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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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Civil Liberties Conference

Sixth Session in Ambala

The sixth session of the All-India Civil Liberties Conference was held at Ambala in the Punjab on 26th and 27th April. The session was as successful as, from the experience of the past sessions, one might have expected. The attendance at these gatherings is never large, but those who participate in the proceedings are deeply interested in civil liberties problems and generally have a good understanding of the principles to be observed in solving these problems. Such was especially the case with the Ambala Conference. The Punjab Press Act, a measure of unparalleled severity in any democratic country, agitated the people of the Punjab very greatly. And a case arising from the enforcement of the Act on two newspapers, which had been prohibited from publishing any news or comment on a subject of great public interest, had come before the Supreme Court, which found for the State and against the newspapers. The judgment disturbed the public profoundly. The presence of a statute putting such far-reaching curbs on the press and the highest court in the land upholding it aroused interest to such a high pitch as was the lot of no earlier Conference. Moreover, the widespread prevalence of abuse of powers by the police, for which the Punjab State is notorious, aroused much concern, which made the proceedings very lively. There were a number of other subjects of general interest that engaged the attention of the Conference; the resolutions passed on them were well thought out. All the resolutions adopted by the Conference are given in extenso in this issue. We think they would repay perusal and close consideration. The presidential address by Mr. N. C. Chatterji, an eminent jurist, was, as was to be expected, very inspiring and full of practical suggestions. We hope to supply our readers with the text of the address. We have also included in these pages brief extracts from the address of Acharya J. B. Kripalani, who inaugurated the Conference.

No one need be ashamed of the quality of the proceedings, and to the extent that the report of the proceedings reaches an interested audience, one may well claim that the Conference did a good job of spreading an

understanding of the principles underlying the civil liberties movement. In spite of this, however, it must be admitted in full that the defect pointed out by Acharya Kripalani is very real, viz., that the work is not continuous and that the movement does not reach the masses. He said: "Let it not be with this Conference, as it has been with former such conferences, that after making speeches and passing resolutions, those interested dispersed and no trace of their work remained. If the (Civil Liberties) Union is to be effective it must work continuously and must have active branches, not only in each province but in each district of India." The Conference took two steps which would help remove this serious defect. The major step is that Mr. Chatterji, as Working President of the All-India Civil Liberties Council, which is the executive of the Conference, is going to appoint a small executive committee of the Council, which is expected to take into consideration civil liberties problems as soon as they arise, express its opinion thereon and try to carry the message to the masses. The other step is that for the post of the Secretary of the Council a young public-spirited lawyer of Delhi has been selected, who will be ready at hand for consultation with the Working President. These measures, it is fervently hoped, will help to make the civil liberties movement a living and dynamic movement.

A Kashmir Detenu

ORDERED TO BE RELEASED BY THE HIGH COURT

Mr. Pir Abdul Gani, a worker of the pro-Abdullah Plebiscite Front, was arrested under Kashmir State's preventive detention law on 11th November 1957. He filed an application for a writ of habeas corpus in the Kashmir High Court, and on 29th April last a divisional bench of the Court consisting of the Chief Justice and Mr. Justice Kilam set aside the detention order as "improper and invalid" on the ground that "proceedings in this case have been taken in disregard of the usual practice and law" and ordered immediate release of the detenu.

As in previous years, the present number is for May and June. The next one will issue in July,

SHEIKH ABDULLAH BACK IN PRISON

Sheikh Abdullah, who had been released on 8th January after detention for four years and a half, was rearrested on 30th April and held in detention once again under the Kashmir State's sweeping Preventive Detention Act on the ground that "his remaining at large was hazardous to the security of the State." One often feels a kind of satisfaction when on account of a shift in circumstances a tyrant himself comes to be tyrannised over. Such malicious satisfaction we may derive when we see that the Lion of Kashmir, who was not slow when in power to use dictatorial methods against his political opponents, is himself now the victim of similar methods at the hands of one who was once his chief lieutenant. But apart from any consolation one may find in this aspect of the matter, one cannot discover any ground of justification for this move, even considering it from a purely political point of view. This becomes clear from the fact that even Mr. G. M. Sadiq, the Democratic National Conference leader, who is as strong a supporter of Kashmir's accession to India and as strong an opponent of Sheikh Abdullah's plan to break the link as the Kashmir Prime Minister himself, denounces the present action as entirely wrong-headed and mischievous.

By all accounts the Sheikh was living a quiet life at his residence at Shaura, six miles from Srinagar. He no doubt had taken a strong stand for the right of self-determination being accorded to the people of Kashmir by means of a free and impartial plebiscite under U. N. auspices, as had been promised by India, but, though he did not modify his attitude on this vital question, there is nothing to show that he had created or even sought to create any political turmoil. He had not conducted any whirlwind campaign to mobilise public opinion in favour of his stand for Kashmir's right to settle its political destiny. In fact he was not allowed an opportunity to do so, for the Bakshi Government under a so-called Defence rule prohibited all public meetings and processions. The Sheikh showed an unsuspected docility in observing the ban; he did not defy the order as Dr. Syama Prasad Mookerjee had defied the Sheikh's order preventing him from entering the State. The result was that the Sheikh was practically bottled up in his house and could only consult with the few of his co-workers who were still out of gaol and give interviews to press correspondents, which in any case did not receive much publicity. He is charged with fomenting communal feelings, but this may well have been because he was left free only to address Moslem gatherings at mosques. Whatever that be, his propaganda appears to have failed to produce any appreciable effect on the mass of the people. Bakshi Ghulam Mahommed himself was loud in assuring the Indian Government that Sheikh Abdullah was no longer the popular hero that he was supposed to be, that politically he was a spent force and that the people of Kashmir were solidly behind the present regime and

wholeheartedly supported its policies. The people of India were told in emphatic terms that things were perfectly normal in the State and it was not even faintly suggested that there was any likelihood of anything like a state of emergency arising because of the Sheikh's activities even if they had been left wholly uncontrolled, or that the Sheikh would by any possibility be a political menace. Pakistani newspapers no doubt were trying to create the impression that Sheikh Abdullah's propaganda had become so popular as to produce a keen sense of alarm in the Bakshi and Nehru Governments and that they were sure to fling him into gaol once more. But everyone in India felt that this was only an attempt to whip up interest in a matter to which the people in general had become indifferent. Never could a detention be proved to have been more devoid of justification on the showing of the detaining Government itself than this one.

No one was therefore prepared for the detention of Sheikh Abdullah, when it came. There were many in India who felt a sense of relief when he was first detained, but they were unable to understand why he should have been released at all only to enjoy freedom for less than four months. The only conclusion they drew is that the Kashmir Government set him free in the belief that after his prolonged detention Sheikh Abdullah would see reason and drop his demand for subjecting Kashmir's accession to the approving vote of the Kashmir people (Bakshi Ghulam Mohammed had even proffered Premiership to him if he only consented to do this), but finding that he would not change his attitude, the Government again put him under arrest. The "Times of India" voices much the same feeling. It says, the Kashmir Government "took a calculated risk, hoping against hope that the changed political climate in the State would make him more realistic. But its hope was belied; the Sheikh... wanted to reopen the question of accession." Merely his speeches in which a plebiscite was insisted upon are generally thought in India to be a crime meriting the forfeiture of freedom, but, as the "Hindustan Standard" says, "actions remain unrevealed," treasonable actions apart from speeches in the above sense, which Bakshi Ghulam Mohammed characterizes as treasonable. The latter told the Congress Parliamentary Party of India that Sheikh Abdullah "had directed his activities towards the subversion of Kashmir's accession to India and for the annulment of the State's Constitution which indissolubly linked Kashmir with India" and that this time the reasons for his arrest were stronger than those when he was first arrested in 1953. In a sense the Kashmir Premier is right. Earlier one could lawfully advocate a change in the existing political status of Kashmir. The Constituent Assembly of the State had been established for the purpose of deciding the question of the final accession of the State, and though, according to Sheikh

Abdullah, it was intended only to ratify the accession to India, such ratification had not been effected. The Sheikh in the meanwhile changed his mind. He began demanding for the Kashmiri people complete freedom of choice in a plebiscite and urging that the freedom should be so exercised as to give independence to Kashmir, without accession either to India or to Pakistan. Though Abdullah had clearly gone back on his former position, his plea for independence could not be legally treated as subversive of the Constitution of Kashmir, which had not been enacted. But after his detention the Constituent Assembly had ratified Kashmir's accession to India; Kashmir had now become part of India under the Constitutions of both Kashmir and India. Now merely to talk of undoing the accession, even if the talk was unaccompanied by any specific acts was treason. Bakshi Ghulam Mohammed told members of the Congress Parliamentary Party that, apart from the Sheikh's treasonable propaganda, "there was enough evidence to prove his treasonable activities," and that if he chose not to bring the Sheikh to trial, it was only because "a trial would have given Sheikh Abdullah a platform which Pakistan and other anti-Indian forces would have exploited." So far as Pakistan is concerned, it has already started exploiting the Sheikh's detention, and although in Pakistan, which surely is not less backward in employing repressive methods than India, detention without trial is perhaps not regarded as a measure of any extraordinary severity, in all other countries, not necessarily anti-Indian, the detention will meet with stern condemnation. The general feeling in India too is that where the bringing of a charge of treasonable activities in a court of law is available as a means of putting a stop to such activities, this course should be preferred to detention without trial. The "Hindustan Standard," for instance, says: "There is no reason at all why a man treated as a traitor, probably

rightly, should be allowed to appear as a martyr" by being thrown into gaol without a trial.

