Regd. No. B 5681

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Office: Servants of India Society, Poona 4

Annual Subscription: Rs. 3
Per issue: annas 4
including postage

NOS. 8 AND 9
May and June, 1950

The Editor is always exceptionally busy in the month of June and will for this reason be unable, much to his regret, to bring out an issue of the Bulletin next month. This number is therefore being issued as a double number for May and June. The next will be published on 16th July. The reader will notice that, in spite of one issue being cut out, he already has more pages of reading matter than he was promised for the whole year.

"Our system of justice preserves the freedom and dignity of the individual, and his right to think and speak as he feels and to worship as he pleases. It protects him in the assertion of his rights even against his own government.

"Our lawyers have a primary responsibility in the maintenance of justice. This is particularly true of the Government lawyers, whose first devotion must be to the public interest. The public interest does not mean only the interest of the Government. It means also the protection of the rights of individual citizens."—President Truman's address before the Federal Bar Association on 24th April.

Speaking on the eve of the Colombo Commonwealth Conference, Professor Philip Noel-Baker put Personal Freedom in the forefront of the four great principles forming the basis of the social system and national life of the Commonwealth countries. He said: "They have established in their countries, on an unshakeable foundation, the personal liberty of every subject of the king." The ex-Secretary of State for Commonwealth Relations would obviously now have to except India from this generalization.

ARTICLES

PRESIDENTIAL ADDRESS

The second session of the Indian Civil Liberties Conference held in Patna on 15th and 16th April was a great success. No little part of this success was due to the personality of the president, Mr. Atul Chandra Gupta, an eminent jurist of Calcutta. Of the high place he holds in public estimation and of the trenchant character of his presidential speech (a copy of which has already been supplied to every reader of the BULLETIN), it would be well to let the "Calcutta Weekly Notes," a reputed law journal of Calcutta, speak. The journal says, in part:

> Mr. Gupta has long been eminent, not only as one of the country's soundest and most persuasive advocates but also as a man of letters. Patriot to his finger-tips, Mr. Gupta has never hesitated to criticise where he felt criticism was due, and on many an occasion he has championed causes that are usually beyond the ken of those who win his kind of success in the profession and in public life. It is to us, therefore, no surprise that at Patna he gave a memorable address.
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> "The executive Government," said Mr. Gupta, "that is, those who are in power at a particular time under a party system of government may, honestly and even reasonably, convince themselves on the eve of a general election that unless their party were returned to power, the security of India and of the States would be imperilled; and it is necessary, therefore, to put the leaders of those political parties who may try to oust them in detention." He, therefore, warned his people, and we desire to underline this much-needed warning, that "if India's destiny was not ultra-fortunate, there will be apt pupils to follow the present party in power, and India's political life may degenerate into party vendetta."
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> Mr. Gupta is not generally accustomed to using harsh language. He has borne, without ostentation, his share in the country's struggle for freedom. He has never been what is vulgarly called a carping critic of the Congress; on the contrary, he has been among its more high-minded adherents. When he is constrained to speak in this manner of "the present party in power," it is something of which the Congress and its leadership should take serious note. Mr. Gupta has without the least suggestion of equivocation expressed his disillusionment, and when a man with his quality of mind does it, the Congress owes it to itself and to the people to think hard, act courageously and correct its errors.
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> "In the name of the security of the State," Mr. Gupta averred, the Preventive Detention Act "has made every citizen's security insecure. The concept

is so broad, without any particularization or delimitation, that it is quite easy to bring almost anything not to the executive's liking under it. It is a confession that free India cannot govern itself except by the barbarous methods of Star Chamber and *lettres de cachet*."

Mr. Gupta is of course by no means unaware that in society freedom needs to be regulated; did not Wordsworth, long ago, speak of "unchartered freedom" as something which "tires" the soul? But, as Mr. Gupta inimitably suggested, Authority in India is incomparably more in love with regulation than with freedom—and the regulation is done, it seems, with a rather ugly-looking baton. As is his wont, Mr. Gupta sought to analyse the reasons behind it. He said—and it was about time someone like Mr. Gupta whose patriotic credentials are beyond cavil said it—that "the wail of our rulers and leaders that the people were not co-operating with them was shameful and painful." "The truth was," he added, "our leaders had failed to enthuse the country into efforts for achieving a better life. In fact, they had succeeded in killing the enthusiasm roused by the removal of foreign rule." Perhaps even Pandit Jawaharlal Nehru will read this statement and try not to think impetuously of self-justification.

There is one portion of Mr. Atul Gupta's speech which has been very severely criticized, and a word must be said about it. In one place Mr. Gupta says: "In spite of these and other defects in our constitution, I am of the opinion that the provisions for protecting individual freedom in the part on fundamental rights, when correctly understood, are wise and adequate." Critics are bewildered by this general praise of that part of the constitution with which the Conference was mainly concerned, coming as the praise does from one who has himself in his speech so mercilessly condemned the governments for their post-constitution repressive policies. Professor G. D. Parikh has given forcible vent to this line of criticism in the "Radical Humanist" of 23rd April, and the editor of the "Calcutta Weekly Notes," extracts from the comments of which have been reproduced above, also indicates very clearly that he does not agree with this appraisal of the constitution by Mr. Gupta. Indeed, the criticism voiced by Mr. Parikh on the basis of a summary of the speech is wide-spread, and in private conversation one finds it echoed almost everywhere. There is no doubt that over-compression of the speech has mainly given rise to this criticism. Mr. Gupta makes two points in his speech. He is pleased that the main elements of civil liberty have been incorporated in art. 19 of the constitution. However, he has not dealt in any detail with the qualifications to which exercise of these "rights of freedom" has been made subject; he rather contents himself with the reflection that the qualifications such as they are will not be enforced at the discretion of the executive or legislature but will be subject to judicial interpretation. He also lays great stress on the fact that social and economic legislation has not been made liable in the constitution to the judicial veto. He says: "Our constitution, delimiting the powers of the legislatures within definite though wide spheres and the powers of the judges within spheres ample but well-defined, has minimised the risks of legislative and of judicial vagaries." On this second point the Indian constitution makes a departure from the American model and it is mainly this departure which seems to have led Mr. Gupta to form a favourable opinion of the constitution to the extent that he has formed it. We are sure that on this point many will be inclined to agree that the departure has been well-conceived.

The best proof of this is that the late Mr. Justice Holmes of the United States Supreme Court, who was foremost in invalidating any legislation which violated rights of civil liberty, was equally foremost in pleading that legislation concerning social and economic policy be allowed to stand as the legislatures would have it. From its devotion to individualistic and laissez faire concepts and to the doctrine of freedom of contract the Supreme Court was instrumental for a long time for thwarting many measures of social reform. For instance, the Court held unconstitutional (i) a State law limiting the hours of labour [Lochner *v.* New York (1905) 198 U.S. 74], (ii) a Congress law prohibiting child labour [Hammer *v.* Dagenhart (1918) 247 U. S. 251], and (iii) a Minimum Wage Board created by an Act of Congress [Adkins *v.* Children's Hospital (1923) 261 U. S. 525]. It was only after 1930 that the tendency of the Supreme Court has been consistently in the direction of leaving the legislatures free to shape their own economic and social policies. And what the Indian constitution has done is merely to give to our legislatures by express provisions that freedom of legislation in such matters which in fact the legislatures in the United States have been enjoying for the last twenty years by judicial interpretation. The conclusion now generally accepted on this matter may be well summarized in the words of a modern writer on constitutional law: "The experience of the war period has shown the vital need in modern conditions for an authoritative agency invested with the constitutional power to protect the fundamental safeguards of liberty not merely against encroachments by the executive, but no less against panic measures of the legislature. American precedent (before 1930), on the other hand, would seem to indicate how effectively judicial interpretation may stultify the dynamics of political life." While Mr. Gupta is not backward in censuring the constitution-makers for their failure to give effect to the former lesson in full, he has every right to express satisfaction that they have given effect to the latter, and on this last point we believe Mr. Gupta will receive wide support.

Chairman's Address

The speech which the Chairman of the Reception Committee, Mr. Nageshwar Prasad (a former Judge of the Patna High Court), made in welcoming the delegates to the Conference was notable in many respects. But the concluding part of the speech in which he emphasised the point made by Mr. M. C. Setalvad in "War and Civil Liberties" about the necessity of affecting even in emergency legislation the ordinary jurisdiction of the courts as little as possible (vide p. 81 of the BULLETIN) was perhaps the most notable of all. Mr. Nageshwar Prasad said:

> The powers which the constitution gave to the government to legislate against the enemies of the State appear to be used against opponents of government policy and programme. The excessive arming of itself by the government with restrictive laws affecting the civil liberty of citizens and their indiscriminate use against all and sundry are bad auguries for the growth of an opposition and the consequent growth of democracy in this country, And the tragedy of the situation is that the government would not allow courts to look into the charges or the evidence in support of those charges or to judge about the reasonableness of the restrictive orders. Much of the unpopularity of these security laws would disappear if an impartial tribunal were permitted to look into individual cases by hearing both sides and to confirm or cancel government orders in these respects.
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> The very idea that there was a court (say the High Court) to review such orders would make the police circumspect in reporting and would make the government cautious in accepting such reports, and it would instil a sense of confidence and security in the person affected by such orders, and it would dispel the sense of helplessness from him and the public intervention by the High Court will have a great moral and psychological effect on the people. . . . The supremacy of the courts would make democracy sufficiently strong and would make rebellions unnecessary and unlikely. . . . I would urge on the ruling party not to weaken the supremacy of the courts if they are earnest about democracy.

A COMPLETE RETROGRESSION

The Preventive Detention Act which now replaces the detention provisions of the Public Safety Acts in the provinces constitutes in every single respect a setback on these provisions from the point of view of the liberty of the subject. How complete the setback is may be shown at some length.

