

The U.Kal. Civil Liberties Conference, Cuttack.

23rd and 24th December 1949.

Presidential address

of

P. R. Das.

(Retired high-court judge and Barrister, Patna.)

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I am grateful to you for asking me to preside over this Conference. I stated in my speech in Madras that the importance of conferences of this nature cannot be over-estimated, because it is necessary to state and restate the case of civil liberty over and over again and as often as it may be necessary. Yet, what is there to say to-day which has not been said over and over again by men more eminent than myself? We know that civil liberty is impossible except in a democratic form of Government. We know that a democratic form of Government is impossible except under Rule of Law. We know that there is no scope for Rule of Law unless the Constitution provides that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of law. It is obvious that a constitution which provides for absolutism cannot be a democratic constitution, and Rule of Law has no place in such a constitution.

There is no doubt whatever that the Constitution which has just been adopted by the Constituent Assembly does provide for absolutism. Enormous powers have been given to the executive governments to curtail civil liberty in every possible way at the discretion of these governments. Respect for the judiciary is the very basis of democracy; and yet there is little doubt that the executive governments have lost their faith in the judiciary. I would remind you of the speech which the Prime Minister of India delivered in the Constituent Assembly on the 10th of September last in connection with abolition of zamindaris. He said

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There is no doubt whatever that the Constitution which has just been adopted by the Constituent Assembly does provide for absolutism. Enormous powers have been given to the executive governments to curtail civil liberty in every possible way at the discretion of these governments. Respect for the judiciary is the very basis of democracy; and yet there is little doubt that the executive governments have lost their faith in the judiciary. I would remind you of the speech which the Prime Minister of India delivered in the Constituent Assembly on the 10th of September last in connection with abolition of zamindaris. He said

that he honoured the judges "within limits". He added, "no judge, no Supreme Court can make itself a third chamber. No Supreme Court, no judiciary can stand in judgment over the sovereign will of Parliament, representing the will of the entire community". I am not aware that any judge has ever claimed the right to convert the court into a third chamber or to stand in judgment over the sovereign will of Parliament. The judges have always claimed the right to decide whether a particular statute is within the power of the legislature; and, if so, to construe the statute. But no judge has ever put forward a claim that the court of law is a third chamber of correction. The Prime Minister has given a warning that the legislature must be supreme and must not be interfered with by the court of law in measures of social reform and that, if the judges do so, the appointing authority will begin to appoint judges of its own liking to see that it gets decisions in its own favour.

This speech was made when the Constituent Assembly was considering the celebrated clause 31 of the Constitution. That article provides that there should be no expropriation without payment of compensation; and no exception can be taken to the provision unless there is something else in the article. But the article also provides that if any Bill pending at the commencement of the Constitution before the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President, and has received his assent, then, notwithstanding anything in the Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provision as to compensation. This is clearly an attempt to oust the jurisdiction of the courts of law in matters which vitally affect the property rights of the subject; and this extraordinary provision had to be justified in the Constituent Assembly. So an attack was made by the Prime Minister on the honour and integrity of the judges with a threat that, if they do not behave well, the Prime Minister will appoint judges who will carry out his orders.

I venture to think that if a Viceroy of India had made a speech of this nature it would have been received with one hiss of indignation from one end of the country to the other. But, surprising as it may seem to you, the press in India has taken no exception to the sentiments expressed by the Prime Minister of India.

The Prime Minister of Bihar has recently referred to me in a speech which he delivered in the Legislative Assembly in support of the new Security Bill. He completely annihilated me by saying that I was making money while he was languishing in jail. The inference is that those who did not suffer in the country's cause must not claim the right to criticise the members of the Government at all. I plead guilty to the charge which the Prime Minister has brought against me. Under ordinary rules of the game, I must have the right to say what I think of the Prime Minister of Bihar. I have known him for many years, and I am prepared to affirm that there is no one in India to-day with a greater sense of duty. A life-long democrat, a serious student of political science, he takes no pleasure in depriving persons of personal liberty. I am willing to admit that he sincerely believes that the Security Act is absolutely necessary for the preservation of the State. I impute no motive to him; but I entirely differ from him as regards the policy which he is pursuing to-day at the dictation of the Central Government. He believes that the Communists are threatening the very existence of the State; but I have two witnesses of unimpeachable position against him on this point. My first witness is the Prime Minister of India, who, at a press conference in Ottawa on October 24, 1949, said: "Indian Communists had little more than mischief status but the Communist success in China had boosted their morale." My other witness is the Revenue Minister of Bihar, who, in a statement to the press on August 11, 1949, said: "there was no danger from communism or Communists in Bihar."

