly extended by a resolution, the West Bengal Governor issued an ordinance in July 1949 and thus continued the operation of the Act. But the ordinance would have expired within six weeks from the commencement of the legislative session, and thus in West Bengal too the need arose for passing a new Act.

The duration of both Bombay's and Bengal's renewed Acts is three years. Where Security Acts are concerned, the Governments do not think in terms of shorter periods, and they find no difficulty at all in getting any legislation, however sweeping in character and however long in duration, from their legislatures, whose members hardly take any interest in the matter. In the Assembly of West Bengal there were only about 35 members present when the Bill was considered, and it did not take more than two hours and a half to pass it. The necessity for continuing such extraordinary powers as these measures confer is not questioned by any but a handful of Opposition members. The Home Minister of Bombay was melodramatic in telling the legislature why the powers were still necessary. He said: "We are sitting on the top of a volcano, and there is no knowing when we shall be blown off." Such sensationalism does duty for reasoned thinking when it is a question of passing Public Safety Acts.

Even assuming that there was sufficient warrant for not terminating the Public Safety Act's regime in Bombay, would any Minister, moving in the region of reason instead of in that of emotionalism, seek, after wielding these extraordinary powers for three years, to continue to wield

them for another period of three years? Does that happen in other countries where civil liberties are respected? There any special powers taken usually last for a year in the first instance, and if the emergency does not end within that period, a request is made for continuing them for another year. When, for example, habeas corpus was suspended by an Act of Parliament by Pitt in the course of the wars at the end of the eighteenth century, the suspension was only for a year (and incidentally it may be mentioned that the suspension took effect only in the case of persons arrested for high treason), and because the necessity continued, the Act was renewed year after year. Unless this is done, what is intended to be a strictly emergency measure tends, almost unconsciously and imperceptibly, to become a routine measure to be brought into force in normal conditions.

When, on the outbreak of the last World War, the Emergency Powers (Defence) Act was passed in England, Parliament took care to limit its duration to one year in the first instance. It was stated in the Act that it "shall continue in force for one year beginning with the date" of its passing, and, for the sake of greater precision and emphasis, it was added that it "shall then expire." But no one knew or even expected that the world-shaking event of the war would come to an end within a twelve-month period, and to meet this contingency a proviso was inserted:

Provided that if at any time while this Act is in force, an address is presented to His Majesty by each House of Parliament praying that this Act should be continued in force for a further period of one year from the time at which it would otherwise expire, His Majesty may by Order in Council direct that this Act shall continue in force for that further period.

If for such a terrible emergency as the war extraordinary powers are taken for a year and then renewed by yearly extensions if necessary, in order to preserve intact the legislature's control over the executive, should Bombay or West Bengal or any other State be saddled with extensions of Public Safety Acts by three year terms in the situation that exists in this country? That this happens in India shows how little regard our Governments have for individual liberty. It almost looks as if these Acts will be with us for an indefinite period of time, as in the case of the Bengal Criminal Law Amendment Act, which was passed as an emergency measure so long ago as 1930, and yet it has remained on the statute book for two decades and has been vigorously enforced both under the British regime and under the present regime of free India. It has ceased to be regarded as an emergency measure, and when the matter came up recently before the Bengal High Court on a mass of habeas corpus petitions of detained persons it was frankly admitted by the Advocate General on behalf of Government that the Act was being utilised as ordinary law. So it threatens to be with our Public Safety Acts.