The worst aspect of this action is that it will create the impression that the Kashmir Government, with the backing of the Indian Government, is only trying to get round India's pledge to decide the question of Kashmir's accession according to the wishes of the Kashmir people. Suggestions in fact are being made that India should now repudiate a plebiscite in Kashmir. The plebiscite may not in the present circumstances be the very best solution of the problem of Kashmir; a plebiscite, whether it goes in favour of India or Pakistan (and there is no reason to suppose that it will not go in India's favour) will leave much ill-will behind. The problem is best solved by agreement between the two countries; such a solution will bring peace provided it does not go against the will of the Kashmiris. But to goad India into going back upon her pledge even when conditions for giving effect to the pledge emerge is to do no service to India. It should never be forgotten that the Indian Government voluntarily undertook to hold a plebiscite; the undertaking has assumed the form of an international commitment. Even after the Constituent Assembly of the Kashmir State ratified the accession on 6th February 1954, when Sheikh Abdullah was already in prison, Mr. Nehru declared that the Assembly's decision, though he believed it "represented the wishes of the elected people in Kashmir," "did not come — it cannot come — in the way of our observing our international commitments in regard to a plebiscite." If, because of no amicable settlement of this critical problem becoming possible, the only alternative is a plebiscite (assuming that the conditions for holding it, as laid down by the U. N. Commission for India and Pakistan, come into existence), the plebiscite will have to be resorted to. Even to think of resiling from this international commitment, so solemnly undertaken and so often repeated, would be an indelible blot on India's honour, which it is impossible to contemplate.

JUDICIAL REPRESSION IN HUNGARY

POLITICALLY-CONTROLLED JUSTICE STILL IN FORCE

The Soviet-imposed Kadar regime promulgated on 3rd November last year a decree purporting to abolish the summary procedure applicable in the trials of revolutionaries. This decree has created a widespread impression that a year after the military crushing of the revolt of the Hungarian people the authorities have found it possible to restore the normal law. But the International Commission of Jurists, which has done such signal service in drawing world-wide attention to the facts concerning penal justice in Hungary, has in its recent report shown conclusively how the Hungarian Government's claim is unfounded and how even after the so-called repeal of summary jurisdiction there is really no change in the system of politically-controlled justice adopted a year

earlier, thus continuing "to violate human rights in failing to provide the minimum safeguards of justice in criminal trials which are recognized by civilized nations."

Soon after putting down the revolution by massed military strength, a decree was passed on 12th November 1955, authorizing the Procurator to prosecute persons in the ordinary courts in a wide range of offences "without an accusation in writing." The decree provided: "No date for hearing shall be fixed by the court, nor shall subpoenas be issued. At the hearing the prosecution shall prefer the charge orally. It is for the prosecution to see that witnesses and experts appear in court, and that other evidence is submitted to it." The effect of the decree was, as the International Commission says, that "under this procedure

the accused may have no foreknowledge of the offence with which he is charged and can have no adequate opportunity to prepare his defence." The summary procedure thus introduced was made applicable a month later by decree to trials before military courts which were required to impose a death sentence on those found by them to be guilty. Another decree was passed envisaging the substitution of imprisonment for the death sentence "if the re-establishment of peace and order no longer requires the imposition of the death penalty." It put a maximum limit of 72 hours for the proceedings, including the judgment, and provided that, except for reopening the case, "there shall be no legal redress against decisions of the courts of summary jurisdiction." A petition for mercy could be made, and if the court did not recommend the convicted person for mercy, "the sentence shall be carried out within two hours."

Then followed on 13th January 1957 a new decree, because, according to the Commissioner of Justice, the previous decrees "proved inadequate" and necessitated the introduction of an "expedited procedure." It widened the range of offences triable summarily so as to include not only strikes but even vague crimes like "associating against the democratic state order" as crimes to be tried by a summary procedure. It created Special Councils to be attached to military and other courts for the summary trial of offences. These Councils were to consist of one professional judge and two laymen appointed by the Presidential Council of the People's Republic, i. e., by those who are in political control in Hungary. A right of appeal was provided, but the appeal lay to a Council consisting of two professional judges and three laymen, similarly appointed. Since the nominees of what corresponds to the Presidium of the Supreme Soviet of the U. S. S. R. could outvote the Judges in either case, one can see that the trial of political offenders was brought completely under the control of the men who wielded political power. The decree of 6th April 1957 set up a People's Chamber as a special court within the Supreme Court. This Chamber consists of a professional lawyer and four "People's Judges" appointed, as the lay assessors under the previous decree, by those in power. The decree specifically provides that the People's Chamber "can sentence an accused who has been found not guilty or increase the sentence of a person who has been punished even when the Public Prosecutor makes no appeal against the interest of the accused." It also provides that a protest can be lodged with the People's Chamber "against legally binding decisions of any court in a criminal matter." This decree was followed by that of 15th June 1957, which authorizes the setting up of People's Courts at County Courts and at the Metropolitan Court of Budapest in addition to the People's Chamber or Court set up at the Supreme Court under the previous decree, because the latter Court was

found by the Government to serve its purposes well. In the preamble it was said: "In the course of trying crimes committed for political reasons or having political objects, summary procedure and the adjudication by the People's Court of the Supreme Court have proved effective. For this reason and in the interest of a continued fight against counter-revolutionaries... and the furtherance of socialist legality, the setting up of People's Courts with the Metropolitan and County Courts to adjudicate according to the rules of summary procedure is, at the request of the workers, warranted." It is unnecessary to say that the procedure before these People's Courts is of summary nature, that being the weapon on which the Government mainly relied for quelling the uprising. This decree further weakened the safeguards of the accused in political trials by limiting the rights of the defence. It provided that "no advocate may act as authorized or appointed defence counsel whose name does not appear on a list compiled by the Minister of Justice for that purpose." The prohibition is to come into effect if, in the interest of the security of the State, it is thought necessary to enforce it.

Decree on the "Abolition" of Summary Jurisdiction

Then, all of a sudden, a decree was promulgated on 3rd November 1957, which on the face of it was one for abolishing the summary procedure followed till now in the trials of political offenders. The preamble said: "The successes attained in the last year concerning the re-establishment of law and order, make it possible to abolish summary jurisdiction, introduced for a transitory period." We confess we were led to believe, and we are sure many others must have been led to believe, that in the Government's opinion the revolutionary elements had largely been liquidated and that because of this summary procedure was no longer necessary. But the International Commission of Jurists, in its report on the Hungarian Situation and the Rule of Law, 1st September 1957 to 1st January 1958, conclusively shows that any such impression would be completely misleading.

All that this decree does is to repeal the "summary jurisdiction introduced by decree-law No. 28," i. e. the decree of 12th November 1956. This latter decree laid down that "proceedings under summary jurisdiction shall be within the competence of the Military Courts," and, as the International Commission of Jurists says,

The sole effect of the repeal is to discontinue certain summary proceedings primarily before Military Courts which, due to the introduction of People's Chambers, have largely fallen into disuse.

For, though immediately after the military suppression of the revolution, political trials were primarily conducted by Military Tribunals, they were handled later, first, by Special Councils established within existing courts and, afterwards, by People's Courts, both of which

applied summary procedure. The decree of 15th June 1957, under which People's Courts were set up, describes in detail the summary procedure which these Courts may apply if the Procurator so suggests. Following are some of its characteristics :

The case is presented by the Procurator orally without a bill of indictment.

It is for the Procurator to secure the presence of witnesses.

The accused cannot be represented by counsel of his own choice, but must select his advocate from a list compiled by the Minister of Justice, "if the security of the State should specially warrant this."

The People's Chamber of the Supreme Court is empowered to sentence an accused person who has been previously acquitted, or to increase his sentence, even if the Procurator has not lodged an appeal.

The People's Chamber of the Supreme Court may set aside — within a year — any final judgment of any criminal court on a protest of the Chief Procurator or the President of the Supreme Court, and may pass a decision "less favourable to the accused than the invalidated decision has been."

The decree of 15th June 1957 is still in force, and therefore the provisions governing the procedure, some of which are given above. The International Commission of Jurists says :

It is, as outlined above, a summary procedure, but technically not identical with the summary procedure now abolished (by the decree of 3rd November 1957 entitled "on the Abolition of Summary Jurisdiction"), since it is regulated in another decree (i. e., the decree of 15th June 1957).

It thus appears that the practical impact of the decree-law abolishing summary jurisdiction is very limited. This is the more true if one considers that Military Tribunals which primarily applied the summary procedure now abolished are expressly empowered under the decree of 15th June 1957, still in force, to try cases by a procedure of a summary nature. Such trials may now be conducted by "Special Courts" of Military Tribunals.

The decree-law of 3rd November 1957 on the abolition of summary jurisdiction introduces no change in the essence of the law, except in so far as the summary procedure as regulated by the decrees of December 1956 provides for more extraordinary measures than the rules currently in force. Abolished are, for instance, the maximum period of summary proceedings which was fixed at 72 hours, and the provision requiring death sentences to be carried out within two hours if the Court decides not to recommend an application for mercy.

U. N. Conference on Maritime Law

Israel's Shipping Rights Upheld

INDIA'S STAND PROVED WRONG

The eighty-seven-nation conference on international maritime law and freedom of the seas, sponsored by the United Nations, has adopted five draft treaties, one of which affirms the right of innocent passage of foreign ships through territorial waters of any nation and through straits used for international navigation. This Article says :

There shall be no suspension of the innocent passage of foreign ships through straits that are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state

This treaty, like the other four, will have to be ratified by individual nations, but at any rate it gives added force to the rule in this respect which is already generally recognized to be valid.