I must, therefore, assume that the theory that the Security Acts are necessary to meet the Communist menace is not supported by facts. I admit that when the country

is involved in war or there is rebellion within the country, the Government must have the right to decide whether a particular person should be deprived of his personal liberty if it is satisfied with respect to that person that, with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order, it is necessary to detain him. I will also admit that directly after the independence of India the situation was such that the Government was entitled to take extraordinary powers to put down what really amounted to acts of rebellion on the part of a section of the people. I do not admit, however, that the situation in the country to-day demands that these Security Acts should still be in operation. I would remind you of the wise words of Dr. Sachchidananda Sinha, President of the Bihar Civil Liberties Union, whose leaning towards the Congress is well known. He said in his presidential address: "It is equally incumbent on the Central, Provincial, and the Indian States Governments not to make much—not to say too much—of petty emergencies, and thereby continue to keep the people cribbed cabined and confined as they were under British rule, on the frivolous ground that the least departure from the now departed British-Indian traditions would jeopardise the safety and the stability of the State."

What then is the position to-day? Although there is no Hindu-Muslim question in India to-day, although there is no foundation for the theory that there is a real danger to be apprehended from the Communists, although, so far as I can see, there is no real emergency anywhere in India, the Executive Governments are still arming themselves with fresh powers to suppress civil liberty.

I propose to deal with the fresh Security Acts which are being enacted by practically every legislature.

You are aware that under the earlier Security Acts, the authority making an order of detention against a person was required to communicate to the person affected thereby the grounds on which the order had been made against him, and such other particulars as were in the opinion of such authority sufficient to enable him to make a representation

against the order. The different High Courts construed this section as giving them the right to order the release of the persons concerned if it came to the conclusion that the grounds furnished were too vague and uncertain to enable the persons concerned to make representations to the authorities. The High Courts never arrogated to themselves the right to examine the adequacy or even the truth of the grounds as a basis of detention. But they took the view that if the grounds of detention were so vague that no adequate representation could possibly be made by the detenu to the authorities, they were entitled to order the release of the detenu. The various orders of release made by the different High Courts did not please the executive governments at all. So they began to devise means to take away the very limited power possessed by the High Courts. The Madras Government initiated this new policy by issuing an ordinance on the 25th of May, 1948, and some other Governments were desirous of following the Madras Government, banning Habeas Corpus petitions altogether from any kind of proceedings under the Public Safety Acts. But such complete ouster of the jurisdiction of the High Court appeared too drastic a step to the Central Government who, it is said, issued a directive to the provincial governments to stay their hands. After a short interval, these governments achieved their object not directly, it is true, by ousting the jurisdiction of the High Court in all matters, but indirectly by ousting it in those few matters where alone such jurisdiction had been previously exercised. The Central Provinces Government took the lead in enacting the necessary amending legislation. It inserted in October of last year, the following proviso to the section in its Public Safety Act relating to the supply of grounds to the detained persons :

“Provided that neither the said order (of detention) nor the detention of the said person thereunder shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made to such person under this section.”

It follows, therefore, that the High Court has now been deprived of the very limited power it once possessed

to order the release of the detenus. The United Provinces, Assam and Madras Governments have now passed similar legislations. In Bihar a Bill has just been introduced which contains a similar proviso to section 5 which provides that the grounds of order of detention must be disclosed to the person affected by the order. Henceforth the different High Courts will be powerless to interfere. This is the reply which the executive governments have made to the views consistently expressed by the different High Courts that they had power to interfere where the grounds served on the detenus were too vague or insufficient to enable them to make a representation to the authorities. The effect of the proviso is that the High Courts will be powerless to interfere even though the provincial governments may really have no grounds for detention and are therefore unable to formulate grounds for such detention.

This then is the position in India so far as personal liberty is concerned. Over two thousand persons are under detention. They live under the worst conditons possible; and the Governments, having satisfied themselves that they are dangerous persons, have come to the conclusion that they are outside the pale of law so that nobody has a right to complain about their treatment.

I have recently received a communication from Detenus Aid Committee, Madras. According to this Committee, there are over 500 trade union and kisan leaders under detention without trial for over a year under the Madras Security Act. It appears that they are lodged in two jails, (1) at Cuddalore and (2) at Vellore. There has been firing in the Cuddalore jail resulting in the death of two persons and injuries to many. If the letter of the Secretary is to be believed, these detenus are being treated with the utmost cruelty. I have no means of judging whether the allegations made against the Madras Government are true or false; but there is clearly a case for an open enquiry. If these charges had been brought against the British authorities, there would have been a clamour for an open enquiry from one end of the country to the other. But as we have our own Government, we have apparently no right to ask for

such an enquiry. It appears that the detenus went on hunger strike on the 11th October, 1949, as a protest against the provocative behaviour of the Superintendent in severely beating certain convicts in the presence of the detenus. The letter addressed to me on the 11th October last states as follows :-