In West Bengal the section in the new Act relating to detention has been brought into conformity with the provisions of the central legislature's Preventive Detention Act providing for an Advisory Board of two members to review cases of detention. Before this Board would be placed "the grounds on which the (detention) order was made, the representation of the person affected by the order, and *such other material as the State Government may think fit.*" Here is clearly seen the cloven hoof of the Advisory Boards which the constitution provides. In Bombay sections concerning detention have been removed altogether from the Act. They are no longer necessary since the central Act gives all the State Governments power to do what they could do before under the local Acts. The Bombay Government gets the power of detention from a different source, and one may be sure it will use it with as great a zeal as before. For the rest all the old powers, which are very comprehensive and very drastic, continue. But one provision in the Bengal Act deserves notice. Sec. 13 gives power to impose pre-publication censorship and the power to prohibit the publication of any document. For contravention of an order in regard to the first matter one may be punished even with forfeiture of the press and for contravention of an order in regard to the second one may be punished with imprisonment for five years! The censorship provision in the Bombay Act has been removed by the Minister perhaps because he has been advised that it would go against article 19 of the constitution relating to freedom of the press. The Bombay Minister seems to be more careful in conforming to the letter of the constitution. Power is taken under sec. 9 A to control such publications as "will undermine the security of the State or tends to overthrow the State" (the phraseology adopted in clause 2 of article 19 of the constitution). The Minister perhaps thinks that by a verbal change like this Government will be protected from such encroachments on the right to a free press as it is in the habit of making. If so it will be a test of the effectiveness of the constitutional guarantee.

Among the new powers taken under the Act is power to control essential services. Under the provision relating to it the Government may declare any employment as an essential service, may further declare that an emergency exists in respect of such a service, and may thereafter prohibit a strike or lock-out during the period of emergency, contravention of this provision making a person liable to a year's imprisonment. Further, power is taken by Government to assume charge of any essential service during the period of an emergency. It is not by such blanket control that industrial crises are usually dealt with. All offences under the Public Safety Act are made non-bailable by the amended law. Below we deal with these two matters, reciting the enlightened opinion in the world on these subjects.

EMERGENCIES IN INDUSTRIES

How Dealt with in U. S. A.

The amended Public Safety Act of Bombay confers vast powers on the Government to prohibit strikes and lock-outs in an industry and to take possession of it whenever, in the opinion of the Government, an emergency has arisen in regard to that industry and such a step has become necessary. We admit at once that labour-management disputes may become so insoluble at any particular time and the resulting injury to the interests of the community so grave that seizure of an industry by Government and operation of it by State machinery may sometimes become unavoidable in the public interest. But whenever such a situation arises, it is the practice everywhere to make out a case for taking such an extreme step and seek the legislature's consent to it. Nowhere is such blanket sanction given for meeting an industrial emergency as the Bombay Act gives.

The nine-month strike in the bituminous coal mines in the U. S. A., that has happily just ended in an amicable way, is a timely reminder to us as to the manner in which in other countries industrial crises of the kind to which the Bombay Act pertains are dealt with there. The wage contract between the owners and miners of soft-coal mines in the U. S. A. expired at the end of June last, and thereafter the two parties could not come to an agreement on the wage rate. As a result of the dispute, the miners organized as a body in the United Mine Workers went on a three-day week, with the result that the production of coal was reduced 50 per cent. and coal stocks declined considerably. The dispute dragged on and became more and more bitter till on 8th February a nation-wide coal stoppage began, most of the 370,000 miners saying "no contract, no work."

By this time the stocks of coal had gone down so much as to last only for two weeks. A crisis evidently arose. Never were the stocks so low in a generation, and an adequate coal supply is basic to the preservation of the industrial, economic and social life of a community so advanced as America. The President was therefore compelled to have recourse to the emergency sections of the Labour-Management Relations Act of 1947, the so-called Taft-Hartley Act. The Act provides that as a first step in dealing with strikes that "imperil the national health or safety" the President shall name a three-man board "to inquire into the issues" and to make a report. A fact-finding committee was accordingly appointed which reported that an emergency had arisen in the coal industry.

The President thereupon petitioned a federal court, as provided by the Act, to issue an injunction ordering the strikers to go back to work and ordering the parties to the dispute to make a fresh effort to arrive at an amicable settlement of the dispute. This injunction can last for 80 days. If within this period no settlement is reached, then

the injunction is dissolved and Congress is thereafter free to take other measures. The court does not issue an injunction automatically, but considers if it is required in the circumstances. In this case, the crisis had reached such a danger point that the injunction followed at once. The U. M. W., which embraces most of the miners, in its turn ordered the miners to resume work, but the miners stayed off the pits as before. Thereupon the Government brought an action against the miners for contempt of court on the ground that the U. M. W.'s was but a "token compliance" with the injunction. The court, however, did not accept the Government's plea, holding that though the mass strike might have been encouraged by the U. M. W., there was not enough evidence on record to support a finding of contempt and that it was not the function of the court to "convict on conjecture."