This is important in view of Egypt's rejection, in her dispute with Israel, of the right asserted by the latter country, that her ships and those of the other nations must be allowed to pass through the Strait of Tiran to and from the Gulf of Aqaba, although the strait, three miles wide, lies within the territorial waters of Saudi Arabia and Egypt. It will be recalled that in this dispute India's representative at the U. N., Mr. Krishna Menon, supported Egypt's stand even on this purely legal issue. As on the Hungarian question he was keen on doing everything possible to support Soviet Russia's contentions, so on the Israeli question he took pains to give India's backing to Egypt's contentions, irrespective of the rights and wrongs of the matters involved. This was no doubt done solely with the object of securing the friendship of a strong non-western power. The Geneva conference's decision to prevent any suspension on any legal ground of the free passage of ships of all nationalities through sea lanes like the Strait of Tiran gives in effect a slap to India. One wonders how India voted on this treaty; we hope she supported it. Even the Arab states dared not vote against it: they merely abstained.

At the time of the troubles of November 1956 President Nasser's forces had placed a battery opposite the Strait of Tiran which must be traversed by Israeli ships sailing from the Red Sea to the port of Elath at the northern end of the Gulf of Aqaba. The Israelis coming in over the desert took and destroyed the battery. When they withdrew, the U. N. placed an emergency force at Sherm el Sheikh, which has prevented Egypt from blocking Israeli shipping. Now, even when this force is no longer there, Egypt will be compelled, if she is not to defy international law as laid down by the U. N.,

to permit Israel freely to use her port for importing oil and other necessities without going through the Suez Canal under Egyptian control. India, while countering Israel's aggression (as did the U. K. and U. S. A.) against Egypt was really helping, Egypt, unlike the U. K. and U. S. A., to commit aggression against Israel by blocking Israeli shipping. It is well that this opportunist attitude on the part of India has in effect been condemned by the U. N. by permanently neutralizing the Strait of Tiran.

But the Geneva conference has been unable, like The Hague conference of 28 years ago, to solve the principal

issue before it — a new universal delimitation of territorial waters. Disagreement over exclusive fishing rights was the main reason for the failure of the conference to reach a solution on this issue. Most major western powers offered plans to extend territorial waters from the present three-mile limit to six miles. This was unacceptable to several nations like Indonesia which insist upon a twelve-mile territorial limit, which would put many international shipping lanes under their unilateral jurisdiction. The lack of agreement means that the more than a century and half old tradition which fixes the limit of territorial waters at three miles remains intact until a compromise solution is found later.

POWER OF CONGRESS TO EXPATRIATE COURT SHARPLY DIVIDED ON THE EXTENT OF THE POWER

The Supreme Court of the United States on 31st March delivered judgments in three cases concerning the power of the Government to deprive native-born Americans of their citizenship. There are Congressional statutes which make certain acts grounds for automatic expatriation; e. g., the National Security Act, sec. 401 (e), provides for the expatriation of a citizen who votes in a foreign election, and sec. 401 (g) permits expatriation of a war-time deserter who is dishonourably discharged after conviction by a court-martial. And the question that was raised in the Court by the cases was what are the constitutional limits on the power of the Congress to enact such legislation. One of these three cases was decided on non-constitutional grounds and need not be considered here, but the other two dealt with the constitutionality of such statutes and deserve to be reported.

Sharply split opinions were expressed in these citizenship cases. What especially divided the Court was the question of what constitutional provisions give Congress power to take away citizenship. The Justices fell into two broad groups.

A majority of six subscribed to the view that Congress could use the device of expatriation to implement its broad powers in such areas as foreign policy and war, for example, that foreign policy might be advanced by expatriating persons whose acts embarrass the country's foreign relations. In this view, the only constitutional restriction on Congress power to expatriate is that it be used reasonably — that the acts condemned have some rational connection to the Congressional goal.

The minority view, expressed by Chief Justice Warren and Justices Black and Douglas, was that the Constitution gives Congress no general power to expatriate citizens. Under this conception, the only grounds for expatriation would be a man's voluntary renunciation of citizenship or some act that constitutes an abandonment or transfer of allegiance—for example, becoming a citizen of another country.

Voting in a Foreign Election

The first case involved Mr. Clemente M. Perez, born in Texas of Mexican ancestry. In 1946 Mr. Perez, while in Mexico, voted in a Presidential election. Because of this he was held to have forfeited his United States citizenship. Justice Frankfurter, writing for the majority, found that the foreign affairs power supported Congress's right to expatriate Americans because of participation in foreign elections. He found the device of expatriation a reasonable one here because of the "frictions" and "embarrassments" to foreign policy that might arise "when the citizen of one country chooses to participate in the political or governmental affairs of another." He said:

The critical connection between this conduct and loss of citizenship, is the fact that it is the possession of American citizenship by a person committing the act that makes the act potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations.

The termination of citizenship terminates the problem.

Chief Justice Warren, in a dissenting opinion, said:

The Government is without power to take away citizenship from a native-born or lawfully naturalized American.

If the Government determines that certain conduct by United States citizens should be prohibited because of anticipated injurious consequences to the conduct of foreign affairs, it may within the limits of the Constitution proscribe such activity and assess appropriate punishment.

The citizen may elect to renounce his citizenship, and under some circumstances he may be found to have abandoned his status by voluntarily performing acts that compromise his undivided allegiance to his country.

The mere act of voting in a foreign election, however, without regard to the circumstances attending the participation, is not sufficient to show a voluntary abandonment of citizenship.

Justices Black, Douglas and Whittaker joined in the dissent. In a separate opinion Justice Whittaker said he agreed with the majority approach but did not think such voting by an American presented any reasonable possibility of endangering the country's foreign policy.

Desertion of a Former Soldier in War-Time

The second case concerned Mr. Albert L. Trop, a native of Ohio who was an 18-year-old Army private in North Africa in 1944. He left his post for a day. He was convicted of desertion and sentenced to three years in prison and dishonorable discharge.

He did not know he had automatically lost his United States citizenship until, in New York in 1952, he applied for a passport. He was told then that he could not get one because he was no longer a citizen. He sued to regain his rights.

In this case the dissenters were joined by Mr. Justice Brennan. Chief Justice Warren, writing for himself and Justices Black, Douglas and Whittaker, repeated his previous views that only an effective renunciation of citizenship justified expatriation. Under this view, he said, Mr. Trop could not constitutionally be expatriated.

But the Chief Justice said that, even accepting the majority view of the Perez case, the loss of Mr. Trop's citizenship must be reversed. He based this argument on the assertion that expatriation had been an extra punishment added to the court-martial sentence for desertion.

The Chief Justice said that expatriation for such a crime was a "cruel and unusual punishment," barred by the Eighth Amendment to the Constitution.

Justice Frankfurter, writing for himself and Justices Burton, Clark and Harlan, found the power to expatriate a deserting soldier within Congress's war power. He said :

Congress may well have thought that making loss of citizenship a consequence of war-time desertion would affect the ability of the military authorities to control the forces with which they were expected to fight and win a major world conflict.

He rejected the idea that expatriation was "cruel and unusual punishment," noting that desertion could be punished by death and adding :

Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death ?

Confrontation of Faceless Informants

in Industrial Security Programme

The loyalty programme for Government employees has long been attacked in the U. S. A. on the ground that such employees are liable to be dismissed on the basis of secret information given by informants, whom the defendants cannot confront. The unfairness of such security methods is obvious. The constitutional validity of these procedures has been challenged in the courts, but the question has not yet been finally determined. In 1955 and 1956 the Supreme Court had the issue before it, and though it found for the employees on other grounds the constitutional question remained undecided. Latterly the subject has somewhat receded into the background, for two reasons. Firstly, the Eisenhower Administration no longer lays the same political emphasis that it did before on the dismissal of security risks. And, secondly, the Administration is trying to improve its security programme by putting a stop to the filing of baseless charges. This has resulted in a general lessening of public tension, though the legal dispute about the right to confrontation remains.

Attention has now been shifted from the constitutionality of the security programme for Government employees to that of the industrial security programme, which now covers about three million persons. One such case was decided on 17th April by the Court of Appeals in Washington. The Government's right to deny security clearance to an employee in defence plants on the basis of secret information was upheld by the court in this case.

Mr. William L. Greene was formerly vice-president of the Engineering and Research Company (Erco) in Maryland. He did most of the engineering work on a number of classified projects developed by Erco for the Navy. In 1953 the Navy informed Erco that it was withdrawing Mr. Greene's security clearance and said he would have to be excluded from all Navy work in the plant or the contract would be revoked. Since most of the company's business was defence work, he agreed to resign. The charges were that Mr. Greene had associated with reputed Communists. Most of these persons were friends of his former wife. The Greens had been divorced some years before the charges were made.

Mr. Greene had a hearing in which the Government produced no witnesses but relied on undisclosed statements by anonymous informants. In his suit he challenged this use of secret information as a violation of the Fifth Amendment's guarantee that no person be deprived of life, liberty or property without due process of law.

The Appeals Court's opinion was delivered by Judge Washington, who indicated his concern for the broad implications of the case. He noted that Mr. Greene had gone from an \$18,000-a-year job to one as an architectural draftsman at \$4,000 and that he would find it hard to get

many engineering jobs because of security requirements. He said :

The personal tragedy revealed by this recital needs no emphasis. So, too, is the risk which the United States must take in denying itself the benefit of the services of a man apparently so proficient in the science of modern warfare. A government which is too cautious in such matters may ultimately have few secrets to protect or able workers to serve it.

But Judge Washington concluded that it was beyond the power of the courts to make the Executive Branch choose between revealing "a state secret" or cancelling its defence contracts—"either of which might compromise the security of the country."