Under the Public Safety Acts a person could be detained without trial for six months. This was the maximum period for which any particular detention order could remain in force. The section in the Acts regarding this was: "An order (for detention) shall be in force for a period not exceeding six months from the date on which it is made." But under this section a government was not debarred from ordering detention for a shorter period, say for three months. However, even if the detention order was limited in duration only to three months or even to one month, an obligation rested on the government to refer the case of a person against whom the order was passed to an Advisory Council. Till such reference was made the order was of an interim nature; it reached a stage of finality only when it was confirmed by the government after receiving the Council's advice. That is to say, every order for detention, whether it be for the full term of six months or for a shorter term, was reviewed by an independent body. No case of detention could escape such a review merely because the duration of detention was limited in the order to three months. Under the Preventive Detention Act, however, detentions for three months are not subject to scrutiny by any kind of tribunal. The Attorney-General made a frank confession, in the hearing of a habeas corpus petition of a Madras detenu in the Supreme Court, that in respect of detention for three months (or less) there were no safeguards for a detenu, except to receive the grounds of detention and make a representation to government.

There is a clear setback here, but it may be thought that in respect of detentions for a period longer than three months there is not only no setback, but an equally clear advance inasmuch as, by sec. 11 of the Preventive Detention Act which carries out the provision in article 22 (4) (a) of the constitution, a detention cannot be prolonged beyond three months unless the Advisory Board has reported "that there is in its opinion sufficient cause for the detention of the person concerned" for a longer period. Cases of such detentions have not only to be referred to the Advisory Board for an inquiry, but the advice the Board gives is, if favourable to the detenu, binding on the government, whereas under the Public Safety Acts these cases were no doubt invariably inquired into by the Advisory Council, but the Council's opinion could be set aside by Government. We know for a fact that many persons still have a feeling that, however retrograde the Preventive Detention Act may be concerning detentions for three months, it makes a great step forward in so far as detentions of a longer duration are concerned, and that there is thus a compensation. But this is an entirely wrong impression based upon an imperfect study of the provisions of the Act. If every case of detention for more than three months had to be investigated by the Advisory Board, this impression would be correct enough; but it is not so.

To sub-clause (a) of clause (4) of article 22, which requires endorsement by the Advisory Board for detentions beyond three months an exception is provided in the same article by sub-clause (a) of clause (7), which lays down that "Parliament may by law prescribe the class or

classes of cases in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board." And, in accordance with this enabling provision in the constitution, the Preventive Detention Act in sec. 12 has removed *all* cases of detention for which provincial governments were so far responsible under the Public Safety Acts from the purview of the Advisory Board. These Acts authorised the governments, " if satisfied with respect to a particular person that with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order it is necessary so to do, to make an order directing that he be detained." But this class of person, i. e., a person who " has been detained with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order," has been excluded altogether under sec. 12 (1) (b) of the Preventive Detention Act from the scope of the Advisory Board. Such a person's case will be reviewed by the government itself "in consultation with" a person possessing certain judicial qualifications. The consequence is that while under the Public Safety Acts every case of detention was reviewed by an outside body, under the Preventive Detention Act *none* of these cases can be reviewed by such a body, but they will all be reviewed (if the detention be longer than three months) by the Government itself which is responsible for the detention order. Thus the seemingly progressive provision in the new Act concerning the mandatory jurisdiction of the Advisory Board does not apply to such cases at all, but these cases are deprived even of the advantage of the advisory jurisdiction of the Advisory Council which they enjoyed before. And when it is remembered that ALL the cases of detention which till now could take place in the provinces have been taken out of the ambit of the Advisory Board, it will be seen how complete the retrogression is under the Preventive Detention Act, which in fact removes all previous safeguards.

If the maximum period to which a person detained for reasons connected with the maintenance of public order or the security of the State appears under sec. 12 (1) to be a year, the Attorney-General has frankly stated (he did so while speaking on the Preventive Detention Bill in Parliament and again while arguing against the habeas corpus petition above referred to) that the limitation of time in the section only follows the limitation imposed upon the duration of the Act itself. The Act is to remain in operation for a year but is, according to the Home Minister, to give place to a permanent law after this period is over. The maximum limit in sec. 12 of the Act is thus meaningless. But in this respect too the new Act is clearly retrogressive. Under the Public Safety Acts a detention order could remain in force for six months ; it could no doubt be followed by another which would again operate for another six months, and so on indefinitely, but there were hurdles at every such step which the detaining authority had to get over. The Government had to refer the case afresh to the Advisory Council every six months. The section in the Acts providing for this might be given here in full :

> If in the opinion of the provincial Government it is necessary or expedient so to do, they may at any time before the expiry of the period of six months aforesaid (i. e., the six months' duration of the initial order) and after giving an opportunity to the person concerned to make any representation in writing which he may desire to make and after referring the matter to the Advisory Council and considering its report, direct that the order shall continue in force and the order as so extended shall continue for a further period of six months from the date on which but for such direction it would have ceased to be in force and thereafter if and so often as it is again extended by a further similar direction made in the same manner.

Even if the maximum limit of a year in the Preventive Detention Act were real, during this period there would have been under the operation of the old Public Safety Acts review by an independent body twice, whereas under the present Act there is no such review of the case even once.

The excision of the detention provisions from the Public Safety Acts and their replacement by the provisions of the Preventive Detention Act in all the provinces have left the provincial Governments in a very queer position. If the Madras Government, for instance, passes an order of internment or externment against a person under its Public Safety Act, it has to refer the order to the Advisory Council, and, the duration of such an order also being limited to six months, has to do so every six months if it wishes to continue it. But if it now passes an order detaining a person under the Preventive Detention Act, it need not, and indeed cannot, refer such a case of far greater gravity to any independent body even for advice. Smaller restrictions on movements it cannot impose and keep in force without taking outside opinion once in every six months, but total deprivation of personal liberty it can enforce without such consultation! Exactly the same situation would arise in Assam, where too every order of internment or externment has to be submitted to the Advisory Council for inquiry, but where a detention order would now under the Preventive Detention Act be capable only of a government inquiry. Similarly, the East Punjab Safety Act provides for an order of internment or externment to be referred to the Advisory Tribunal, if the order is to be in force for more than three months. But, under the Preventive Detention Act, a detention order will not go to the Advisory Board or any independent tribunal but will at most be a subject of inquiry by the government itself. One

would have thought that central legislation in the matter of preventive detention was contemplated by the constitution-makers for the purpose of imposing some restraints on the power which the provincial Governments previously enjoyed of detaining persons without trial, but it now becomes clear that the object of the central legislation was, and in any case the effect of the legislation that has been passed is, to remove all such restraints. Could the retrogression go any farther, and retrogression from Acts which are themselves sufficiently repressive ?

That there is complete retrogression under the Preventive Detention Act will be fully apparent to anyone who casts a glance over the amending bill which the Madras Government prepared after the Indian constitution came into force in order to bring the provisions in its Public Safety Act relating to detention into accord with article 22 of the constitution. This bill has been published in the Fort St. George Gazette of 21st February. At that time the Preventive Detention Act had not been passed, nor had the Government any idea that it would be passed so soon. The bill provides for two courses in the matter of detention according as the order for detention is for three months or for a longer period : in the former case the Government is given power to confirm the order itself without referring it to the Advisory Council (the constitution itself released it from this obligation), and in the latter case it is required to refer the order to the Advisory Board whose advice it is under an obligation to follow ; i. e., it binds itself either to confirm or revoke the order " in accordance " with the report of the Board. Thus, under the provisions of this bill cases of short term detention would have lost the advantage of a review by an independant body but all other cases would have retained that advantage and would also have had the further advantage of the reviewing body's opinion being made binding on the Government. There would have been a worsening in one way and an improvement in another. Every case of detention for longer than three months would have been not only inquired into but decided by the Advisory Board. What kind of cases are these ? Cases of persons suspected by Government to be acting or to be about to act or to be likely to act in any manner " prejudicial to the public safety or the maintenance of public order. " Now, because of the Preventive Detention Act, none of these cases will go to an Advisory Board. The change that the passage of the legislation has effected therefore is a change from ALL CASES being investigated to NO CASE being investigated !

The bill of the Madras Government, issued four days prior to the passage of the Central Government's Act, also provided that no order for detention if for longer than three months shall be in force for more than six months, and if the order is to be renewed it again provided that such order, if for longer detention than three months, shall be referred to the Advisory Board for opinion which will have to be accepted. The Advisory Board, according to this Bill, was to come in every time the initial order is extended. All these provisions were scrapped after the Preventive Detention Act came into force. Now the old Public Safety Act is shorn of all detention provisions and the provisions of the Preventive Detention Act take the place of what has been cut out.

The Madras bill clearly shows that the Preventive Detention Act is worse than it need have been in order that the Act should conform to the provisions of art. 22.

GROUNDS OF DETENTION

The progressive worsening of the provisions relating to the communication of grounds of detention to a detained person has reached its culmination in sec. 14 of the Preventive Detention Act, which forbids disclosure of these grounds even to a court on pain of heavy penalties.

The Public Safety Acts made it obligatory on Governments to communicate to the detenu the grounds on which the order for detention was based and "such other particulars as are in their opinion sufficient to enable him to make, if he wishes, a representation against the order." These grounds and particulars, with the representation if made, were then placed before the Advisory Council.

Under the provisions of the Public Safety Acts, however, it was not obligatory on the Governments, as it was under the provisions of Regulation 18 B of England, to communicate either to the detenu or to the Advisory Council all the facts in their possession. They could at will keep back any information from the Advisory Council's scrutiny, thus retaining the freedom, on the strength of information so withheld, to confirm the detention order, whatever the Advisory Council's opinion might be on the basis of the information vouchsafed to it.

The obligation cast upon the Governments by the Acts was so construed in numerous cases that they practically gave no information whatever, thus denying all opportunity to the person detained to make his defence.

While the detenu was thus helpless before the Advisory Council the Courts came to his rescue on habeas corpus petitions. The Courts held that on the basis of the information supplied neither an effective representation by the detenu nor a real inquiry by the Advisory Council was possible, and thus, the provisions of the Public Safety Acts being violated in spirit, the detention order must be declared void. When such nullification orders were issued by the Courts, the provincial Governments, under instructions from the Nehru Government, amended the Acts, inserting in them the following proviso:

> No order of detention made in respect of any person in pursuance of any of the foregoing provisions shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency in any communication made to such person under this Act.