Thereafter the President sent a message to Congress asking for power to be given to Government to seize and operate the struck mines. Suddenly, however, the negotiations that under the injunction had been going on between the owners' and workers' representatives took a favourable turn and an agreement was reached between them, in virtue of which the workers obtained a wage increase of 40 cents a day and an increase of 10 cents a ton in the owners' payments to the miners' welfare fund. The request made by the President to Congress for power to seize was therefore withdrawn.

But it will be seen what preliminary stages have to be gone through before Government can take possession of an industry in labour-management disputes in the U. S. A. First, the President must satisfy himself that an emergency has arisen; secondly, a fact-finding commission of independent persons must endorse the President's conclusion about the existence of an emergency; thirdly, all that the Government can do thereafter is to be allowed to have a "breather" in which fresh negotiations could be compulsorily started between the disputing parties and for that purpose to have the *status quo* temporarily restored; fourthly, for such restoration of the *status quo* a court's injunction is required, and whether such an injunction will be granted or not will depend upon the court's view of the facts of the case; fifthly, even if granted the injunction will be in operation for 80 days at the outside; sixthly, if no settlement acceptable to both parties is arrived at within this interval, then alone will it be possible for the President, with the consent of Congress, to take the industry in his charge.

The Public Safety Act of Bombay gives general authority to Government to take possession of any industry in an emergency. Both as to the existence of the emergency and the necessity for assuming control over the industry, the Government is the sole judge. Nowhere else is such discretionary power of a general nature given to the executive. We do not refer here to the complaint frequently made that powers in such Acts, though outwardly applicable on even terms to the parties in dispute, are always used against the workers and never against the owners.

COVENANT'S PROVISION ABOUT BAIL

Apropos of the provision in the revised Public Safety Act of Bombay making all offences under the Act non-bailable, we would like to refer here to the provision in the International Covenant on Human Rights as adopted by the Human Rights Commission on the subject of bail, and to point out that what Bombay has done is inconsistent with the decision of the United Nations body. Paragraph 4 of article 7, as passed by the Human Rights Commission, runs as follows:

Any one arrested or detained on the charge of having committed a crime or of preparing to commit a crime shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pending trial, release may be conditional by guarantees to appear for trial.

The second sentence in the above paragraph refers to bail, though the word does not appear in it.

It was on the insistence of Mrs. Roosevelt, U. S. delegate, that the idea of bail was incorporated in the article. The proposal that she submitted was: "Pending trial, release on bail or other condition to appear for trial shall satisfy the requirements of release." To some delegates the proposal seemed to imply that on payment of bail release would be compulsory under it. France therefore proposed another version which stressed the optional nature of provisional release, but it was stressed in such a way that many delegates felt that so loose a phrase was inappropriate in a binding charter such as the Covenant was intended to be, and besides it would be inconsistent with the preceding phrase "shall be entitled to trial within a reasonable time or to release." Thereupon it was explained by Mrs. Roosevelt that while by her proposal it was not intended to confer an absolute right to provisional release, it was certainly intended that when a judge thought that a sufficient bail was offered or other guarantees were available ensuring the appearance of the person concerned at the trial, release would be compulsory. She said (26th May, 1949):

The provision in question meant that it was essential to establish a procedure which would guarantee every individual's right to freedom and to defend himself against any abuse. The Commission had already adopted a text, stating that everyone should be entitled to trial within a reasonable time or to release. It was therefore logical to provide that when a trial was delayed for any reason, *inter alia*, to enable the prosecutor to prepare his case and the defendant to prepare his plea, the person accused or detained should be released on certain conditions. If it was impossible to grant release because the said conditions had not been fulfilled or because the law did not provide for conditional release for the crime or offence in question, the accused or detained person should be tried immediately.