Mr. Justice Hofstadter of the New York Supreme Court has written an article in the "New York Law Journal," in which he has made suggestions for improving the present unsatisfactory procedures in security programmes for public employees. He suggests the appointment of "public advocates" to scan confidential material in such cases. These public advocates would be drawn from a panel of lawyers with security clearance. They would in effect represent the accused, checking the credibility of informants when the employees were not allowed to confront their accusers. He takes a strong stand for the right of confrontation and cross-examination. He says :

The right to a fair trial must encompass the rights of confrontation and cross-examination in loyalty proceedings. Our conscience demands it, and we believe that our organic law commands it.

SALES TAX ACTS

Tax on Goods Supplied in Contracts

Held Illegal by the Supreme Court
MADRAS SALES TAX ACT

The provisions of the Madras General Sales Tax Act, 1947, whereby the value of the materials used in the construction works carried out by a building contractor is covered by the term "sale" and subjected to sales tax, were declared ultra vires on 1st April by Mr. Justice Aiyar delivering a judgment of the Constitution Bench of the Supreme Court.

The present appeal arose out of a decision of the High Court of Madras regarding the provisions of the Madras General Sales Tax Act, 1947, but as similar provisions had been enacted by the States of Bihar, Punjab, Mysore, Kerala and Andhra Pradesh, they were given leave to address the Court in these proceedings together with a number of building contractors who claimed to be interested in the decision of the question.

In the present case Messrs. Gannon Dunkerley and Co. were assessed to sales tax by the authorities after including in their turnover the value of the materials used by them in the construction works carried out under contract. This assessment was upheld by the Sales Tax Appellate Tribunal but on a petition by the company the High Court of Madras decided against the State. It held that the term "sale of goods" in the Government of India Act had the same meaning as in the Indian Sale of Goods Act and consequently the State legislature had no power to extend the meaning of the term by definition.

The State appealed to the Supreme Court against this decision. It was contended by the appellant that authority had been given to the legislature of a State to enact laws with respect to "sale of goods" by Entry 48, List II, of the Seventh Schedule of the Government of India Act. This provision, which confers legislative powers, should be construed liberally and not in a narrow and technical sense, according to the appellant. If such a construction was placed on the term "sale of goods" the laws subjecting building materials used in works contracts to sales tax must be held valid.

The respondents on the other hand contended that the expression "sale of goods" was a term of well-recognized legal import in law and in the legislative practice relating to that topic in England and India and it must be interpreted in Entry 48 as having the same meaning as in the Sale of Goods Act, 1930. On this construction it was urged that the several enactments of the respective State legislatures had given the term a meaning wider than that contemplated in the Government of India Act.

On this issue there had been sharp conflict of opinion among the several High Courts, with the High Courts of Nagpur, Rajasthan, Mysore and Kerala in favour of the validity of the legislation and the High Courts of Madras and Hyderabad against it.

The Supreme Court examined the meaning of the term "sale" as understood in legal parlance and also as used in popular language. It said :

According to the law both in England and India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which of course presupposes capacity to contract, that it must be supported by consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale.

In the case of a building contract the Court held that "the agreement between the parties is that the contractor should construct a building according to the specifications and receive payment as provided." There was in such an agreement neither a contract to sell the materials used in the construction, nor did the property pass as movables. "It is therefore impossible to maintain that there is implicit in a building contract a sale of materials as understood in law." The Court said :

The expression "sale of goods" in Entry 48 of the Government of India Act is a term of law, its essential ingredients being agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the present case, one, entire, and indivisible—and that is its norm—there is no sale of goods and it is not within the competence of the provincial legislature under Entry 43 to impose a tax on the supply of the materials used in such a contract treating it as a sale.

In view of this conclusion the imposition of sales tax on the materials used in a building contract could not be included in the assessable turnover of a dealer and provisions to this effect in the Madras General Sales Act were ultra vires.

Similar provisions in the enactments of other States will also be affected by this decision with the consequence

that no sales tax can be levied by these States on similar transactions.

Madhya Pradesh Act

On the lines of the above judgment, the Constitution Bench of the Supreme Court on 3rd April declared invalid the provisions of the Central Provinces and Berar Sales Tax 1947, whereby sales tax had been imposed on the value of materials used in a building contract.

The Court gave this decision in the appeals preferred by the Madhya Pradesh Contractors' Association, the Jabalpur Contractors' Association and Pandit Banarasi Das Bhanot against the judgment of the Nagpur High Court which had held against them on the powers of the legislature to tax a works contract. The Supreme Court held that under Entry 48 the State legislature could impose a tax on the sale of goods, and it could not tax a transaction and assume such a power by an artificial definition in an enactment whereby what in fact did not amount to a "sale of goods" was given that name. Mr. Justice Aiyar, who delivered the judgment, said that in a building contract there was no sale of materials as such and that it was therefore ultra vires of the State legislature to impose tax on the supply of materials. The clauses of the C. P. and Berar Sales Tax Act which purported to bring the material used in a building contract within the ambit of sales tax were accordingly held to be invalid. His Lordship, however, made clear that prohibition against the imposition of tax was only in respect of contracts which were single and indivisible and not of contracts which were a combination of distinct contracts for the sale of material and for work.

The appellants also challenged the validity of the notification issued by the Government of Madhya Pradesh on 18th September 1950 under sec. 6 (2) of the Act withdrawing the exemption from sales tax granted to goods sold to the State Government, on which question also the Nagpur High Court had held against the appellants.

It was argued that the power vested by the section enabling the State Government to levy a tax on certain goods which were excluded from the tax under the schedule to the Act was ultra vires as it constituted an excessive delegation of legislative power. Counsel for the appellants submitted that it was a matter of legislative policy to determine whether exemption should be granted from sales tax under the Act, and the decision on this question must be taken by the legislature and could not be left to the determination of an outside authority.

It was held by the Court that the delegation in question did not relate to any essential feature of the law and did not involve any change of policy. It said :

We are therefore of the opinion that the power conferred on the State Government by sec. 6 (2) to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic and is not unconstitutional.

Sales Tax in Delhi

Following the line of reasoning in the above two cases, the Supreme Court on 7th April held the provisions of the East Punjab General Sales Tax Act 1948 to be ultra vires, under which Messrs. Peare Lal Hari Singh, building contractors of the Punjab, were called upon to produce

their account books for assessment of sales tax on the value of the materials used in construction work, treating the materials supplied as a "sale of goods." The petition of the contractors was allowed.

However, on the same day as above, the Supreme Court upheld the validity of the provisions of the Bengal Finance (Sales Tax) Act as extended to Delhi, levying sales tax on building materials used in construction under a works contract and dismissed the petitions filed by building contractors of Delhi.

The conclusion of the Supreme Court in this case is the reverse of the decision in the case of Messrs. Gannon Dunkerley in which similar provisions of the Madras General Sales Tax Act were declared ultra vires.

The difference in the two judgments is based on the fact that the Madras Act was enacted by the State legislature, which has no competence to impose a tax on transactions other than a "sale of goods," whereas the measure in force in Delhi was made applicable by Parliament, which is empowered to tax such transactions under the Constitution.

Delhi emerged as a Part C State with the coming into force of the Constitution and under Art. 246 Parliament was empowered to make laws regarding any matter for any part of the territory of India not included in Part A and Part B States. By virtue of the "Part C States (Laws) Act" which provided that Parliament could extend by notification any enactment in force in any Part A State to a Part C State. Acting under this latter Act, the Bengal Finance Act (Sales Tax) 1941 was extended to Delhi as from November 1, 1951.

The petitioners were called upon to pay sales tax on the building materials used by them in their contracts. The petitioners relied on the decision in Messrs. Gannon Dunkerley wherein similar provisions had been held ultra vires, and further contended that since the Bengal legislature could not enact any such provisions validly, they could not be deemed to be in force in Bengal. On this ground it was urged that since the provisions did not exist in Bengal, Parliament could not extend them.

The Solicitor-General stated in reply that the decision in Messrs. Gannon Dunkerley did not apply to the present case. It was submitted that the Delhi law was not enacted by a State legislature but had been extended by Parliament under Art. 246 (4) of the Constitution, and there was no bar on Parliament making a law to tax transactions other than a "sale of goods."

The Supreme Court upheld the contention of the Solicitor-General that the decision in the Gannon Dunkerley petition did not apply to the present one. The Court further held that the power of Parliament to extend any enactment in force in a Part A State must be construed to mean the power to make applicable any statute which was in operation in a Part A State, irrespective of the validity of its provisions with respect to that State.

The Court also observed that in any case Parliament had power to extend a law to a Part C State after modification, and it could also have made these provisions applicable by way of such modification.

The Court accordingly stated that "whether we view the notification as one extending a subsisting statute to Delhi or as extending it with modifications, so far as the impugned provisions are concerned, they are intra vires."

Hyderabad Sales Tax Act

The question whether under the Hyderabad General Sales Tax Act 1950 a dealer buying groundnuts from an agriculturist is liable to pay tax on the purchase of the goods was decided by the Constitution Bench of the Supreme Court in favour of the State of Hyderabad by a majority judgment delivered on 3rd April in the appeal by Kondurai Bachiraja Lingam challenging the validity of such a levy.

The appellant was the vice-president of the Warangal Oil Mill Owners' Association. Its members in the course of their business purchased groundnuts for the purpose of converting them into oil and trading in it. Soon after the Sales Tax Act came into force in May 1950, the Sales Tax Officer informed the members of the Association that they would have to pay tax on the purchase of groundnuts by them.

The members took the stand that they were entitled to collect the tax from the persons from whom they bought the groundnuts, but the Marketing Superintendent informed them that they should not collect any tax from the agriculturist, and this view was confirmed by the Commissioner of Sales Tax, Hyderabad. Following this, the Sales Tax Officer made a demand on them for the payment of the tax, whereupon the appellants filed a petition in the High Court for orders to restrain the Government from proceeding in the matter of levying the tax.