The proviso in effect withdrew all detention orders from the jurisdiction of the Courts.

The Courts were thus deprived of the power to set aside the detention orders on the ground that the information given was inadequate. But they could at least give a hearing to such complaints. Now, however, the Preventive Detention Act debars the Courts from even hearing complaints of this character. For sec. 14 provides that "no Court shall... allow any statement to be made or any evidence to be given before it of the substance of any communication made under sec. 7 of the grounds on which a detention order has been made against any person or of any representation made by him against such order." If any person disclosed the grounds he would be punishable with imprisonment for a year or with fine or with both imprisonment and fine.

In several of the applications for habeas corpus now presented the complaint of the detenus is that they were not supplied with grounds of detention at all, as required by sec. 7 of the Act. Probably what happened in these cases was that the detenus were merely informed whether they had been detained under paragraph (i), (ii) or (iii) of sec. 3 (1) (a); that is, they were merely told whether the allegations against them related to the security of India or the security of the State or the maintenance of essential services, etc. But no further particulars in support of the grounds were given. And sec. 7 makes no reference to "particulars" at all, as the Public Safety Acts did.

Thus it is possible that a detenu might know nothing about the details of the suspicion which the Government entertains against him; he is, therefore, obviously unable in his representation to rebut any of the charges which the Government has in mind but which it will not deign to make. And if in such a case he wishes to go before the Courts to lodge a complaint he cannot do so. The Courts will stop him at once. He cannot make a complaint before the Courts; nor can be make such a complaint outside.

Sec. 14 in the Courts

How the Courts will be prevented under the recent Act from having even a distant look at the grounds of detention was forcibly brought to the notice of the public by a recent judgment of the Nagpur High Court. Even under the Public Safety Acts, which were amended expressly for the purpose of removing from judicial review the question of sufficiency or otherwise of the grounds on which a detention order had been made, the High Courts managed sometimes to get on the top of the law and declare the orders for detention illegal. The Nagpur High Court had thus in a number of cases taken affidavits from the detenus and the detaining authority, and, comparing one with the other, expressed the opinion that the Government had been misinformed on the matter and that there was really no ground for detention. Such was the Court's decision in the case of Mrs. Kusum Sharma whom the Court therefore ordered to be released from custody. Against this decision the Government asked for leave to file an appeal to the Supreme Court, but the High Court (1st May) refused it. Hemeon and Mudholkar JJ., who heard the petition for the grant of a certificate to file an appeal, said that, subsequent to the hearing of the detenu's habeas corpus petition, she had been served with an order for detention under the Preventive Detention Act and the order of release passed by them had been rendered "unenforceable." In view of this, consideration of their decision by the Supreme Court was only of academic interest, particularly (they added) "because sec. 14 of the (Preventive Detention) Act precludes the Court even from inquiring into the grounds of detention furnished to a detenu under sec. 7 of the Act."

The Preventive Detention Act has in this way erected an impassable barrier against detention orders being by any possibility challenged in the Courts on the ground that the information furnished to the detenu was insufficient. Even so, on occasion the framers of the Act may find that they have overreached themselves in taking such precautions (see the Sultanpuri case on next page).

Nagpur High Court

In the Nagpur High Court detention orders passed against six persons were challenged in habeas corpus applications on the express ground that sec. 14 of the Preventive Detention Act was ultra vires of Parliament and it was contended that the detention orders were therefore bad in law. The applications were heard by a division bench consisting of Hemeon and Mudholkar JJ., who held (30th March) that the impugned section was intra vires. The Judges observed:

> The constitution has delegated legislative power to the State subject to certain restrictions contained in the constitution such as preserving the right of a detenu to make a representation to the detaining authority. Therefore, so long as the law does not affect the right to make a representation to the authority detaining a person, it is in our opinion within the competence of the State to restrict disclosure of grounds by him.

The Court, however, was apparently very unhappy about this state of the law. The Judges said;

> That the grounds on which the order of detention is based should be unavailable even to the superior courts in the land renders the question (order?) of detention almost unjustifiable. The Act is, as was perhaps inevitable, a hastily enacted piece of legislation, and it is possible that Parliament did not fully realise the drastic effect of sec. 14 when it assented to it. At the same time Parliament was competent to put it on the statute book, and it may well at no distant date so modify it that the elementary right of a citizen to seek redress before a judicial tribunal will not be so gravely affected as it now is.

We do not think that the Court can release a person even if the detention may in fact be illegal or improper if any law framed by Parliament precludes the Court from looking into appropriate material to determine the legality or regularity of the detention.

Allahabad High Court

In the case of Nand Kishore's application for a writ of habeas corpus which was heard by Dayal and Bhargava JJ., Mr. Justice Dayal also (3rd April) delivered himself of the same opinion. He did not think that it was ultra vires of the legislature to enact sec. 14, though it was possible to say that the provisions of sec. 14 of Act IV of 1950 were inconsistent with the spirit of clause (5) and clause (6) of art. 22 of the constitution. But on other grounds the application was admitted and the detention order set aside as illegal, and the Judge did not consider it necessary to go further into the legal consequences of sec. 14 of the Preventive Detention Act.

But in disposing of the habeas corpus petition of Shiva Prasad Sultanpuri he had occasion to consider this question in greater detail. In this case the applicant had stated that the grounds of detention had not been communicated to him. The Judge therefore found that the situation created by sec. 14 was this: the Government arrests a person and detains him; the man complains that his detention is illegal; he is apparently not told of the grounds on which the order is based and in any case he is debarred from disclosing the grounds in a court of law; and yet the onus lies upon him of proving that no grounds existed, and that on this account the detention was illegal. This meant perhaps that the Court should accept without question the detention order as a valid order and reject the applicant's petition for release without looking further into the legality of the order.

This position Mr. Justice Dayal refused to accept. He said (12th April) in his judgment:

> The moment a detenu came to court and alleged that he was under illegal detention, it became the duty of the court to look into the matter and satisfy itself that the detention was lawful. He saw no good reason why this power of the court to look into the validity of the order should depend on the detenu raising that question and leading prima facie evidence in support of it.
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> His lordship said it was for the detaining authority to justify the detention. So long as the court was not satisfied that the detention was lawful, it was not in a position to say that the detention was legal. When the detenu could not disclose to the court even the substance of the grounds of detention communicated to him, it would be wrong on the part of the court, to his mind, to accept the detention order at its face value and to require the detenu to lead prima facie evidence in support of the allegation. A detenu put the detaining authority to proof by alleging that the detention was illegal, and so long as the court was not prepared to raise the presumption about the regular performance of official acts in a particular case, the onus would continue on the detaining authority to prove that its order was valid. To hold otherwise would make the power of the court in the matter of alleged illegal detention of persons to be practically nugatory and would make the exercise of this power under sec. 491, Cr. P. C., and under sec. 226 of the constitution to be dependent on the accidental carelessness of the detaining authority in improperly drafting the detention order. Such errors in drafting were not to be expected and were minimised to a very large extent when a carefully drafted order could be printed or typed for use after making the necessary entries whenever it was necessary to pass an order of that kind.
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> His lordship was, therefore, of the opinion that the production of the order alone, even though valid on its face, was not sufficient to establish that the detention was lawful.

The detention of Shiva Prasad Sultanpuri was thus held by Mr. Justice Dayal to be illegal "in the absence of material to show that the order had been properly passed."

Calcutta High Court.

In the Calcutta High Court, on account of a difference of opinion between two special benches, the question of the constitutionality of the Preventive Detention Act was referred to a full bench, which by a majority of 3 to 2 held (6th April) that the Act was not void. [An appeal against the decision is being preferred before the Supreme Court.] The full bench, however, held, except for Mr. Justice P. B. Mukharji, that sec. 14 of the Act was void and of no effect. On this point Mr. Justice G. N. Das said:

> Sec. 14 put a ban on the court and prevented the person affected from making use of the communication he had received from the authorities. It was contended that this section took away or abridged the right conferred on a citizen by article 32 to move the Supreme Court for enforcement of his fundamental rights. In his lordship's opinion the appropriate proceedings to move the Supreme Court necessarily implied that the defence would be entitled to state the grounds of detention and to show that the grounds were not valid. Art. 21 also required that deprivation of personal liberty could be made according to the procedure established by law, i. e., a fair trial. If sec. 14 was effective, the right of the detenu to move the Supreme Court would be rendered illusory. In his lordship's opinion sec. 14 of the Act was void under the constitution. As sec. 14 was severable, the Preventive Detention Act as a whole was not rendered void on that account.

Orissa High Court

It may be stated incidentally that in disposing of the applications for a writ of habeas corpus made by Prahlad Jena, Raisnab Patnaik, Ramachandra Misra and Budhia Singh praying for their release from detention on the ground that the sections of the Public Safety Act dealing with preventive detention were void on account of their inconsistency with clauses 4 to 7 of article 22 of the constitution, the Orissa High Court upheld the plea of the applicants and ordered them to be set at liberty. This was a unanimous decision of the four judges who heard the applications. In pointing out how the provisions of the Public Safety Act were inconsistent with the constitution two of the judges mentioned the fact that under the Public Safety Act the grounds of detention supplied to a detenu could be very vague and yet that defect would not invalidate the detention order. The Chief Justice said: "The validity of the detention on account of vagueness and inadequacy of the grounds supplied is (under the Act) beyond question." Mr. Justice Narasingham said: "The provincial Government is made the sole judge as to what particulars in the grounds are sufficient to enable a detenu to make a representation against the order of detention." Evidently, these judges think that the new constitution forbids this sort of procedure. When they expressed themselves in this way they were unaware of the provisions of the Preventive Detention Act, but one wonders whether, since this Act makes the position of the detenus even worse than under the Public Safety Act because of sec. 14, they would say, if the question arose in that form, that the Preventive Detention Act contravened the constitution and was thus null and void.