The word "bail" was eventually omitted, but the proposal was accepted in the sense that, provided bail or other guarantees were offered which in the opinion of the judicial authority were adequate, release was compulsory. [It may be stated here that India's delegate, Mrs. Hansa Mehta, threw her weight on the side of making release wholly optional, thus flying in the face of Indian opinion on this question also.]

This is precisely the intent of the normal criminal law prevalent in India in the case of all bailable offences. "The intention of the law undoubtedly is that a man is ordinarily to be at liberty; and it is only if he is unable to furnish such moderate security, if any, required of him as is suitable for the purpose of securing his appearance before a court pending inquiry, that he should remain in detention... In all bailable offences bail may be claimed as of right, and a magistrate is not competent to refuse the same" (S. Ranganathaiyar: "Code of Criminal Procedure," p. 660). By making offences under the Bombay Public Safety Act non-bailable, the accused has been deprived of this right. It is true that the Indian Law does not say that bail ought to be refused merely because an offence is non-bailable, except in offences punishable with death or transportation for life. But "as a rule persons accused of non-bailable offences shall be detained in custody" (*ibid.*, p. 662). This is the general practice of Indian courts of law. And the Bombay Government is taking advantage of this practice in converting offences which were formerly bailable into non-bailable ones.

But the change militates against the purpose of the provision in the Covenant, which was, as was stated in the Human Rights Commission, to "facilitate" release of the accused, if his trial could not at once be proceeded with. The change in the Bombay law obstructs such release and is therefore, as it seems to us, in flat contradiction of the Covenant, as it stands at present. It may be thought that when detentions without trial are taking place galore, this question affecting the custody of a person accused of crime while undergoing trial is a very small matter. It is; but it serves to show how with growing callousness the executive, aided by the legislature, is clamping uncalled for restrictions on the individual's freedom. The provision in the Covenant has not yet acquired binding force; but when it does it would be well if the International League for the Rights of Man took the matter up. This will also open the way to a ventilation of infractions of human rights in larger matters. If international opinion speaks with a decisive voice there is a possibility, if not a likelihood, of the common man in India getting some relief in matters concerning personal freedom.

COMMENTS

Affiliation with International League

We are happy to announce that the All-India Civil Liberties Council, formed in Madras at the first Indian

Civil Liberties Conference in July last, has the honour of being admitted to affiliation with the International League for the Rights of Man (756, Seventh Avenue, New York 19, U. S. A.), which was established in 1941 and performs the important function of co-ordinating the activities of civil liberties organizations in various countries. Among its officers are well-known personages such as Sir Norman Angell, who is a Vice-President. The League is recognised by the United Nations as its special consultative agency in the matter of human rights. The affairs of the League are administered by a Board of Directors, of which Mr. Roger N. Baldwin is Chairman, who, as our readers are aware, retired from active work in the American Civil Liberties Union, to which he had devoted thirty years of active service as its head, only at the beginning of this year, in order that he might be free to give his whole time to the protection of human rights in the international field.

The All-India Civil Liberties Council, which is yet in its infancy and will take some time to find its feet, will no doubt feel it a source of strength that it can now claim to be a unit of a much larger organization and can by reason of that fact alone share something of the great prestige which the International League commands in all democratic countries. It will also receive from the League, we are sure, guidance in the local work which it very much needs. And this guidance will have the additional advantage that it will help to a large extent in dissipating the suspicions with which the A.-I. C. L. C. is regarded in some quarters. Pandit Jawaharlal Nehru at least will be put wise if he also entertains any of these suspicions. For the guiding spirit of the International League is Mr. Baldwin, and it was with Mr. Baldwin's co-operation that Mr. Nehru formed the first Civil Liberties Union in this country in 1936, whose work the A.-I. C. L. C. is really carrying on. Mr. Nehru may be sure that if the A.-I.C.L.C. does not act in a truly non-party spirit and with the single object of guarding the civil liberties of the Indian people in an honest way, Mr. Baldwin will soon put the body in its place.