When this petition was dismissed the appellants came to the Supreme Court. It was argued by counsel for the appellants that a purchase from an agriculturist was outside the scope of the Act, that in any case the appellants were entitled to collect the tax from the persons from whom they purchased the groundnuts, and since the Government had prevented them from doing so, it could not collect the tax from them.

Mr. Justice Sarkar who delivered the majority judgment said that they were unable to agree that secs. 3 and 4 of the Act did not impose a tax on purchase by a dealer from an agriculturist. Under these sections, His Lordship said, the tax was on the turnover, that was to say, the aggregate amount for which the goods were either bought or sold.

The result, therefore, was, Mr. Justice Sarkar said, that under the Act tax was leviable on a sale either on the seller or on the buyer but not on both and it had been provided by Rule 5 (2) that in case of sale of groundnuts the buyer should pay the tax provided, of course, he was a dealer. In respect of groundnuts, therefore, the tax was payable by a dealer on his turnover of purchases of these goods. The seller of these goods, whether he was an agriculturist or not, was not in any case, as the Act and Rules stood, liable to pay tax.

Mr. Justice Sarkar observed that under the Act a dealer was liable to pay the tax and an agriculturist, not being a dealer, had no such liability. A dealer, therefore, had no right to collect any tax from an agriculturist under the Act.

It was also argued that groundnuts had been declared an essential commodity and, therefore, under Art. 276(3) of the Constitution no tax was leviable in respect of it. His Lordship, rejecting the contention, said that the law of Parliament, declaring goods to be essential contemplated by Art. 286 (3), was a law making a declaration for the purposes of clause (3). An Act like the Essential Supplies (Temporary Powers) Act, 1945, which declared certain goods essential for its own purposes, was not a law within the meaning of the provision in the Constitution.

The appeal was dismissed.

Mr. Justice Bose delivered a dissenting judgment and expressed himself in favour of allowing the appeal.

Levy of Sales Tax on Commission Agents SUPREME COURT SETS ASIDE ASSESSMENT

Messrs. Mahadaya Prem Chandra, who were carrying on the business of selling woollen and cotton fabrics partly on their own account and partly as commission agents of manufactures in Kanpur, in West Bengal, etc., included in their return submitted to the sales tax authorities for the year 1951-52 the turnover of their own business and did not include the transactions from which they had received commission. When the Commercial Tax Officer, Calcutta, came to know of this, he, after obtaining the opinion of the Assistant Commissioner, passed an order assessing the turnover relating to the sale of goods on which the firm, registered as dealers in West Bengal, had earned commission. The firm filed an appeal from this order in the Supreme Court.

On 15th April the Supreme Court allowed the appeal and set aside the assessment made by the Commercial Tax Officer in respect of the goods sold by the firm in West Bengal as commission agents, which were of the total value of over six lakhs of rupees. After examining the provisions of the Bengal Finance (Sales Tax) Act, 1941 the Court stated that the appellants could be assessed to sales tax only if they were covered by the term "dealer" in the enactment, and also if the dealing in question could be covered by the definition of the term "turnover" in sec. 2. The Court found that in fact the sales in question were made by the principals, and the appellants did not carry on the business of selling the disputed goods in West Bengal, and consequently they were not dealers.

On the same reasoning the Court held that the "sale price of the goods thus delivered by the mills to the respective customers in West Bengal could not be included in the gross turnover of the appellants." On these conclusions the Supreme Court stated that in regard to the disputed transactions the appellants were not liable to pay sales tax.

They found that in the matter of assessing the appellants the Commercial Tax Officer had not exercised his own judgment and had followed faithfully the instructions conveyed to him by the Assistant Commissioner, without giving the appellants an opportunity to meet the points urged against them. Mr. Justice Bhagwati, delivering the judgment of the Court, said:

The whole procedure was contrary to the principles of natural justice. The procedure was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the Sales Tax Department concerned.

Thus, according to the judgment of the Court, a commission agent who neither effects the sale of goods of his principals nor receives the sale proceeds is not liable to assessment for sales tax under the provisions of the West Bengal statute.

Levy by a State on Inter-State Sales SET ASIDE BY THE SUPREME COURT

Messrs. B. C. Patel and Co., a firm carrying on business in Kendu leaves, were assessed to sale tax by the Sales Tax Officer of Cuttack in respect of sales of Kendu

leaves for the five quarters from 30th September 1949 to 31st December 1950. The admitted position was that the goods in question were delivered for consumption at various places outside Orissa, but the authorities proceeded on the basis that all the sales took place in Orissa even though the goods were delivered for consumption outside the State. The liability of the firm was alleged to have arisen under the provisions of the Orissa Sales Tax Act 1947, and notification by the provincial Government dated March 1, 1949. By this notification every dealer with a gross turnover exceeding Rs. 5,000 per annum commencing from March 31, 1949, was made liable to sales tax.

The assessee firm challenged the orders of assessment in the Orissa High Court, which quashed the order. Thereupon the Sales Tax Officer preferred an appeal in the Supreme Court against the High Court's judgment.

On 5th April the Constitution Bench of the Supreme Court allowed the appeal in part. It held by a majority that the assessment orders were valid in regard to the two quarters of the pre-Constitution period and allowed the appeal to that extent. But it dismissed the appeal in regard to the assessment for the three post-Constitution quarters, holding that they were contrary to Art. 236 (1) of the Constitution and sec. 30 (1) (a) (1) of Orissa Sales Tax Act.

All-India Civil Liberties Conference

Inaugural Address of

Acharya J. B. Kripalani, M. P.

Acharya J. B. Kripalani, for a good many years the General Secretary of the Congress and once its President, inaugurated the Conference in a speech which because of his illness had to be read for him. Brief extracts from the speech are given below. He said:

I consider civil liberties as the cornerstone of democracy. There can be no democracy without proper safeguards against State interference with certain fundamental rights of the individual. Democracy does not merely mean putting into power a set of people or a party for a number of years through a free vote. Democracy is a continuing process. It is truly said that "eternal vigilance is the price of liberty." This vigilance means vigilance to safeguard the fundamental rights of the people, such as the rights to free speech, free press and free association. It also means that fair and impartial justice should be meted out to all citizens, irrespective of caste, creed, class, colour and sex.

Referring to the establishment, by Mr. Nehru as Congress leader, of the Civil Liberties Union in 1937 "when India was under the iron heel of foreign domination," Acharya Kripalani said:

But soon after the attainment of Provincial Autonomy, the Congress as an organization lost interest in the matter. Evidently, it was thought that only under a foreign rule is the freedom of the individual imperilled, and that native rule, specially if it has the democratic form, will not deny the people their liberties.

However, this is not true. Mere democratic set-up may be as inimical to the freedom of the individual as any foreign rule. The history of mankind shows that people have suffered more, and for longer periods, from the tyranny of native than foreign rulers. Neither, therefore, national freedom nor formal democracy can

guarantee civil liberties. Hence the need for an organization for safeguarding the same.

(Congress politicians in their speeches criticize the judiciary, which is a dangerous thing.) Another thing is even more dangerous. It is said that, in a backward country like India, the rules of Anglo-Saxon jurisprudence cannot be safely applied. And this is done by learned lawyers who have practised their profession under the advantage and wholesome restrictions of this scientific jurisprudence. Now that under the new dispensation they have turned into pure party politicians, they forget their past. To me it appears that if anything good was left by British rule in India, it was an impartial judiciary, trained in the traditions of a freedom-loving people.

The question then arises, why do the Congress politicians do the very things that they condemned not so long ago, and against which the people of India waged a relentless war, albeit non-violent? We may not forget that the very movement for national independence started with our agitation against the Rowlatt bills which deprived the citizen of his fundamental rights of free speech and free and fair trial.

It is sad to contemplate that in history those who have resisted tyranny forget their former sufferings when they themselves come into power and heap them upon those who are unfortunately placed under them. It is the case of the oppressed daughter-in-law, who, when she in her turn becomes a mother-in-law, behaves in the same tyrannical way. But a big national organization cannot be charged with such petty failings. There must be deeper and more weighty reasons.

To me it appears that having lost its idealism and its moral standing, like every authority that lacks these, the Congress relies not upon argument, reason, persuasion and conversion, but upon force and repression. If it were not so, we would not have such frequent lathi-charges and firings on peaceful demonstrators, who can never possibly threaten the authority of a mighty Government or imperil the unity of the country or the safety of the State.

I would like to remind Congressmen of the words of a learned Judge of the Supreme court of the U. S. A. [Mr. Justice Brandeis in *Whitney v. California*, 274 U. S. 357 (1927)], addressed to his countrymen. He said:

Those who won our independence by revolution were not cowards. They did not fear revolutionary change. They did not exalt order at the cost of liberty. If there be time to expose, through discussion, the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech and not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such in my opinion is the command of the Constitution.

Not the bad tendency, but clear and imminent danger must justify the deprivation of civil liberties and fundamental rights of the citizen. Not the nervousness of

authority intoxicated by power, but cool reason and a judicious mind must decide the issue.

The Servants of India Society deserve the thanks of the people that they have so far kept the embers of the (Civil Liberties) Union alive. I hope they will continue to feed them till the object is achieved and the people of India enjoy the democratic liberties for which they fought their good fight against foreign domination. Jai Hind!