ANALOGY OF THE IRISH CONSTITUTION

In arguing before the Supreme Court that, in article 21 of the constitution, which says that "no person shall be deprived of his life or personal liberty except according to procedure established by law," the words "procedure established by law" should be interpreted as meaning "procedure prescribed by statute law in force at any given time," the Attorney-General, Mr. Setalvad, relied upon the analogy of the corresponding article in the Irish Free State's constitution of 1922. Article 6 in this constitution relating to personal freedom says: "no person shall be deprived of his liberty except in accordance with law," and as almost immediately after the constitution was brought into force, the guarantee for freedom of person given in this article was allowed by the Irish Courts to be overridden by Public Safety Acts depriving persons of their liberty, so should the Courts in this country (argued Mr. Setalvad) allow the Governments in India to curtail personal freedom guaranteed by article 21 of our constitution by any legislative enactment like the Preventive Detention Act.

But Mr. Setalvad was not on strong ground in arguing in this way. It is true that when after the first Public Safety Act was passed in 1923 in Ireland the question of the validity of the Act came up in the case of the King (O'Connell) v. The Military Governor of Hare Park Camp (1924) 2 I. R. 104, Lord Chief Justice Moloney held, relying upon the judgment of the House of Lords in the King v. Halliday on the subject of the Defence of the Realm Act, that the Public Safety Act did not contravene the constitution, as it came under the term "law" in art. 6. But it must be remembered in this connection that the court which decided the matter in this way was still a court of the preceding regime, and as Leo Kohn says in "The Constitution of the Irish Free State," "the essential difference between the English constitutional system, under which any Act of Parliament implicitly invalidates earlier statutes in so far as it contravenes them, and the Irish constitution, which restricts the legislative scope of Parliament, was (in this case) entirely ignored." However, in the same case, Justice Pim conceded so much as to express an opinion that a permanent law giving the executive power to deprive a citizen of his liberty without trial would be contrary to the spirit of art. 6 and hence a violation of the constitution, though he thought that the argument would not apply to a temporary law, such as the Public Safety Act was, made in abnormal times for a temporary purpose. [Our Preventive Detention Act is not claimed to be one designed to meet a temporary emergency.]

Subsequently the question of a law contravening the constitution did not arise. For, when after the assassination of Kevin O'Higgins, a comprehensive Public Safety Act was passed in 1927, a general saving clause (sec. 3) was inserted in it providing that any of its provisions which contravened the constitution should to the extent of such contravention operate, while in force, as an amendment of the latter (since article 50 of the constitution allowed amendments of the constitution to be made within the first eight years by ordinary legislation). The same procedure was followed three years later when a revival of revolutionary activities led to the enactment in 1931 of a further exceptional measure of even a more rigorous character. This Public Safety Act was introduced and passed in the form of a constitutional amendment, the entire measure being inserted as a new article (2 A) in the body of the constitution. The new article was inserted prior to the Fundamental Declarations, and the construction of the latter was subjected to the provisions of this Constitution Amendment Act No. 17.

The fact that laws which were repugnant to the provisions of article 6 were meant in Ireland to be amendments of the constitution invalidates the contention of Mr. Setalvad that statute law should be allowed in India to restrict the scope of art. 21 of the Indian constitution. The guarantees of civil liberty provided in the constitution of Ireland are nowhere regarded as ideal; just the contrary. But there is no warrant for the Attorney-General to argue on the basis of its analogy as he did, for there is no analogy.

HABEAS CORPUS PROVISIONS
in the Irish Constitution

In view of the great deal of public interest aroused by the article in the Irish Free State's constitution relating to freedom of person, mainly because it was cited by the Attorney-General in defending the constitutionality of the Preventive Detention Act in this country, it may be useful to trace the history of this article in the constitution of Ireland (art. 6) as it reveals the mind of the constitution-makers on this subject.

It is no doubt true that the article contains a blanket exception such as is contained in art. 21 of our constitution, but the purpose of introducing the exception was very different from that which the authors of our constitution had in mind.

When in the Irish Constituent Assembly the article came up first for discussion on 25th September 1922, it stood in this form :

> The liberty of the person is inviolable, and no person shall be deprived of his liberty except in accordance with law. [Then followed in great detail the procedure about habeas corpus, to which remedy an individual unjustly deprived of his personal liberty could take recourse.]

In order to make it clear that the writ of habeas corpus can be suspended when in grave national emergencies this becomes necessary an amendment was moved on behalf of the Government inserting words in this sense in the article. So amended, the article read as follows :

> The liberty of the person is inviolable, and no person shall be deprived of his liberty *in time of peace* except in accordance with law. . . .

But it was feared that these words "in time of peace" might be so construed as to make habeas corpus liable to be suspended not only in times of crises, but in ordinary times when there were "any local ebullitions such as a breach of the peace." To meet this objection, the wording of the amendment was changed. Under this altered amendment, the article assumed the following negative form :

> The liberty of the person is inviolable, and no person shall be deprived of his liberty, *except in time of war or armed rebellion*, except in accordance with law. . . .

This amendment was in substance adopted ; but at the last stage, i. e., during the fourth reading of the Constitution Bill, the words of the amendment were embodied (18th October 1922) in a special proviso which was added to the original article in order to mark it out "as an exception to the normal law." The final version of the article, as adopted, therefore, was :

> The liberty of the person is inviolable, and no person shall be deprived of his liberty except in accordance with law. [The procedure of habeas corpus then follows.]
>
> Provided, however, that nothing in this article contained shall be invoked to prohibit control or interfere with any act of the military force of Saorstat Eireann (the Irish Free State) *during the existence of a state of war or armed rebellion.*

The article as finally passed put it beyond doubt that when there was war or armed rebellion the writ of habeas corpus would be capable of being suspended. But it must be remembered that an abnormal state of things could not be made a pretext for interfering with personal liberty, for the Courts were to decide whether "a state of war or armed rebellion" existed in the terms of the proviso.

This is a point which is worth bringing to the attention of our readers. In our constitution the President declares a state of emergency, and his proclamation to this effect is not subject to judicial review as to the actual existence of conditions justifying a declaration of emergency. The President's proclamation settles the issue. It was not so in the Irish Free State. As in the United States, in Ireland too, the Courts were invested with the power of judging whether in fact a state of war or armed insurrection did exist which would justify suspension of habeas corpus.

COMMENTS

Number of Detenus
A SUGGESTION TO GOVERNMENT

It is known to our readers that the Premier of India, in response to the All-India Civil Liberties Council's request to give periodical information to the public about the number of persons held in detention in different parts of the country, promised the Council that on application the Home Ministry would supply this information to it every quarter. Accordingly, the Council, having applied, was furnished with the following information as to the number of persons that were held in detention on 15th March :

West Bengal	...	...	1,031
Bombay	...	...	505
Madras	...	...	479
Punjab	...	...	249
Assam		...	140
Madhya Pradesh	...	...	129
Uttar Pradesh	...	...	114
Orissa	...	...	104
Bihar	...	...	87
Delhi	...	...	21
Ajmer	...	...	6
			2,865

We are obliged to the Home Ministry for the information supplied, but may we now suggest, in view of the great interest which the public takes in this matter and in view of the fact that publicity is likely to exercise

a wholesome check upon the uncontrolled powers of the executive, that the Home Ministry should of its own accord publish a monthly return in the Gazette of India (as was the practice in England under Regulation 18 B) giving the number of detenus in the various States, including States in Part B of the first schedule of the constitution ? We mention these States in particular because in the Home Ministry's communication these States have been left out.

There is one further suggestion we would like to make. It is that the return should for every State make a breakdown of the number of detenus, detailing how many persons were detained under para. (i), (ii) and (iii) respectively of sec. 3 (1) (a) of the Preventive Detention Act, which has now superseded the Public Safety Acts in the provinces. This information is necessary because it will enable the public to know how many of the cases of detention are subject to review by the Advisory Board and to how many of the cases sec. 12 (2) will apply, in which a review by Government in consultation with a judicial officer will alone be possible. The return should also mention, State-wise, how many of the cases were reviewed by the Advisory Board and in how many of them the detention came to an end because of the opinion so recorded by the Advisory Board. In short, the information should be as complete as possible. The authorities concerned have certainly nothing to hide in this matter, and the public will have some means of judging how the Act is administered.

Who can Order Detention?

To arm the executive with power to detain persons in gaol without trial is a most serious matter, but when this odious course becomes unavoidable for a short time the least that a government does in any country which has a feeling for personal liberty is to surround such exceptional power with a number of safeguards against its abuse. One of these safeguards is that the power is vested only in the Home Minister who is charged with the duty of closely examining every case put up before him and satisfying himself personally, before making an order for detention, that the suspicions against the person to be detained are well-founded. It is well-known that in England Regulation 18 B authorized the Home Minister, and the Home Minister alone, to order detention if he had reasonable cause to believe a person to be of hostile origin or association, etc., and that by reason thereof it was necessary to detain him.

Our Preventive Detention Act on the other hand empowers even district magistrates, sub-divisonal magistrates and commissioners of police to make final and definitive orders for detention. such a wide extension of power to lower officials is unheard of in democratic countries. The Attorney-General has been arguing before the Supreme Court that the Preventive Detention Act should be held legal, as in Ireland the Public Safety Acts were, on the ground that the Act was not in contravention of the constitutional guarantee for personal liberty. He might have stated to the Nehru Government when the Preventive Detention Act was being framed how the Irish Acts differed from the Indian Act in respect to the grade of officials permitted to make an order for detention. The Public Safety Act of Ireland, passed in 1923 because of the continued prevalence of civil war, gave power to any member of government to order the arrest and detention of persons suspected of being or having been engaged in criminal activities on grounds of "public safety" or "military necessity". The Public Safety Act of 1926 went a little further in giving drastic powers, but even under this Act only members of government were authorized to order detention. In England the power was vested only in the Home Minister; in Ireland it was given to all Cabinet Ministers. But in India the power is conferred even on very subordinate officials, on whom no further responsibility lies than to report the detentions they have in their own independent authority made to their government. It is the subjective satisfaction of these officials that decides the issue!