For the present all the advantages of affiliation are on one side, but the A.-I. C. L. C. cherishes the ambition, after it has grown to its full stature, to do its part in strengthening the International League also. However, as things stand at present, its only objective must be to do its own national work zealously and in a loyal spirit, thus qualifying itself for the larger role which every unit of the International League must play in the end.

News about C. L. Unions

Pending the formation of a Civil Liberties Union for the whole of East Punjab, some workers in Ambala have formed such a union for their district under the name of the Civil Liberties Protection Society, Ambala. This was done at a meeting of prominent citizens on 10th February. The meeting adopted for its basic principles those which

this BULLETIN in its first issue enunciated as the principles which would guide the conduct of its policy. They are :

- (1) The Society feels no less profound a concern for national security than for civil liberty ; it recognizes that both are social interests of the highest value and that a proper balance must be struck between the respective claims of these interests ; and while the Society will fight the tendency to regard the individual as nothing and the State as every thing, it will ever be ready in all that it will urge to concede in ungrudging measure what is legitimately due to public order and the security of the State.
- (2) The Society will not countenance violence in any shape or form, but on the contrary will utterly oppose every attempt to preach or practise violence.
- (3) The approach of the Society to civil liberty questions will be wholly non-party. Its membership will be open to all citizens irrespective of their party political affiliation.

A committee of six persons (of whom Pandit Haradatta Sharma of the Servants of India Society is one) has been appointed for the purpose of enlisting members. The Society will work under the auspices of the All-India Civil Liberties Council.

At a well-attended meeting of the members held on 28th February, the constitution and rules of the Society were adopted. The main activities of the Society would be : to (i) collect facts relating to the suppression of civil liberties ; (ii) publish statements, bulletins, etc., to acquaint the public with facts relating to such suppression ; (iii) organise public protests against the suppression ; and (iv) render legal or other assistance to those who suffer from it.

The seventh annual general meeting of the Bombay Civil Liberties Union was held on 10th February, at which a new executive committee was elected. The President and Vice-Presidents are the same as before, viz., Mr. N. M. Joshi (President) and Professor P. A. Wadia and Mr. N. H. Pandia (Vice-Presidents) ; and the Secretaries are Mr. Dinkar Desai of the Servants of India Society and Mr. Kamalashankar Pandya.

The executive committee of the Bombay C. L. Union met on 27th February with 12 members present and passed a comprehensive resolution on Bombay's revised Public Safety Act which was then in the form of a bill. The resolution points out in particular the drastic nature of the provision prohibiting strikes and lock-outs in emergencies declared by the Government in any industry, a provision which is always used against workers thus depriving them of their right to collective bargaining. The Union also adopted a resolution on firing in the Nasik Road Central prison demanding an immediate judicial inquiry to ascertain whether the firing was justified and

whether the force that was employed on the occasion was the minimum necessary in the circumstances.

The Poona C. L. Union organised a largely attended public meeting on 21st February at which also a similar resolution on Nasik firing was passed, and the meeting was preceded by a public statement in the same sense signed by prominent citizens of Poona.

At a general body meeting held on 24th February, the office-bearers of the Madras Civil Liberties Union were appointed. They are : Mr. P. Chanchiah, retired Chief Judge (President), and Mr. K. G. Sivaswamy (Secretary). The executive committee, also elected at this meeting, resolved to urge upon the Government of Madras certain points in connection with the inquiry ordered by the Government into the firing that took place in Salem prison (one of these points being that the Union be allowed to be represented at the inquiry by a lawyer) and formed a Legal Aid Committee of seven members, with Mr. N. S. Mani, a member of the All-India Civil Liberties Council, a convener.

On 12th February the general body adopted a constitution for the Union, in which it is expressly stated (as in that of the Ambala Society) that "The Union will not countenance violence in any shape or form, but will on the contrary utterly oppose every attempt to preach or practise violence." This indeed is the bedrock of all C. L. Unions, and where the principle is not expressed stated it is implicit in all their activities and is rigidly adhered to.