“We are having the hunger strike peacefully to-day. This morning at about 9 a.m. when we were peacefully going in procession around our blocks, siren was given. When we were wondering what it was about, the Superintendent with a posse of armed warders with lathis and rifles and himself with a pistol rushed towards us, who were on the point of dispersing. They suddenly began firing while those who were suddenly attacked were taking shelter by lying down on the ground. The firing continued. The detenus were shot point blank with a purpose to kill some of us. For instance, the warder Selvaraj, shot Com. A. V. S. Ramarao, while he was on the ground after a severe beating by the warders. Lathi charge continued indiscriminately. The brutal firing and lathi charge on the unarmed and hunger striking political prisoners is unprecedented in the history of our country.

As a result of this armed attack, Comrades V. Jogiah and A. V. S. Ramarao of Krishna District died. The condition of Comrades Koganti Kotaiah, D. Yagnaramiah of Guntur District and G. Ramakrishna of Anantapur is very serious. Many received injuries due to the brutal attack. The following are the severely wounded:

1. G. Ramachandra Reddi, Nellore District—lathi charge wound on the forehead.
2. Yeturi Surya Rao, East Godavari—lathi wound on the head.
3. B. Brahmachari, Krishna—bullet wound on the left hand fore arm.
4. Ch. Ramakrishnareddi, West Godavari—right hand finger crushed, middle finger of left hand smashed—severe blows on the body.
5. Kota Subbareddi, Guntur—lathi blows on both the shoulders—bullet wounds on the body.
6. M. Satyanarayana—Madira Taluk—bullet shot through left thigh and other bullet wound on the left fore leg.
7. A. Sitharamaraju, East Godavari—bullet wound on the right thigh.
8. K. Butteraju, East Godavari—lathi blows on head—head broken on the left side above the ear—lathi blows all over the body.
9. P. Apparao, Vizag. District—bullet wounds on the left hand, two on the back side of the head.
10. G. Nageswararao, East Godavari—lathi blows on both the knees.

11. Tekuru Subbarao, Cuddapah—lathi blows on the body—left leg ankle broken.

12. D. Bhujangarao, West Godavari—bullet wounds on the left shoulder and elbow.

13. V. Nageswararao, Madhira Taluk—bullet wound on the right leg above the ankle—two more on the left thigh—severe wound on the back.

14. N. Rajiah, Madira Taluk—bullet wound on the right ear, right hand fore arm, laceration, lathi blows on the body.

15. P. Hanumantha Rao, Kurnool—left hand two fingers crushed, head broken—severe lathi blows all over the body.

The Superintendent of the jail even when talking to the detenus points his pistol at them threatening to shoot anybody he likes. We complained about this to you even previously. Yesterday he threatened to shoot us, to-day he actually with a pistol in hand, led the armed warders and killed some of us. We demand public enquiry of this incident and his immediate recall, as we apprehend that he is determined to kill some more others. The Superintendent refused to keep the dead bodies till the relatives come. Within 15 hours of the incident he got the bodies cremated at dead of night. This itself shows to what unlimited savagery he has gone refusing minimum decency towards the dead.

Protesting against these murders by the Superintendent, we go on indefinite hunger strike, for the following demands :

1. A PUBLIC ENQUIRY INTO THE INCIDENTS OF 11-8-49 and 11-10-49.

2. COMPENSATION TO THE FAMILIES OF PERSONS KILLED IN THE FIRING ON 11-8-49 and 11-10-49.

3. RESTORE LOOTED PROPERTIES AMOUNTING TO Rs. 10,000.

4. THE IMMEDIATE RECALL AND PUNISHMENT OF SUPERINTENDENT OF THE JAIL.

5. WITHDRAWAL OF THE PROSECUTION FOR ALLEGED RIOTING ON 11-8-49.

6. COMPLETE RESTORATION OF INTERVIEW RIGHTS WITHOUT POLICE INTERFERENCE AND DELAY.

7. CANCELLATION OF THE NEW ORDER COMPELLING US TO GO TO LOCK-UP BEFORE 8 P.M.

8. CANCELLATION OF THE ORDER OF THE SUPERINTENDENT OF THE JAIL, dated 10-10-49, STOPPING OUR INTERVIEWS AND LETTERS."

I consider that it is absolutely necessary that there should be an open enquiry into these very serious allegations.

From Madras I turn to West Bengal. On the 22nd of November last an order of the Commissioner of Police was served on Mr. K. P. Chattopadhyay in these terms :

“Whereas having considered the materials against the person known as Sri Kshitish Prosad Chatterji, son of late Jamini Mohan Chatterji, of 2, Palm Place, Ballygunj, Calcutta, I am satisfied that with a view to preventing the said person from doing any subversive act, it is necessary to make the following order.