In this particular respect also the Preventive Detention Act takes away the safeguard which even the Public Safety Acts afforded. The East Punjab Public Safety Act, 1949, for instance, authorized district magistrates to arrest suspected persons without warrant and keep them in custody for a maximum period of a month, the final order of detention being made by the government itself after referring the matter to the Advisory Tribunal. Now this provision goes, and district magistrates are vested under the Preventive Detention Act with plenary power to detain persons. The East Punjab Act limits the power of district magistrates even where other restrictions on movements are concerned. They may impose such restrictions only for a period of three months in their own authority, where after the matter goes to the Advisory Tribunal for advice the final decision being that of the government. But see how anomalous the position has become because the Public Safety Act does not now apply to cases of detention, but still applies to cases of other minor restrictions. A district magistrate, if he externs a person, can by virtue of his own power keep him in externment for a period not exceeding three months, but he can in his own right issue an order for detention and keep it in force for as long as the Home Minister himself can. He is a subordinate official subject to the Home Minister's control in respect of externment orders, but he is no less an authority than the Home Minister in respect of detention orders! It is anomalies of this kind which we think will bring home to the common man the utterly reactionary nature of the Preventive Detention Act better than anything else.

Bombay's Chief Justice on Civil Liberty

In a speech delivered in Poona on 1st May, the Hon'ble Mr. M. C. Chagla, Chief Justice of Bombay,

emphasized the great value of fundamental rights incorporated in the constitution and called for an awareness of the rights on the part of the public, urging them to defend those rights against any possible executive or legislative aggression.

It was a heartening speech, for he scouted the idea entertained by certain people that the so-called fundamental rights were conferred with one hand and taken away with the other. In refutation of this idea he pointed to art. 19 in which certain " rights of freedom " are set out. These rights were no doubt qualified, he said, but the qualifications were to be interpreted by the judiciary and were not left to the discretion of the legislatures, which was a great improvement on the situation that existed till now.

This is no doubt true, but Mr. Chagla did not deal with the criticism of those who have argued that the qualifications go too far, and though the judiciary are the interpreters of the constitution the excessively wide qualifications will necessarily tie the hands of the judiciary in so interpreting the constitution as to make full civil liberties available to the citizens. Naturally Mr. Chagla could not go into this criticism in any detail, because some of these qualifications might come up to him for interpretation in the High Court. But the net effect on the public mind of Mr. Chagla disposing of a shallow criticism and ignoring a more substantial one may possibly be that the people at large will place too high a value on the fundamental rights in the constitution, which too is hardly desirable.

While on the subject of Liberty and Authority, Mr. Chagla said in one place : " Liberty can never be on the defensive; it is Authority that must always be prepared to be challenged." To this observation the " Bombay Chronicle " demurs. But in our opinion this is the best part of his speech. Here Mr. Chagla seems to us to have merely echoed the doctrine of preferred status of civil liberty which the Supreme Court of the United States has laid down. The doctrine was enunciated in the most emphatic manner in the famous Thomas v. Collins case (323 U. S. 516) affecting free speech. Saying that democratic freedoms secured in the First Amendment enjoy a preferred place, the Court proceeds :

> That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. . . . Any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. . . . Whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramoun interests, give occasion for permissible limitation.

Implicit in this doctrine of the priority of civil liberty is the principle consistently followed by the Supreme Court of the United States in recent years, which is thus described in the Report of the President's Committee on Civil Rights :

> When a law (federal or state) appears to encroach upon a civil right—in particular, freedom of press, religion and assembly—the presumption is that the law is invalid, unless its advocates can show that the interference is justified because of the existence of a " clear and present danger " to the public security.

In such matters Authority, both executive and legislative, is clearly on the defensive, and we very much wish that Mr. Chagla will soon have an opportunity of affirming this principle authoritatively from the bench. This will be his most valuable contribution to the maintenance of civil liberty in India.

Mr. Chagla's speech is replete with many wise sayings, one of which concerning emergency legislation we must reproduce here.

> The Chief Justice sounded a note of warning against the danger of emergency legislation. Such legislation had always the tendency of by-passing the ordinary law and it enabled the executive to resort more and more to special and extraordinary powers. The emergency legislation which owed its birth to a temporary necessity became a permanent feature of the statute book. The executive could always see clouds on the horizon and every cloud was capable of bringing about a storm.

Kashmir Mediator

The Kashmir problem, though of the utmost importance to the peace of the country, is outside the bounds which the BULLETIN has set to itself in commenting upon public affairs. But some facts concerning the previous record, in the field of civil liberty, of Sir Owen Dixon, the Australian mediator appointed by the Security Council, will perhaps interest our readers.

In 1948 Gilbert Burns was prosecuted for sedition under the Crimes Act and sentenced to six months' imprisonment. Burns thereupon made an appeal to the High Court against his conviction on the ground that there was no seditious intent on his part when, in answer to a question addressed to him in a public debate as to what the Communist Party's attitude would be in the event of early war between Russia and the western powers, he said: "If Australia was involved in such a war, it would be between Soviet Russia and American and British imperialism. We would oppose that war ; we would fight on the side of Soviet Russia."

The High Court gave judgment in October 1949. Two judges, including the Chief Justice, upheld Burns' conviction, while two other judges, of whom Sir Owen Dixon was one, held that the conviction should be quashed. These latter judges expressed the opinion that the words were directed to a contingency merely and in order to answer the questioner, and were not uttered with a seditious intention.

Sir Owen also played a part in the more widely known case against Laurence Louis Sharkey under the same provisions of the Crimes Act. Sharkey also was prosecuted for utterances, again made in answer to a question, which were similar in import to the utterances of Burns. The judge of the Supreme Court of New South Wales, who tried Sharkey, convicted him of sedition, but before delivering judgment and pronouncing sentence referred certain matters of law arising in the case to the High Court. The main question which the High Court considered was whether the material section of the Crimes Act under which the prosecution was launched was intra vires or ultra vires of the constitution. Five judges of the High Court held (August, 1949) that the section was within the constitutional power of the Commonwealth Parliament to enact and that the conviction should stand. Sir Owen Dixon, dissenting, gave judgment that the main paragraph of the Act relied upon against Sharkey was beyond the powers of Parliament and therefore invalid, and that the conviction should be set aside. The trying judge confirmed the conviction and sentenced Sharkey to three years' imprisonment, the maximum allowed by the Act.

Banning Communism

The government of the coalition of two Conservative parties which succeeded the Labour government in Australia after the December election has brought down a bill for outlawing communism. The bill declares the Communist Party illegal, dissolves it and confiscates its funds. It gives power to the Governor General to name communist-dominated organizations whose activities he deems "prejudicial" to the government, and similarly to ban them. If the organizations so banned do not cease their activities, their officers and members will, under the bill, become liable to imprisonment. All persons declared to be "prejudicial" will not only be barred from all government employment, but will also be prohibited from holding even an elective office in any of the key industries like coal, iron, steel, building, transport, power, etc., which are vital to the security and defence of the country.

The bill so cuts across democratic principles that the "New York Times" expresses relief that, though a number of Latin-American countries have outlawed the communists, "this is the first time that a major power with an uninterrupted tradition of democracy is taking such a step." South Africa is since known to propose such a law, but it hardly ranks as a democracy. However, India seems to have escaped the notice of the "Times", though the governments in India took the first move in the Commonwealth in outlawing the Communist Party. Perhaps, according to this journal, India belongs in the same category as Latin-American countries in so far as democracy is concerned.

The Australian bill does not cut off all access to law courts. For it provides that any organization or person declared unlawful or prejudicial may appeal to the High Court, but the burden of proof lies with the aggrieved party: the person or organization concerned must prove that he or it is not communist. To prove such a negative proposition being almost an impossibility, the Parliamentary Labour Party which is in opposition has resolved to move an amendment reversing this topsy-turvy procedure and placing upon the government the onus of proving by normal legal procedure that the accused was a communist. Nevertheless even the procedure laid down in the bill would be some improvement upon the position that exists in India. Here the executive government takes action without the organization or person so affected having any chance of seeking redress in a law court.

The most important part of the bill is not that which outlaws the Communist Party or communist-dominated organizations, for Australia has had the experience twice, once in 1914 and again in 1940 when the I. W. W. and the Communist Party stood banned, that the proscribed groups after proscription merely go underground and not only conserve their former strength but even gather new strength by becoming martyrs. The part of the bill on which great reliance seems now to be placed is that under which communists are made ineligible for any office in a trade union. It is no doubt true that recently industrial stoppages, undertaken mostly for political purposes and at the behest of a foreign power, have done great havoc to Australian economy. But many competent observers are of the opinion that other means not so open to objection in principle would set matters right, and it is a serious question whether, even if the bill goes through organized labour in Australia will tolerate such a grave interference with its fundamental right to freedom of association.

The objections to the measure are well stated by the "New York Times." It says: "One danger, as we are learning to our cost, is the temptation to foster witch-hunts to use the fear of communism for partisan purposes, to get hysterical and set norms that carry into the field of genuine liberalism and the legitimate freedom of dissension and of social experiment." The other danger arises from the grave doubt whether "the ban can be restricted to one political party and one belief while liberty will be preserved in all other fields." Civil liberties are indivisible, and the likelihood is that an attack on one of them will lead almost unconsciously to an attack on the remaining, and that the very foundations of democratic freedom will thus be sapped.

On 2nd May, General MacArthur, Supreme Allied Commander in Japan, expressed an opinion that the Japanese Communist Party might be outlawed, saying that it "is an avowed satellite of an international predatory force and a Japanese pawn of an alien power policy. The suggestion is not yet officially made. But "Occupation authorities and many Japanese officials believe," we are told, "that the communists would be harder to deal with if they were forced underground."

In England the irrepressible Sir Waldron Smithers promptly asked in the House of Commons after the publication of the Australian bill whether the British Communist Party would not be so outlawed. Of course the answer received was no. Apparently, in Britain, no part of the political world—whether Labour, Liberal or Conservative —is yet prepared to part with its traditional regard for due process of law.