The late Dr. S. Sinha

We deeply mourn the death of Dr. Sachchidanand Sinha on 6th March at Patna. He occupied a position of high eminence in the official and the non-official world in the various stages of his long career, and as an elder statesman he silently influenced the policy of the country for a good many years. The latest role that he played in Indian politics was that of Provisional President of the Constituent Assembly. His connection with the civil liberty organizations was very close. He presided over the meeting called in September last year to form the Bihar Civil Liberties Union, and because of his deep sympathy with the Congress movement and the great regard in which Congress leaders in their turn held him disarmed much of the criticism that used to be levelled against civil liberties unions everywhere that these bodies were started mainly to run down the Congress. Early in the current year he joined the All-India Civil Liberties Council, and his association with this larger organization was a source of great strength to it. The cause of civil liberties has lost in him a sturdy champion.

President's Order Continuing Detention

In spite of the forethought of Dr. Ambedkar in inserting article 373 in the constitution authorising the Presi-

dent by order to continue the detention of those who were already in detention for three months or more, it was found that such continuation of the detention orders was not possible. In a habeas corpus petition filed on behalf of a Bihar detenu, Brahmeshwar Prasad, the Patna High Court decided (14th February) that the Presidential order intended to continue existing detentions was not valid in law. Mr. Justice Sarjoo Prasad expressly stated in course of his concurring judgment that the provisions relating to detention in Bihar's Public Safety Act having already become void as soon as the constitution commenced, they could not be revived by any act of the President purporting to do so under article 22 (7) read with article 373 of the constitution and also that he could not do so by any adaptations contemplated by article 372 of the Constitution Act. Consequently the Court held that the detention of the petitioner had become illegal since 26th January and hence ordered that he be released forthwith.

This judgment brought on the Preventive Detention Act which was passed by the central legislature on 25th February. The same view in regard to the President's order as that of the Patna High Court was taken by the Special Bench of the Calcutta High Court in the hearing of habeas corpus applications of over 300 detenues, but this decision being delivered on 1st March, after the passing of the Preventive Detention Act, the Government urged that no order should be passed on the petitions as the detention orders previously made had been cancelled and new detention orders had been made under the new Act. The Court, however, insisted on pronouncing its decision on the previous detention orders and warned the Government of the risk they ran in not giving effect to its decision. Mr. Justice Sen, speaking for the Court, said:

Whether the detenus are now detained under any valid law [the Preventive Detention Act] is not a matter for consideration in the disposal of these Rules. We pronounce no opinion on the validity of such detention or upon the propriety of the conduct of the authorities in continuing a detention which we have pronounced to be illegal or upon the risks which the detaining authority may be taking upon themselves by detaining the petitioners under this law in spite of our orders. That is a matter which may form the subject of further proceedings, the result of which we cannot anticipate.

The Government seems to have taken the risk, for we understand that no release followed upon the High Court's orders, either actual or even symbolic.

Advisory Committee under Regulation 14 B

In the last issue of the BULLETIN was described the procedure that was followed in England in inquiring into the cases of deportees or detainees under the Prevention of Violence Act just before the outbreak of World War II or into the cases of detainees under Regulation 18 B in war time. But the procedure was really devised, though

perhaps in somewhat lesser detail, under Regulation 14 B in World War I. The then Home Secretary's speech which sets forth the procedure that was then adopted is given below. A perusal of its contents will show that—

- (i) The internee was told what he was charged with. [If much is not stated about full information being given, it is only because that point was not so forcibly urged then as later under Regulation 18 B.]
- (ii) He was allowed to appear and offer explanation personally at the investigation by the Advisory Committee consisting, among others, of two judges.
- (iii) The Advisory Committee settled its own mode of inquiry.
- (iv) The Committee allowed internees to take the help of attorneys in presenting their case.
- (v) It also allowed them to call witnesses in their defence.
- (vi) While the Home Secretary had authority not to accept the advice given by the Advisory Committee, he usually accepted its advice and in fact never refused it if the Committee recommended any person's release from internment.