Sir Mirza Ismail's Message

A large number of messages were received from prominent leaders wishing success to the Conference. Out of these only the one sent by Sir Mirza Ismail, former Dewan of Mysore State, is given here. Making a strong appeal to the Government of India for the repeal of repressive laws, Sir Mirza said:

It is certainly unfortunate that India should have so many repressive laws on its statute book, not only those enacted in the British days but new ones in addition. Frankly, as an old bureaucrat, I cannot say that they were not called for, but perhaps some at least could have been avoided. A wise, benevolent and prudent administration manages its affairs in such a way as to avoid the necessity of resorting to repressive measures. There is no human problem which, broadly speaking, does not admit of a reasonably satisfactory solution. It is to be hoped that it may be possible before long for the Government, in co-operation with the leaders of public opinion in the country, to repeal the repressive laws. No Government, which wishes to be regarded as an enlightened one, can be proud of itself or can really be happy so long as a single repressive law disfigures its statute book.

RESOLUTIONS

The following resolutions were passed by the All-India Civil Liberties Conference at its sixth session held at Ambala on 26th and 27th April 1958.

1. — Obituary

This Conference mourns the loss by death of three veteran leaders of the civil liberties movement — Messrs. N. M. Joshi, K. G. Sivaswamy and Jamnadas Mehta — since its last session in Cuttack in 1954.

Mr. Joshi was among the pioneers of the movement. He was one of the active supporters of the Indian Civil Liberties Union founded by Mr. Jawaharlal Nehru and was throughout the Secretary of its Bombay Branch, which continued its activity even after the parent body had become dormant. He was one of the founders of the All-India Civil Liberties Conference and served the institution with the greatest zeal and devotion as a Vice-President. He organized the fourth session of the Conference in Bombay in 1952 and presided over the Punjab Civil Liberties Conference in 1950. The inspiring quality of his leadership and the remarkable driving power he possessed helped the movement greatly to be ever watchful in safe-

guarding the civil liberties of the public. His death has left a void which it is almost impossible to fill.

Mr. Sivaswamy organized the first session of the All-India Civil Liberties Conference in Madras in 1949 and was since then the Organizing Secretary of its executive council. He was unsparing in his labours for the movement and contributed materially to its activities. Much was expected of him in the way of organization after he was free from the heavy public commitments he had latterly undertaken, but his premature death has unfortunately put an end to all those expectations.

Mr. Jamnadas Mehta had become physically incapable of much active work latterly but took deep interest in civil liberties. The catholicity of his outlook was an example to many of his co-workers. Himself a fervent adherent of one school of thought in politics, he always stood up for preserving the civil liberties of all, irrespective of their political affiliations.

Moved from the Chair.

2. — The Punjab Press Act

(1) The Punjab Government, when its language formula aroused widespread discontent in the State, first started enforcing pre-censorship orders under sec. 144, Cr. P. Code, on newspapers voicing opposition to its formula, in disregard of the recommendation made by the Press Laws Enquiry Committee and supported by the Press Commission to the effect that this section should not be made applicable to the press. Two newspapers, against which such orders were issued, filed writ petitions in the Punjab High Court challenging the pre-censorship orders passed against them under the section, and although these applications became infructuous because by the time the matter came up for decision in the High Court the orders had already expired, the High Court made observations which clearly showed that if the orders were still in operation it would have declared them invalid and improper.

(2) The Government therefore proceeded in 1956 by enacting special legislation to curb the press. The Punjab Special Powers (Press) Act was passed, which in its scope went much farther than what the Government had previously contemplated doing and had done under sec. 144. It not only permitted the Government or any of its officials so authorized to impose pre-censorship on newspapers (and that too without limit of time whereas such orders made under sec. 144 could be in force only for two months), but it permitted them, at their sole discretion, to prohibit publication altogether of either comments or news on certain subjects or a class of subjects, to prohibit the entry into Punjab of newspapers published outside Punjab, and also to require newspapers to insert in their columns matter which the Government or any official may direct them to publish. The provision forbidding circulation of outside newspapers in Punjab

was in the Act as originally passed without limit of time like the provision authorizing imposition of censorship, but because of the decision of the Supreme Court in the *Virendra v. the State of Punjab* case it was later amended so as to limit the duration of orders banning entry of newspapers into Punjab to two months at a time.

(3) Legislation of this kind imposing censorship of news and comments prior to their publication, totally forbidding publication of such news and comments and banning the entry of newspapers into a State is legislation that only totalitarian countries with no pretence of democracy can possibly adopt. But even in such countries no compulsion on newspapers to publish matter of Government's choice is ever attempted. It is clear that the Act amounts to a severe curtailment of the freedom of the press at the sweet will of the authorities.

(4) The Act met with stern opposition in the legislature, not only from members of the Opposition and independent members, but also from some members of the Congress Party which for the moment is in control of the State. They all appealed to Government to drop the Bill providing for preventive measures being applied to the press and instead to proceed against newspapers fomenting communal antagonism and creating public disorder under sec. 153-A, I. P. C., which gives ample powers to the Government to punish newspapers which may engage in such deplorable activities. But the Government was obdurate and placed the Act on the statute book, thus showing how little is the value which it attaches either to democracy or to a free press, which is the pre-condition of a stable and properly functioning democratic State.

(5) It is to be noted that the Act is not temporary, but is a permanent piece of legislation to be put into force as long as the Government chooses to keep it on the statute book. Further, it is to be noted that all such State legislation is in complete violation of the assurances given by the Union Government when Article 19 (2) of the Constitution was amended, vastly enlarging the scope of restrictions which could validly be imposed on the press, to the effect that all legislation affecting the freedom of the press would either be passed by Parliament alone to the exclusion of all State legislatures or would be subject to the assent of the President of India if passed by State legislatures. This shows that the Central Government must also share responsibility with the Local Government for the indelible stigma which the Punjab Press Act puts on the good name of Punjab and the whole country.

Moved by Mr. Jagannath Kaushal.

Seconded by Mr. N. S. Mani.

3.—Supreme Court's Judgment IN A PUNJAB PRESS ACT CASE

(1) This Conference, with all due deference to the authority of the highest judicial tribunal in the land,

desires to voice its sense of disappointment at the judgment delivered in the recent *Virendra v. State of Punjab* declaring valid sec. 2 of the Punjab Special Powers (Press) Act 1955, which authorizes, among other things, prohibition of publication of newspapers.

(2) All persons who believe in basic civil liberties had expected that, however sweeping were the restrictions which the amendment of Article 19 (2) of the Constitution allowed the legislatures to impose on the freedom of the press, restrictions at all events like those of pre-censorship and total banning of publication, if sought to be imposed at the sole will and pleasure of officials, would be effectively countered by High Courts and the Supreme Court which would hold laws vesting such absolute discretionary power in the Governments or their agents to be invalid, on the ground that restrictions of this character and imposed in these conditions could not be held reasonable even under the amended Article 19 (2). But the Supreme Court's judgment in the above-mentioned case has given a rude shock to all who have faith in democracy as it purports to make the legislative judgment supreme.

(3) The Punjab High Court's judgment in the "Pratap" case, decided on 27th August 1956, in regard to the application of sec. 144, Cr. P. C., imposing pre-censorship on two newspapers, made a correct approach to the problem. Instead of letting the Punjab Government exercise its power of interfering with the press on the subjective satisfaction of itself or its officials as to the necessity of interference, the Punjab High Court, in its observations concerning the principles to be followed in judging of infringements of the right to freedom of expression, indicated that a close scrutiny must be made of the circumstances in which any such infringements are asserted, saying that the "clear and present danger" test should be applied in such cases—a test invariably applied in the United States and one the application of which in India as a rule of reason was favoured by the Press Commission. It emphasised further that, in considering any restrictions on freedom of expression, it is the nature of the fundamental right to be safeguarded rather than the restrictions to be imposed thereon that must primarily be considered by the courts, and thus gave in effect a preferred status to the right throwing the burden of proving the reasonableness and therefore the validity of the restrictions, as required by a showing of clear and present danger, on the authorities imposing them.

(4) In the *Virendra v. the State of Punjab* case, however, the Supreme Court almost propounded a doctrine of judicial disability in the matter of determining the propriety and necessity of action abridging or abolishing the right of free expression that might be taken by officials. Their Lordships said :

The Court is wholly unsuited to gauge the seriousness of the situation, . . . Therefore, the determination

of the time and the extent to which restrictions should be imposed must be left to the judgment and discretion of the State Government. The conferment of such wide powers to be exercised on the subjective satisfaction of the Government or its delegate as to the necessity for its exercise... cannot be regarded as anything but the imposition of permissible reasonable restrictions. ... To make the exercise of the powers justiciable and subject to judicial scrutiny will defeat the very purpose of the enactment.

The Court did not merely concede to the Government the right to issue initial orders for prohibiting publication at its sole subjective discretion but virtually also left to its judgment the final determination of the reasonableness or otherwise of those orders. It did not in terms renounce its competence to assess by objective tests the necessity and therefore the reasonableness of enforcing the orders; but the only inquiry which the judgment discloses that it undertook was about the good faith of the authority who enforced the orders.

(5) The Conference is of opinion that the courts in India should insist upon a necessity for prohibition of publication being clearly made out and it views with apprehension the result which would inevitably follow if they were to follow a policy of self-abnegation, the result, viz., that whenever any mass agitation arises on any question dividing the people into opposite camps, a Government could clamp on the press not only censorship but total banning of publication if only there is a law permitting it, without the elementary safeguard that the judiciary would check such a legislative infringement of the people's basic right, enshrined in the Constitution, of freely expressing their views on any question of public importance.

Moved by Mr. R. V. S. Mani.

Seconded by Mr. Shri Ram Sharma.

4.—Amended Article 19 (2)

(1) This Conference reiterates the demand made in its Bombay and Cuttack sessions for the cancellation of the three sweeping restrictions added by the First Constitution Amendment Act of 1951 to Article 19 (2), which have the effect of rendering nugatory the fundamental right to freedom of speech and expression.