Right to Free Expression Guaranteed in U. N. Covenant

INDIA'S REACTIONARY AMENDMENT TURNED DOWN

The Human Rights Commission of the United Nations decided on 24th April to include the right to freedom of expression in the International Covenant on Human Rights. The article concerned would guarantee to all peoples the right to express themselves freely on all subjects and the right to seek, receive and impart information regardless of frontiers through the press, the arts and any other media.

The right has been qualified, however, by several limitations. The article says that restrictions may be imposed "for the protection of national security, public order, safety, health or morals, or for the rights, freedoms or reputations of others."

So restricted, freedom of expression sought to be internationally guaranteed may mean very little in practice. The limitations seem to be even broader in some respects than in clause 2 of art. 19 of the Indian constitution. This clause enables a valid law to be enacted relating *inter alia* to any matter "which undermines the security of, or tends to, overthrow the State", even if the law should restrict the right to freedom of expression.

In the hearing by the Supreme Court of the case of the "Organiser" which has been subjected by the Commissioner of Delhi to a pre-censorship order, great stress was laid that restrictions could be imposed only in the interest of the security of the State but not in that of public order, which it was urged was a minor affair. Even so, it was argued in defence by the Attorney-General that "security of the State" had a very wide meaning. "The State" included the Government and Parliament of India, the Government and Legislature of each of the States, and all other local bodies within the territory of India, and "a small disturbance", Mr. Setalvad said, "which might not have the effect of undermining the Government of India might conceivably tend to overthrow a local authority."

If "security of the State" or "national security." is capable of such construction, and this limitation alone can be invoked to justify wide restrictions, what restrictions will not be justified by limitations in the interest of "public order," which also finds a place in the International Covenant, now approved?

The United States made valiant efforts to cut down these limitations, but without success. America and some other countries have served notice that they would move amendments in the General Assembly, if necessary, with a view to making the article more satisfactory than it was. There is thus a chance of the article becoming eventually less restrictive.

As if the curbs now approved by the Human Rights Commission were not enough, India's delegate, Mrs. Hansa Mehta, popped up with an amendment seeking to impose a further curb. Happily, however, this amendment was defeated.

It sought to prohibit spread of information of a "false or distorted" nature likely to undermine friendly relations between States. The amendment provoked much controversy.

The United States, Britain, Australia, the Philippines etc., opposed the amendment.

When country after country resisted the amendment, Mrs. Mehta expressed surprise that, so many restrictions having already been imposed, this additional restriction which would hit only false reports should be opposed.

But the opposing countries explained that the amendment, if given effect to, would open the door to all types of censorship from governments that would raise the plea that certain reports were false or injurious to friendly relations.

They further argued that the United Nations had covered such possibilities by writing a "right to correction" into its pact on the transmission of news approved by the Assembly last year.

The amendment was, as the U. S. delegate put it, "a step backward," and everybody will be pleased to see the move foiled.

It is not only the aim of a proposal that has to be considered, but its ultimate effect. When for instance the Soviet Union sought on 28th April to insert in the Covenant an article outlawing propaganda supporting racial or national superiority, the United States opposed the amendment and with Mrs. Mehta's support defeated it. Why? Not because the U. S. or Britain or India favours advocacy of racial superiority, but because an article banning it might limit freedom of speech and freedom of the press.

It is yet to be seen whether the guarantee of the right to freedom of expression will be made really worthwhile.

Freedom of Person in U. N.

Article 9 in the International Covenant on Human Rights relating to Freedom of Person was adopted as a whole by the Human Rights Commission of the United Nations on 14th April by 11 votes to none, with one abstention. This decision seems to have reversed a previous decision of the Commission, for at the Fifth Session of the Commission it had been agreed that no vote should be

taken on the Article as a whole until Article 4 concerned with application of the Covenant in times of national emergencies was adopted.

On 14th April only paragraph 4 of the Article was discussed and some verbal changes were made therein. The whole Article as it now stands runs thus:

1. No one shall be subjected to arbitrary arrest or detention.

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

3. Any one who is arrested shall be informed, the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

4. Any one arrested or detained on a criminal charge 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, detention shall not be the general rule, but release may be subject to guarantees to appear for trial.

5. Every one who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided without delay by a court and his release ordered if the detention is not lawful.

6. Every person who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

We in India are particularly concerned with paragraph 2, which remains in the same unsatisfactory condition as before. The wording of the paragraph follows that of art. 21 of our own constitution, leaving the national legislatures free to pass any laws they please restricting personal liberty. The wording adopted is due, as our readers are aware, to the amendment moved by Mrs. Hansa Mehta, India's delegate.

But it should not be supposed that, even in so far as the Human Rights Commission is concerned, this is the last word on the subject. For the Commission is now engaged only in giving a first reading to the Covenant, and Article 9 will come up again before it for a second reading. There is some possibility of an improvement taking place then. And, after the voting took place at the first reading, delegates from several countries like the United Kingdom, Australia and Lebanon expressed dissatisfaction with certain paragraphs of the Article and gave notice that they would move suitable amendments at the time of the second reading.

NOTES

C. L. Union for Hyderabad State

Mr. N. M. Joshi, Vice-President of the All-India Civil Liberties Council, has been instrumental in organizing a Civil Liberties Union for the State of Hyderabad. A public meeting was held in Hyderabad on 7th May, at which such a Union was formed. Mr. Joshi first explained how such Unions work. He said that all these Unions were opposed to the use of violence in any form, and that the Unions as such had no politics and were free from all political affiliations.

At the meeting a provisional committee of the Hyderabad Civil Liberties Union was constituted. The committee is very strong and influential in its personnel. Mr. D. V. Shrikhande, a former Advocate-General, is its President, Mr. Ambadas Wadvalkar, advocate, is Secretary, and the members include Mr. D. G. Bindu, president of the Hyderabad State Congress, Mr. S. K. Vaishampayan, former member of the Working Committee of the State Congress and Mr. J. H. Subbaiah, president of the Hyderabad State Scheduled Class Federation. The committee will frame a constitution for the Union.

Formation of the East Punjab Union in Progress

The executive committee of the Civil Liberties Protection Society, Ambala, met on 9th May and decided to invite the Punjab Civil Liberties Council to hold a Provincial Civil Liberties Conference at Ambala. The committee has taken in hand the question of judicial reform, which is a matter of particularly urgent importance in the province. It urged the Government in a resolution to appoint a representative committee to suggest measures for ensuring to the people expeditious justice at less expense. Above all, it emphasized the need of separating judicial from executive functions, without which the fundamental rights incorporated in the constitution could not be a reality.

The Society issued on 12th May a comprehensive statement of objections to the Preventive Detention Act. It leaves no important feature of the Act unexamined but gives close study to all of them. We have no doubt it will serve a most useful purpose in educating public opinion and is a model which other civil liberty organizations may well follow.

The Bombay Provincial Civil Liberties Union is also taking steps to hold a conference of all its branches to discuss questions relating to civil liberty in the province.

Detention of Mr. Sen Gupta

Mr. Promode Sen Gupta, Joint Secretary, Civil Liberties Committee, West Bengal, was arrested on 24th April after his return to Calcutta from Patna where he had been to attend the Indian Civil Liberties Conference and has since been detained under the Preventive Detention Act. He was recently engaged in organizing relief for the refugees from East Bengal. The detention of Mr. Sen Gupta practically puts a stop to the work of the Civil Liberties Committee, as the other Secretary, the Vice-President and the Working President (Mr. K. C. Chattopadhyay) are all subjected to restrictions under the provincial Public Safety Act.

Marching Ahead

The second Civil Liberties Conference for all India marked steady progress in the civil liberties movement. The most notable and encouraging feature of the Conference was the adhesion to it of two large political forces in the country represented by the Radical Humanist Movement and the Socialist Party.

The leader of the former, Mr. M. N. Roy, was unable to attend the Conference in person, but sent to it a message which is a ringing call for united action against all repression. The leader of the latter, Mr. Jaya Prakash Narayan, honoured the Conference by inaugurating it. In his very thoughtful speech he clearly defined the limits of civil liberty and emphasized the fact that this was a programme which stood apart from and above all political platforms. His appeal to abjure violence will, we have no doubt, make a deep impression on all who are somewhat shaky in this matter and will bear rich fruit in strengthening their will to resist temptation.

These two groups who have collectively joined the movement, and joined it in a way so as not to compromise its non-partisan character, will without a doubt bring great accession of strength in making the cause of civil liberties understood by the mass of the people and encouraging active workers to pursue the constructive methods formulated by the All-India Civil Liberties Council for the preservation of the liberties of the people with persistence, courage and dignity. This is a long and hard road, but the promoters of the movement are determined to follow it and attain success.

EXTERNMENT PROVISIONS DECLARED VOID

Patna and Bombay High Courts' Decision

Two High Courts had occasion recently to consider the constitutionality of the provisions in the Public Safety Acts giving power to the executive to direct a person that he shall not be in any particular area of the province. In the case of detention orders, these Acts provided for some kind of safeguard, such as giving to the detenu reasons for his representation, submitting these reasons to a scrutiny by the Advisory Council, etc. [These detention provisions have now given place to the Preventive Detention Act.] But orders imposing other kinds of restraints on the movements of persons were and are without any kind of safeguard under the Public Safety Acts in all provinces except three (see the article in this issue entitled "A Complete Retrogression". Before 26th January when the new constitution came into force, persons against whom externment orders, e. g., had been passed had no remedy whatever. The remedy of a review of the orders by an independent body was not available, nor was access to the courts open. A law had been duly passed giving the executive uncontrolled powers in this respect, and if one went to the High Court, the High Court had to administer the law as it found it. But the new constitution has made a big difference. Art. 19 (1) (d) has given to all citizens the right "to move freely throughout the territory of India" and has qualified this right only to the extent that a law may validly impose "reasonable restrictions" on its exercise. Whether any law providing for externment comes within the limits of this qualification or goes beyond them and whether in the former case the restrictions actually imposed are reasonable is now a question for the High Court to decide. Such a question came up before the High Courts of Bihar and Bombay (in which provinces the Public Safety Acts give exclusive discretion to the governments to extern persons), and both the High Courts decided that the provisions in this behalf in the Acts were unconstitutional and void.