Guarantee for Freedom of Speech

SIR IVOR JENNING'S OPINION

A leading British constitutional authority, Sir Ivor Jennings, now Vice-Chancellor of the Ceylon University, has commented on India's constitution in the "Manchester Guardian." His comments on the Fundamental Rights section of the constitution are anything but complimentary, his criticism being that the provisions guaranteeing the rights are accompanied by too large limitations. On one of these fundamental rights, e. g., his remarks are:

There is "freedom of speech and expression" (among fundamental liberties), but the State may make any law relating to "libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the state." Even Hitler would have accepted that, though no doubt an Indian judge will take a very different view from a Nazi judge.

REGULATION 14 B UNDER DORA

PROCEDURE OF ADVISORY COMMITTEE

in Cases of Internees

The following speech of the Home Secretary, Mr. Herbert (later Viscount) Samuel, made in the House of Commons on 2nd March, 1916, describes the procedure that was adopted in the investigation of cases of persons interned

without trial under Regulation 14 B made by authority given to the Government by the Defence of the Realm Act, 1914. This procedure was developed and made more elaborate in 1939, but in all essentials it is the same.

Each case has to be dealt with in the first place by the competent naval or military authority. [The proceedings are not set on foot by the Home Office, but by the War Office or the Admiralty, making it clear that the Regulation was a war measure.] The cases then come to the Home Office, where they are examined, and each is considered by the Home Secretary personally. Then the person who is interned, if an order for internment is made, is formally advised that he has a right to refer his case for the consideration of the Advisory Committee, and the vast majority of them have done so. That Committee consists of six gentlemen—Mr. Justice Sankey [afterwards Lord Chancellor], Mr. Justice Younger [and four members of the House of Commons]. I believe they are almost invariably present at each meeting, and at every meeting both the judges are present to consider the cases. These cases are given most prolonged and patient hearing.

The person interned is always heard in person if he desires to be so heard, which is usually the case. He is able to call witnesses. If there is any element of doubt, or if any further inquiry is necessary, the Committee nearly always adjourns the case—sometimes more than once—and if they desire to make further inquiries they do so through their own officers, and those inquiries are frequently of a very exhaustive character.

Mr. Marshall : In these cases are they represented by counsel or do they have legal advice before the Committee ?

Mr. Samuel : The Committee has determined its own procedure. It does not hear counsel or anyone employed for the purpose of advocacy, but it frequently hears solicitors, and the people are always able to get legal advice if they so desire, as to the presentation of their case.

It is said they do not know what charge is made against them. The examination which takes place in the first instance before they are interned, as a rule, lets them know pretty well what it is they are suspected of. When they come before the Committee the judge presides at the examination of the suspected person, and in the course of that examination shows to the individual beyond the possibility of doubt what the authorities have in mind as the cause of his internment. But I agree that as a matter of form it would be better that they should have clearly written on a piece of paper and in general terms the charge which is made against them, and after consultation with the two judges who serve upon the Committee, and after consultation with the military authorities concerned, I

propose to make arrangements that in all cases, as soon as the order for the internment of the person is issued, a statement shall be furnished him showing on what grounds that internment order is made.

The advice of the Committee has always been taken where it recommends release. I think there was one case in my predecessor's [Sir John Simon's] time when the Committee took a somewhat more severe view than was taken by the Home Office. In that case the more lenient view was adopted. Always where release is suggested the advice of the Committee is taken. At the same time I do not wish the Committee to imagine that I regard the Advisory Committee as having the primary responsibility in the matter. The responsibility for the action taken quite definitely rests upon the Home Secretary and he is free either to accept or to refuse the advice of the Committee. It would be a very exceptional case in which he would not accept the recommendation of so highly competent a body as that the constitution of which I have just stated to the House.

[See Comment : "Advisory Committee under Regulation 14 A."]

"You need not worry about infringements of civil liberties," Congress politicians tell us. But

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