(2) But for the amendment of the Article, the Press Act of 1952 could not have been enacted as a valid piece of legislation, and although this Act has now been allowed to lapse, laws more drastic than the Central Press Act, e g., the Punjab Special Powers (Press) Act, have been adopted and enforced in the States, without any check from the Union Government.

(3) Reactionary enactments like the Punjab Press Act, which are possible only because of the amendment of Article 19 (2), are destructive of the freedom of the press and constitute a blot not only on the States con-

cerned but on India as a whole. The only certain remedy to wipe off the disgrace is to deprive all Governments of the constitutional power to enact legislation of this kind by deleting from Article 19 (2) the restrictions inserted by the amendment.

Moved by Mr. Inder Sen.

Seconded by Mr. Babu Ram Sharma.

5.—Detention without Trial

(1) This Conference greatly deplores the extension of the life of the Preventive Detention Act for a term of three years. The present extension suggests that the Act is apparently intended by the Government to be a permanent piece of legislation. The remarks made by the spokesmen of the Government in pleading for the renewal of the Act make it clear that the Government does not yet realize that personal freedom is the most fundamental of human rights and that detention without trial is totally inconsistent with the basic concept of a truly democratic State.

(2) The Conference reaffirms the stand which it has taken in its previous sessions and which the All-India Civil Liberties Council stated in its memorandum to the U. N. Committee to Study Arbitrary Arrest, Detention and Exile, viz., that Personal Freedom must remain inviolate in all circumstances which are not of so grave nature as to constitute an emergency such as is contemplated in Article 352 of the Constitution, as it is held to be inviolate by virtue of a constitutional provision in the U. S. A. and by traditional policy in Britain and France and in all other democratic countries.

(3) Particularly objectionable is the wide scope of the Preventive Detention Act. There cannot be the slightest justification for making this most drastic and undemocratic weapon available for use against those who, in the opinion of executive officials, are likely to endanger public order. An illustration of the reckless manner in which Governments are capable of exercising the power to detain persons suspected of disturbing the public peace is afforded by more than a hundred persons being detained in Punjab on flimsy grounds while the language agitation was rife in that State. Of these more than eighty had eventually to be released as the result of the review of their cases either by the Advisory Board or the High Court, most of them, however, after undergoing what was proved to be unjust detention for a month and a half or two months. These detentions, which caused so much unnecessary hardship, only enforce the dictum of Benjamin Franklin that "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

Moved by Dr. Kali Charan.

Seconded by Sardar Amar Singh Ambalvi.

Supported by Mr. Tilak Raj Bhasin.

Mr. Shri Ram Sharma.

6.— Public Safety Acts

Most of the States in India still retain on their statute books Public Safety Acts conferring the widest power on the Executive to curtail the civil rights of citizens in various fields of activity. In Britain extraordinary power of this kind was assumed only in some of these fields during the last World War, but it was understood there that this power could be exercised only while the War lasted, and in fact it was surrendered, like the power to detain persons under Regulation 18-B, immediately after the termination of the War. In India, on the contrary, even more extensive power was taken under the Public Safety Acts in peace-time. There was no justification then to take this power, and there is much less justification now to hold on to it for more than ten years in succession. This Conference demands that all these special laws be repealed forthwith so that the country would once again be governed under the ordinary law.

Moved by Mr. Shri Ram Sharma.

Seconded by Mr. Lachhman Dass.

7.— Curtailment of Fundamental Rights in Kashmir State

(1) This Conference records its emphatic opinion that the circumscription of Fundamental Rights as applicable to the Kashmir State, which the Constitution allows under Article 370 by providing for "exceptions" and "modifications" in them, is entirely unjustifiable, because by their very definition Fundamental Human Rights should be applicable to all persons irrespective of what State they belong to.

(2) The Cuttack session of the Conference held in April 1954 called attention to the curtailment in the State of Kashmir of all the "Rights to Freedom" embodied in Article 19, but the curtailment made possible by the President's Constitution (Application to Jammu and Kashmir) Order of 14th May 1954 goes much farther. Some of the more significant departures are noted below.

(3) Freedom of Speech, etc.—(i) Clause (1) of Article 19 enumerates the Rights to Freedom, like freedom of speech and expression, freedom of peaceable assembly and freedom of association, and the subsequent Clauses specify grounds of permissible restriction of these freedoms. For Kashmir State the additional ground of restriction which the President's Order permits, for five years, is "the security of the State."

(ii) But a more serious abridgment of these Rights to Freedom results from the provision in the President's Order to the effect that the "reasonable restrictions" permitted to be imposed on the exercise of the rights are to be construed, for the State of Kashmir, for five years, not as restrictions judged to be reasonable by courts of law, but as those which the Kashmir legislature may consider to be reasonable. As the Cuttack resolution said, "The result of incorporating this provision in the Constitution is that these rights become non-justiciable and cease in effect to be fundamental rights."

Preventive Detention.—(i) Similarly, the President's Order adds a Clause to Article 35 which provides that no law of Kashmir State with respect to preventive detention shall, for five years, be void even if it be inconsistent with the commands of the Constitution. In pursuance of this provision the Kashmir legislature adopted a law which in sec. 8 empowers the Kashmir Government to withhold from a detenu the grounds of detention in certain cases, contrary to the provision of Article 22 (5), which is mandatory for all other parts of India, viz., the provision that the detaining authority "shall, as soon as may be, communicate to such person the ground on which the order has been made." Referring to this section, Mr. Justice Shahmiri of the Kashmir High Court was led to observe in a case decided on 2nd August 1955 that Kashmir's detention law "is much more stringent than any such law in any other Indian State."

(ii) The above provision is at least temporary, to remain in operation for five years from the commencement of the President's Order; but by a permanent "modification" of the Constitution personal liberty, very meagre as it is in the rest of India, is still further watered down in the State of Kashmir. While Article 22 permits detention without trial, it also affords some little "protection," as the Constitution itself calls it, in that, if Parliament by law provides any safeguard, no State legislature can take it away. For instance, Parliament has fixed the maximum period of detention at one year, and it is binding on all States, but to this Kashmir is an exception. It can hold a person in detention for any length of time unless the legislature of Kashmir itself prescribes this or any other maximum period according to its will and pleasure.

Public Employment, etc.—Some other provisions in the Constitution have been so modified as to diminish the scope of fundamental rights in Kashmir State, e. g., equality of opportunity in public employment. Similarly, contrary to what could be validly done in the remaining portions of India, Kashmir State has power to confer special rights and privileges upon so-called "permanent residents" and impose restrictions upon others in respect of a great many matters.

(4) The Conference reiterates its view that Fundamental Rights ought to be identical everywhere in India.

Moved by Mr. Tilak Raj Bhasin.

Seconded by Dr. Surendra Nath Mittal.

Supported by Sardar Amar Singh Ambalvi.

8.— The Press Council

(1) In accordance with the recommendation of the Press Commission, the Government of India introduced in the last session of Parliament a bill for the establishment of a Press Council, which unlike its counterpart in Britain is to be a statutory body with statutory power to make

inquiries and compel the appearance of offending newspapers before it. The Press Commission was of the view that without such "legal authority" the Press Council would be largely ineffective. In the Rajya Sabha objection was taken to the proposed composition of the Council involving the appointment of some Government nominees and to the compulsory disclosure of the newspapers' sources of information which must always remain confidential. The Government, apparently impressed with the cogency of the contentions, has dropped the Bill for the present and probably intends to bring up an improved Bill later.

(2) This Conference is strongly of the opinion that the Government should give up altogether the idea of any legislation on this subject. While it agrees that it is highly desirable that the Press should set up an organization which, by exercising its moral authority on erring journalists, would strive to improve the general standard of newspapers, it believes that such an organization ought to be purely voluntary, having no connection with the Government in any way.

(3) The Press Council Bill, which temporarily has been put on the shelf, provided that the Council should be financed by the Government for carrying on its functions and should work within the ambit of the rules framed by the Government. Any subsequent version of the Bill must also retain such close links with the Government, as is inevitable in the case of a Council created by statute. What is required is a Council created by the Press itself, consisting entirely of men engaged in journalism, working under its own rules and meeting its expenditure by subscriptions paid by its constituent units without reference to Government in any of these matters, as is the British Press Council. A statutory body would necessarily bring in the Government, which in its turn would pave the way for direct or indirect interference on the part of the Government with the freedom of the Press, which it is the primary duty of the Press to preserve in full.

(4) It is for this reason that the British Press Commission did not recommend a statutory Press Council, and that the British Press Council which the Press itself has constituted does not desire to be invested with any statutory powers, knowing that its moral influence as "a sort of court of honour" will be all the greater because of the lack of legal powers. Press Associations in the United States too rigorously keep out from their organization and working Government control and influence—and even help—in every form, in the interest of the liberty of the Press. The Conference earnestly requests our Press to do the same. As the International Press Institute, Zurich, says: "It is for the Press itself to fashion its own future. It alone can apply the brake to pressures it is subjected to on the part of the public authorities on the one hand, by establishing its true status and demanding from its members a high sense

of responsibility, and on the other by jealously defending its independence."

Moved by Mr. S. G. Vaze.

Seconded by Sardar Hari Singh Jachak.

Supported by Dewan Alakh Dhari.

„ *Mr. Tilak Raj Bhasin.*

„ *Mr. Roop Chand.*

9.— Law of Seditious Libel

SECS. 124-A AND 153-A, I. P. C.

This Conference notes with satisfaction that the Press Commission, whose recommendations in regard to the freedom of the press are on the whole unfavourable, has recommended, following in this respect the recommendation of the Press Laws Inquiry Committee, to the effect that intention to disturb public order be made a necessary ingredient of the offence mentioned in these sections. The recommendation only amounts to bringing our law in this respect into accord with the law of England. In India and all other British colonies the law of seditious libel, which refers to both the offences, was in the same form as England's common law on the subject, but though by legal definition the offence of seditious libel in the British colonies was identical with that in England, there was a great deal of difference in the interpretation of the offence in the colonies on the one hand and in England on the other, and by giving effect to the Press Commission's recommendation on this subject the above sections of the Penal Code will be interpreted in India as the relevant provisions of the common law are interpreted in England. The Conference hopes that the Government will give early effect to it.