Bihar State

In Bihar one Brajnandan Sharma was served with an order forbidding him to go to any place in the districts of Singhbhum and Manbhum. He invoked art. 19 (1) (d) of the constitution in challenging the validity of the order. His application was heard by a full bench of the Patna High Court, and two of the three judges who heard it (Sir Ribton Meredith, Chief Justice, and Mr. Justice S. K. Das) invalidated the order, the third judge, Mr. Justice Shearer, dissenting from their judgment. The Chief Justice in the course of his judgment said :

> It is apparent on the face of it that the provision does represent an interference with the fundamental right guaranteed by article 19 (1) (d) of the constitution. A citizen is entitled to move freely in the territory of India. But under the provision in the Act, the Government can and has made an order preventing him from going into two districts. The freedom of movement is restricted to that extent. Therefore, there is no escape from the position that under article 13 (1) this provision became void on January 26, 1950, and it necessarily follows that the order made under this provision became void. I would issue a direction upon the State Government prohibiting it and any of its officers from taking action for the enforcement of the order in question.

Bombay State

Similar was the decision of a majority of a full bench of the Bombay High Court in the case of Jaswantbhai Iswarlal Modi of Ahmedabad, who had been served with an order by the Bombay Government under the Public Safety Act prohibiting him from entering the district of Ahmedabad. The order was served after the police had raided his house in connection with a gambling incident. It was stated that the order had been issued in the interest of the general public as Modi's activities were prejudicial to the maintenance of peace. The legality of the order was challenged in the High Court. The Chief Justice and Mr. Justice Bavdekar (14th April) upheld the petitioner's contention, Mr. Justice Shah dissenting. The Chief Justice, who delivered the judgment, remarked :

It was curious, and it was difficult to understand why a discrimination had been made between an order of detention and an order of externment made under the Public Security Measures Act. Whereas provision had been made in the order of detention for a detenu to be heard and to be furnished with the grounds for his detention, no such safeguards had been provided for in the order of externment.

The constitution had made the Court the custodian of fundamental rights and it was in that spirit and in that capacity that the Court had to look upon the nature of the restriction. Even though the absence of any particular safeguard might not be a violation of the fundamental rights, the absence of such a safeguard might result in the restriction not being a reasonable restriction.

"I have come to the conclusion," the Chief Justice said, "that the restrictions placed on the petitioner are unreasonable and therefore the law which imposes such an order and to the extent it imposes it is void and contrary to the fundamental rights conferred by the constitution."

The Court issued directions to the authorities concerned not to enforce the externment order.

Mr. Justice Shah, dissenting from the order delivered by the Chief Justice and Mr. Justice Bavdekar, said that he failed to see why it should necessarily be, that the restriction which was imposed on the petitioner asking him to stay outside a certain limit must be deemed to be unreasonable merely because he was not given the right of being heard or making a representation either before or after the passing of the order.

All three judges of the same full bench (17th April) set aside the orders of externment passed on Bachubhai and seven others of Kaira by the District Superintedent of Police.

What would be the legal position of an externment order passed under a Public Safety Act which provides the safeguards referred to by the Chief Justice in the case of Modi will be decided by the supreme Court when it disposes of Dr. N. B. Khare's petition for quashing the externment order served on him by the Delhi Administration on 27th March. This order was passed under the East Punjab Public Safety Act which provides, in sec. 4 (5), in regard to an order restricting movements other than by detention, that

> the grounds of it may be communicated to him (the person against whom the order is made) by the authority making the order and in any case, when the order is to be in force for more than three months, he shall have a right of making a representation which shall be referred to the Advisory Tribunal.

It was argued on behalf of the petitioner that since the furnishing of grounds has, by the use of the word "may" in this section, been made optional, it might happen that the authorities would not supply grounds at all, and in that case the restrictions imposed would be unreasonable; a section which permitted such a thing could not be held valid. The objection was answered by the Attorney-General by saying that though the word used was "may" it should be construed as "must," meaning that, if the section was thus construed, the obligation would always rest on the authorities to communicate grounds.

The question then would be whether, supposing the minimum test laid down by the Bombay Chief Justice was fully satisfied, the section in the Public Safety Acts giving power to restrict movements would be constitutional, and, if so, whether the validity of any particular order issued thereunder would depend upon whether the grounds given in it were in fact such as to make the restrictions actually imposed "reasonable" or otherwise. The Supreme Court will, it is expected, lay down some criteria about this important matter.

CIVIL LIBERTIES CONFERENCE

Mr. M. N. ROY'S MESSAGE

An Unlawful Law

Mr. M. N. Roy, the leader of the Radical Humanist Movement, sent the following message to the Conference on the Preventive Detention Act and on the Government's repressive policy in general:

The All-India Civil Liberties Council is to be congratulated upon the vigilance it zealously keeps on the fundamental rights of the citizenship of a democratic State. The Preventive Detention Act is an attack on those rights. Unless the alarm is sounded promptly and intelligent public opinion made alive to the menace, this unconstitutional and entirely unwarranted law may be only the beginning of an all-round attack on civil liberties. I hope that this Conference convened by the All-India Civil Liberties Council will arouse public opinion against the abuse of the legislative power by a nervous executive.

The Preventive Detention Act is unconstitutional because it violates the fundamental rights of the citizen supposed to be guaranteed in the newly established Republic. It is unwarranted because there is no conceivable offence which cannot be properly dealt with by the innumerable provisions of the Penal Code. It is repugnant to the spirit of modern criminal jurisprudence which does not allow any punishment until and unless it is proved in a Court of Law that a person has actually committed an offence. To punish a citizen in anticipation of the possibility of his committing a penal offence is obviously unlawful. The Preventive Detention Act, therefore, is an unlawful law in the fullest sense of the expression, memorable in the history of India's struggle for national independence. If it is contended that the executive is in possession of the evidence of the guilt of persons to be detained, why not put them on trial in a Court of Law? The plea that information in the possession of the police cannot be divulged for the sake of public

safety only makes the damaging confession that the popular government is afraid of relying on the confidence of the people.

If the blood-hounds of the Bureau of Intelligence have really unearthed a powerful conspiracy against public safety, the suitable policy of a democratic government should be to take the people into confidence. With such a policy, a truly popular government could effectively deal with actual or prospective trouble-makers without encroaching upon the constitutionally declared rights of citizenship.

On the contrary, for the sake of public safety, such a measure must be strongly condemned, and a powerful popular movement developed to demand its early repeal. With the tradition of our long fight for freedom the victims of an unlawful law will have the sympathy, if not active support, of a considerable section of the public. With that advantage, their colleagues at large will constitute a greater menace for the Government. A movement which appeals to the sense of social justice and political idealism cannot be suppressed by persecution. Communism thrives in the atmosphere of mass poverty and growing discontent of the educated middle class. So long as this atmosphere prevails, the country cannot be inoculated against Communism by the abuse of the legislative power of the Government.

It is obvious that the chronic disease of mass poverty cannot be cured overnight. Why not allow the Communists freedom to peddle their panacea? Because the party in power commands a variety of means to expose revolutionary demagogy. But instead of relying upon intelligent public opinion, the Government prefers to fall back upon the dubious advantage of the one-party rule, which is mortally inimical to Democracy, and encourages a dictatorial tendency.

So, this Conference should not only protest against one particular piece of obnoxious legislation. Let the protest be also a call for a movement to defend democratic rights which are under attack even before they are established.

Message from England

The following message of good wishes was received from the National Council for Civil Liberties of Great Britain:

"The National Council for Civil Liberties sends warmest greetings to the Annual Conference of the All-India Civil Liberties Conference.

"It has been well said that the price of liberty is eternal vigilance and we are following with interest the fight of the people of India for Civil Liberty; a fight not dissimilar from the fight that we have waged and are waging in this country. There is much that the peoples of the different countries can learn from each other; moreover a success in one country helps the people in other countries.

"We wish the All-India Civil Liberties Council success in their work and we look forward to fruitful co-operation and exchange of ideas."

MR. JAYA PRAKASH NARAYAN'S Inaugural Address

Mr. Jaya Prakash Narayan, the leader of the Socialist Party, inaugurated the Conference. Following is a summary of the speech he made on the occasion:

The people at large had a tendency to regard freedom as connoting only "national freedom." They did not realise that this national freedom had no meaning without civil liberties. A country might be free without its people being free. People's freedom found expression in the concept and practice of civil liberties only.

In India the mass of the people had unfortunately failed to realise the full import and significance of civil liberties. They regarded this concept as something academic, not connected with life and its problems.

Without the right to enjoy civil liberties, an entire people ran the risk of being condemned to endless sufferings. But if they had this right, they could by its judicious exercise bring down the government which mismanaged affairs and brought them untold sufferings. In view of this, the people must have the civil liberties to change the government which had failed to deliver the goods. This was their inalienable right.

Role of Liberties Unions

Organizations like Civil Liberties Unions had a great role to play in making the masses fully conscious of the meaning and content of civil liberties.

Mr. Narayan said that he believed that society should be so organised and so constituted as to allow ample opportunity for the fullest self-development of the individual. Such an ideal society presupposed fullest social freedom. In other words there must be social democracy. Indians broadly subscribed to this ideal. The constitution-makers of India also accepted this ideal.

Only Lip Service

But he had a fear that, lip-service to this great ideal notwithstanding, there was not full realisation of its meaning. By common consent India's Prime Minister, Pandit Jawaharlal Nehru was a born democrat, but some of his utterances had been distressing. He had echoed the accents of dictators when in one of his recent pronouncements he had said that if a choice were to be made between the security of the State and the freedom of the individual he would go in for the former. Fascists also raised the bogey of security of the State to suppress civil liberties. The claims of national security were no doubt paramount, but they found that in India civil liberty was being suppressed when there was no danger to national security.

The Excuse of Emergency

The excuse of emergency came handy to the Government in curtailing civil liberties of organizations and individuals not fully agreeing with the rulers. What Dr. Lohia had described as "crisisism" had become the guiding philosophy of the Government. But if the people wanted they could force the Government to enlarge the scope of civil liberties and extend them to all parties and

individuals who wanted to carry on their activities on peaceful lines.

The constitution of India inaugurated on January 26 conferred on the people the right of adult franchise. But how could people exercise that right unless political parties were allowed to work freely? In Bihar, no public meeting could be held without previous sanction of the authorities. This state of affairs was certainly worse than in the British regime in which section 144 was imposed only in special and abnormal circumstances like civil riots, etc. But the present restrictions on holding of public meetings were difficult to explain when there was practically no emergency in any part of the State. For the Congress Party meetings, however, there was no need for any permission but if one were required at all for the sake of formality it could be secured after the event.

Persecution of Independent Labour Unions

In labour areas, externment of political workers was a most handy weapon in the hands of the Government and it had lent itself to much misuse. Government did not wield this weapon for maintaining industrial peace but to put down independent labour organizations. It was a characteristic of Fascist Governments that they fostered official labour fronts; this was unfortunately true of India as well. Here they had a Government-sponsored labour organization. But this labour organization because of the official patronage need not have worried independent labour workers if they had the same freedom as allowed to 'official' workers to work among labour.

Cult of Violence

Referring to the responsibilities of the people, Mr. Narayan said that there was a school of thought which believed in violence and indulged in acts of violence. People had to beware of this school. For they must remember that those who indulged in acts of violence struck at the very roots of civil liberties. No group could demand liberty to loot and murder and commit acts of arson. There were certain groups who were vociferous in demanding civil liberty but undermined it immediately by senseless acts of violence.

The Socialist leader hoped that the beginnings made at Madras under the able and distinguished leadership of Mr. P. R. Das would soon come to represent an organized public movement of such dimensions as would ensure civil liberties to the people. It was not a party question that they had to tackle. It was as much the responsibility of Congressmen to preserve civil liberties as that of any other group of people. But at present, unfortunately, Congressmen while paying lip-service to the ideals of civil liberties denied them in practice.

Lovers of civil liberties had to see that these liberties without which political freedom itself would be meaningless were not lost in India, he concluded.

RESOLUTIONS OF THE CONFERENCE

Below are given some of the more important resolutions passed by the Indian Civil Liberties Conference:

Detention in Peace Time

This Conference enters its strong protest against detention by the executive of any citizen of India without charge and without trial but on mere suspicion that he may do an act prejudicial to the State or to its public order. In the opinion of the Conference such power of arbitrary arrest and detention may be necessary when the State is in danger during war, foreign invasion or rebellion. But assumption of this power during peace is subversive of all rule of law and is a confession that free India cannot govern herself in a civilized way. This Conference has further to point out that such arbitrary exercise of powers demoralises and makes irresponsible all those who exercise them, and destroys the sense of security of citizens, which is the only sure foundation of the security of the State itself.

This Conference demands that all Preventive Detention Laws now existing in India should be repealed without delay.

This Conference is further of opinion that provisions in the constitution empowering legislation for preventive detention in time of peace are unworthy of a civilized constitution, and steps sould be taken to amend the constitution by deleting those provisions.

Preventive Detention Act

This Conference is of opinion that the Preventive Detention Act of 1950, passed by the Union Legislature, is an extremely retrograde and dangerous piece of legislation.

Apart from the general objections against Preventive Detention Laws in time of peace, this particular Act is full of special objections of the gravest kind.

Its want of any particularization, as to what kinds of act are so prejudicial to the security of the State that even in time of peace citizens may be arrested and detained without trial, makes the power given to the executive, which in practice would mean the police, so uncontrolled and extensive that practically all citizens' freedom is in peril.

Though Advisory Boards have been provided in some cases (which, however, do not apply to cases of political detenus), other provisions in the Act make them illusory, and in practice detention for an indefinite period of time has been made legal.

The power of making detention orders has been given to any officer of the Government of the Union or of the States under the general name of the Central or State Governments, and has been given to magistrates, sub-divisional magistrates, and police commissioners by

name, which is in astonishing and lamentable contrast to the practice of any really free country, e. g., England, where even during the last two wars when her very existence was in peril the power was not given to any person less than the Home Secretary to satisfy himself before making an order of detention.

In the opinion of this Conference this Act which is a slur on the people and the Government of India should be repealed without delay.

Restrictions on Movements and Actions

Public Safety Acts in force in India, besides authorizing detention without trial, authorize minor restrictions on the movements of suspected persons, such as internment in or externment from an area, notification of movements, prohibition to be out of doors at stated times, prohibition to travel except with permission, etc. In addition to such restrictions on movements, the Acts authorize restrictions on actions of a specific character, provisions in respect to which are drawn in such broad terms that the restrictions imposed under them may practically deny all opportunity to those against whom they are passed from engaging in any kind of public activity. Such restrictions can be called "minor" only in comparison to the total deprivation of personal liberty involved in detention orders. But in fact these minor restrictions may be even more harassing and oppressive inasmuch as they are not subject to any kind of outside review as detention orders in certain circumstances may be. This Conference is of the opinion that it should no longer be possible for governments to practise this kind of petty tyranny and demands that the Acts which confer upon them the power to do so be repealed and orders issued in virtue of the power be revoked.

Outlawing of Associations

This Conference strongly protests against the continuance of the ban against certain communist organizations in West Bengal, Madras, Andhra, Kerala, Travancore, Cochin, Hyderabad and Bhopal States, and certain trade unions and students' and other organizations in India. This Conference as a body has no political party affiliations, but it feels that the vicious principle of guilt by association, which is followed in the outlawing of organizations and which all democracies abhor, must not be allowed to take root in India. The Conference therefore hopes that the governments concerned will take immediate steps to withdraw the ban which they have imposed.

Restraints on the Press

Orders like those of pre-censorship, suspension of publication for a certain period, demand for security and forfeiture of security continue to be made by the executive against the press of the country everywhere under the provisions either of the Press Emergency Powers Act or the various Public Safety Acts. Access to courts of law is denied in all such cases except in the extreme case of forfeiture of security.

Now that the article in the constitution relating to freedom of the press has given the governments the necessary power to penalise anything "which undermines the security of, or tends to overthrow, the State," there is no justification for them to have recourse to either of the above-mentioned laws in order to take action against the press at the absolute discretion of the executive, and this Conference calls upon all governments to repeal these laws altogether and withdraw any restrictive orders which they might have passed against the press.

The executive action taken is sometimes defended on the ground that it is taken only after the Press Advisory Committee is consulted on the subject and its concurrence obtained as to the necessity of the action. But the machinery of the Press Advisory Committee, established under totally different conditions, has now become outmoded and should be discontinued. While such a body might be useful in persuading members who belong to it to exercise voluntary self-restraint in delicate situations, it is wholly unfit to sanction penal action, and no government should be enabled to shield itself behind it.

Restrictive orders are now issued for the most part against what are called the communalist or communist sections of the press. But the Conference claims, without associating itself with either in any way, that both communalists and communists have every right to seek the support of public opinion for their peculiar doctrines if the democratic regime now sought to be established in the country is to be invested with reality. If in carrying on their propaganda they transgress the limits of freedom allowed to the press by the constitution, they can be prosecuted under the ordinary criminal law of the country which will leave them free to seek redress in the courts of justice established by law.

The governments should no longer wait to have the validity of special legislation challenged by an invocation of Part III of the constitution, but should themselves totally repeal such legislation forthwith. Such prompt action on the part of the governments concerned is specially called for in view of the impending elections in the country. Any elections held in conditions which debar any section of public opinion from pulling its full weight in the contest would be a sheer make-believe unworthy of India's aspiration to be a real democracy.

Office-Bearers of A. I. C. L. C.

The Conference elected the following office-bearers of the All-India Civil Liberties Council for the next year :

President: Mr. P. R. Das,
Fraser Road, Patna ;

Vice-Presidents: Mr. Atul Chandra Gupta,
125, Rashbehari Avenue,
Calcutta, and
Mr. N. M. Joshi,
Model House, Proctor Road, Bombay 4;

Secretary: Mr. S. G. Vaze,
Servants of India Society, Poona 4;

Organising Secretary: Mr. K. G. Sivaswamy,
14, Usman Road, T'Nagar, Madras 17;

Assistant Secretary: Dr. R. G. Kakade,
Servants of India Society, Poona 4.

THE AMERICAN CIVIL LIBERTIES UNION

which is the strongest and most influential body of its kind in the world and has a glorious thirty-year record to its credit

HAS BEEN MADE ITS MODEL BY

The All-India Civil Liberties Council,

which would like to formulate a programme of work similar to that of A.C.L.U.

A. C. L. U.'s 1950 Programme

includes a number of 27 important items like "opposition to racial discrimination and segregation in all forms," but

opposition to Preventive Detention does not figure in this Programme.

The first plank in A. I. C. L. C.'s platform will be opposition to the

Preventive Detention Act.

Why does not the American Programme include such an item ?

Because the United States has not and never had this kind of legislation.

A. I. C. L. C. will make an attempt to have the Preventive Detention Act repealed.

Its stand on Freedom of Person is the same as that of A. C. L. U. It is :

"No person should be deprived of liberty except by the judgment of a court ; and the right to seek release from confinement by haleas corpus should never be denied, except in areas under martial law where the civil courts are closed".

This being its stand, A. I. C. L. C. will seek not merely

Repeal of the Preventive Detention Act, but also

Amendment of the Constitution

itself, which provides for Preventive Detention in peace time.

Printed by Mr. K. G. Sharangpani at the Aryabhushan Press, 915/1 Shivajinagar, Poona 4, and published by Mr. R. G. Kakade, M. A., LL. B., Ph. D., at the Servants of India Society, Poona 4.