Moved by Mr. Jagannath Kaushal.

Seconded by Dr. Kali Charan.

10.— Administrative Tribunals

(1) The reported intention of the Union Government to set up a network of administrative tribunals for the speedy implementation of the Government's policies in various departments has naturally aroused much public concern, particularly because an essential feature of the proposal is stated to be to restrict, by an amendment of the Constitution, prerogative writs and other judicial remedies provided in the Constitution. Since at a recent seminar on Administrative Law the Attorney-General strongly advocated the preservation and extension of the citizen's right to judicial review, this Conference hopes that this most objectionable part of the proposal will in the end be dropped.

(2) It must be admitted that as the range of the State's concern for the welfare of its citizens increases, as it has in this country, the sphere of governmental activities must necessarily expand, giving rise to the establishment of new administrative agencies or boards whose decisions affect the personal rights of the individual citizen. But it is also universally admitted that this proliferation of administrative law often leads to many abuses, leaving the

citizens without any effective remedies, and the problem is how to make the administrative agencies amenable to the Rule of Law without weakening the structure itself. However great the need for efficient and expeditious administration may be, still greater is the need for an impartial assessment of the individual's claim and for the adequate protection of the rights which the Constitution has conferred on him. It is therefore of the utmost importance to secure, in the arrangements to be made for the creation of administrative agencies, that they do not threaten the essential condition of political freedom, viz., government under law.

(3) The recent Franks Committee and the earlier Donoughmore Committee (1929) of Britain have evolved certain principles as being applicable to administrative tribunals, which, the Conference hopes, will be observed in India. They may briefly be stated as follows:

(i) that these tribunals should not be regarded as part and parcel of the machinery of government, from which it follows that their members should not be appointed by or be members of departments which are themselves parties in cases before the tribunals;

(ii) that Parliament should always be reluctant to entrust judicial powers to tribunals and that it should never do so "in the absence of special considerations that make a tribunal more suitable";

(iii) that the tribunals should observe the principles of natural justice: i. e., a man should not be judge in his own cause; no party should be condemned unheard; each party should know in good time the case which he has to meet; and both parties should be given reasons for the decision which is finally reached; and

(iv) that the courts should have power to interfere with the exercise of judicial or quasi-judicial functions which does not conform to the rules of natural justice

(4) In the case of delegated legislation which can be declared ultra vires and invalid if it exceeds the limits prescribed by the enabling Act, a suggestion made by Mr. Bernard Schwartz in "Law and Executive in Britain" should be considered, viz., that the courts should have the power of considering whether the delegated legislation is reasonable, as is the case in the U. S. A. Mr. Schwartz has suggested that "the extension of the ultra vires doctrine to include the question of reasonableness is essential to maintenance of effective judicial control in an age of expanding Executive power."

(5) Above all, the Supreme Court's jurisdiction under Articles 52 and 136 must remain unimpaired.

Moved by Mr. N. S. Mani.

Seconded by Mr. Sukh Dev Bahl.

Supported by Mr. Shri Ram Sharma.

11.—Parliamentary Privilege

(1) The Bombay Legislative Assembly recently exercised its parliamentary privilege against the editor of a

daily Marathi newspaper, "Prabhat," for publishing an article counselling the party favoured by him to pursue a certain policy in the legislature. The Assembly, by virtue of Article 194(3) of the Constitution, used its contempt power on this occasion, according to the "Indian Civil Liberties Bulletin" of August 1957, not because it contained any libellous reflections either on the Speaker or the members of the Assembly, but because, in the opinion of the Committee of Privileges appointed to consider the article, the effect of adopting the policy recommended by the editor would tend to "lower the authority and dignity of the House in the estimation of the people."

(2) Without expressing an opinion as to whether or not the exercise of privilege in this particular case infringed upon the editor's right to freedom of the press, this Conference draws the attention of the authorities and the public to the grave discontent aroused in Britain by some recent cases of the exercise of parliamentary privilege there: in that it has resulted in a severe curtailment of the newspapers' right to free criticism.

(3) It is worthy of note in this connection that, in order to remedy this uncontrolled exercise of judicial power by the House of Commons, it was suggested in the "Times" of London recently that Parliament should give up the power of adjudicating on breach of privilege and transfer the jurisdiction in such cases to courts of law. It is also worthy of note that in the United States of America Congress has not this power. As Chief Justice Earl Warren said in the famous Watkins case decided on 17th June 1957, "Unlike the English practice, from the very outset the use of contempt power by the legislature was deemed subject to judicial review."

(4) In India probably the exercise of contempt power by the legislatures will be regarded as subject to the fundamental right to freedom of speech and expression embodied in Article 19(1), as in the "Blitz" case the Supreme Court held that an arrest executed in pursuance of the order of the U. P. legislature was subject to the fundamental right embodied in Article 22(2). Yet the matter requires to be put on an unshakable footing so that Article 19(1) will always override the enforcement by the Indian legislatures of the powers and privileges of the House of Commons, which is temporarily permitted by Articles 105 and 194.

(5) The Conference urges that, in defining the powers and privileges of the Indian legislatures, as contemplated by these Articles, care be taken so to define them and so to determine the manner of implementing them as not to restrict the basic right of the freedom of the press unduly.

Moved by Mr. Shri Ram Sharma.

Seconded by Mr. S. G. Vaze.

12. — Protection of Government Servants

Having regard to the various decisions in cases of Government servants, it appears that, in interpreting Article 31 (2) of the Constitution of India which lays down that no Government servant "shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him," emphasis has been laid on the words "holds a civil post" and the Article has been construed to afford protection against arbitrary reduction in rank, removal or dismissal from service only to those Government servants who hold civil posts as permanent servants. Therefore, the Article has been construed to mean that no protection against arbitrary reduction in rank, dismissal or removal is guaranteed to temporary or probationary, or officiating Government servants.

This Conference earnestly urges the Government of India that necessary legislation amending the Constitution should be effected to afford protection to all Government servants.

Moved by Comrade Gurbaksh Singh Diwan.

Seconded by Mr. R. V. S. Mani.

13.—Abuse of Power by the Police

The Conference views with serious concern the increase in the number of cases where third degree methods were used by the police in the investigation of crime and outrageous methods were employed for extracting confessions, and vindictive persecution of innocent people was launched and there was abuse of power by the police in the different States of India. A large number of such cases has come to the notice of civil liberties unions in the States.

Recently three cases of death by torture of suspected people have been reported in the Punjab State, which has caused much resentment among the people who hold civil liberties dear. Such behaviour by the police causes incalculable harassment to many innocent people and tends to bring the police administration into disrepute.

This Conference therefore urges upon the Government to appoint an independent commission of inquiry with wide powers to examine the afore-mentioned types of cases and similar objectionable activities of the police and to suggest ways and means of remedying the evil so as to make the guardians of law and order effective servants of the people.

Moved by Comrade Gurbaksh Singh Diwan.

Seconded by Dr. Kali Charan.

14. — Separation of Judicial & Executive Functions

(1) This Conference views with great dissatisfaction the half-hearted action taken by the Punjab Government

in the matter of the separation of the judiciary from the executive. Even in a few districts where such action was announced to have been taken in order to carry out the directive principles laid down in Article 50 of the Constitution, the so-called "judicial magistrates" were not transferred to the full control of the High Court. In fact in actual practice there is hardly any difference between these "judicial magistrates" and the executive magistrates, which leads one to doubt whether the Government is at all sincere in effecting the separation, which is an essential feature of a genuine democracy.

This Conference urges upon the Punjab Government to take effective and speedy steps to carry out the directive principles of State policy as laid down in Article 50 of the Constitution by, inter alia, (a) transferring the control of the magistrates entrusted with the trial of judicial cases to the High Court by the use of the provisions of Article 237 of the Constitution, (b) by effecting the aforesaid change in all the districts in the Punjab, and (c) by placing the prosecuting staff under the exclusive control of the Legal Remembrancer.

(2) A similar state of things prevails in several other States, and this Conference urges upon the Government of all such States to take speedy and effective measures to bring about a real separation of the judiciary from the executive.

Moved from the Chair.

15. — A.-I. C. L. Council

(1) This Conference appoints the following persons as office-bearers of the All-India Civil Liberties Council:

President : Mr. P. R. DAS

Working President : Mr. N. C. CHATTERJI

Vice-Presidents : Mr. JAYAPRAKASH NARAYAN

Dr. NARES CHANDRA SEN GUPTA

Mr. ATUL CHANDRA GUPTA

Secretary : Mr. R. V. S. MANI, M. A., LL. B.

Advocate, Supreme Court

Joint Secretary : Mr. S. G. VAZE

Asst. Secretary : Dr. R. G. KAKADE, M. A., LL. B., Ph. D.

(2) This Conference re-elects the present members of the Council and adds the following to them

1. PANDIT SHRI RAM SHARMA (Rohtak)

2. PANDIT JAGANNATH KAUSHAL (Ambala Cantt.)

3. LALA JAGAT NARAIN (Jullundur)

4. DEWAN ALAKH DHARI (Ambala Cantt.)

5. MR. JAI GOPAL (Yamunanagar)

6. MR. YAGYA DUTT SHARMA (Jullundur)

7. MR. C. B. AGARWALA (Delhi)

Moved by Mr. S. G. Vaze.

Seconded by Mr. D. V. Ambekar.