Now, therefore, in exercise of the powers conferred by Clauses (c), (d) and (e) of sub-section (1) of section 38 of the West Bengal Ordinance No. 11 of 1949 (West Bengal Security Ordinance 1949) which I have been empowered to exercise by Order No. 3501 H. S. dated 24th April, 1949, read with section 43 of the said Ordinance (No. 11 of 1949) I hereby direct :—

(1) that he shall not directly or indirectly organise, promote, attend or take part in any public meeting, demonstration or procession, nor allow or promote any meeting or demonstration in his house,

(2) that he shall not disseminate news or propagate his opinions by speech or writing in any newspaper, journal, magazine, etc., and

(3) that he shall not associate himself with and correspond in writing with any person who is known or believed to be a member of an unlawful association. If he receives any written communication from any such person, he shall deliver it to the Deputy Commissioner of Police, Special Branch, Calcutta.”

I cannot imagine any civilised government, calling itself a democratic government, making an order of this nature on a respectable member of society. If Mr. K.P. Chattopadhyay is engaged in subversive acts, it is open to the Government to bring him up for trial before the ordinary courts of law. I humbly ask, how is it possible to say that rule of law prevails in India when these enormous powers have been given to petty men like the Commissioner of Police. As I said in Madras, the police have not changed their methods, because the Government is our own government to-day.

So much for the personal liberty of the subject.

I should like to make it clear that I did not, in my Madras speech, anywhere suggest that there is no difference between Hitler's Germany and Mussolini's Italy on the one hand and Pandit Jawaharlal's India on the other. I

say this because in his recent speech in the Legislative Assembly the Prime Minister of Bihar has suggested that this is exactly what I said in Madras. The point which I made was simply this: the executive governments have enormous powers under the Constitution Act. They are in fact exercising those powers under the different Security Acts. The difference between Jawaharlal Nehru's India on the one hand and Hitler's Germany and Mussolini's Italy is that Pandit Jawaharlal Nehru is far more humane in the exercise of his enormous powers. The difference is in degree, not in kind. I think that what Lord Acton had said many years ago and what Pandit Jawaharlal Nehru repeated in his Autobiography that power corrupts a man and absolute power corrupts absolutely is as true to-day as it was in British times. The executive governments to-day have dictatorial powers. I do not suggest that they are exercising those dictatorial powers to a very great extent. My fear is that they will do so in order to maintain the Congress Government in power.

I now come to the question of the liberty of the press. In England and in America the freedom of speech and expression—and the liberty of the press falls within this category—is subject only to the Law of Libel. "The liberty of the press", says Lord Mansfield in *Rex. v. Dean of St. Asaph* (13 T.R. 431), "consists in printing without any previous license subject to the consequences of law." "The Law of England", says Lord Ellenborough in *Rex. v. Cobett* (29 State Trial, 49), "is a law of liberty and consistently with this liberty we have not what is called a *imprimatur*; there is no such preliminary license necessary; but if a man published a paper he is exposed to the penal consequences, as he has in every other act, if it be illegal."

These dicta show that the liberty of the press is a mere application of the Rule of Law—of the general principle that no man is punishable except for a distinct breach of the law established in the ordinary manner in the ordinary courts of law. This principle is wholly inconsistent with any right on the part of the Government to require the press to take out a license or of the right to impose censorship and with the further right to demand a preliminary

deposit of a certain sum of money as a security for good behaviour and with the right to forfeit the security in certain circumstances. As it has been pointed out, such checks and preventive measures are inconsistent with the pervading principle of English Law, that men are to be interfered with and punished, not because they may or will break the law, but only when they have committed some definite assignable legal offence.

As you all know, the different Press Acts, which were condemned in unmeasured terms by the Congress leaders at one time, give enormous powers to the executive governments to suppress the liberty of the press. The Security Acts passed by the different provinces also give enormous powers to the executive governments. I will quote section 10 of the Bihar Maintenance of Public Order Bill just introduced in the Bihar Legislative Assembly. That section runs as follows :-

"10. (1) The Provincial Government may, for the purpose of securing the public safety or the maintenance of public order, by order addressed to a printer, publisher or editor, or to printers, publishers and editors generally,—

- (a) require that all matter, or any matter relating to particular subject or class of subjects, shall, before being published in any document or class of documents, be submitted for security to an authority specified in the order ;
- (b) prohibit or regulate the making or publishing of any document or class of documents, or of any matter relating to a particular subject or class of subjects, or the use of any press, as defined in the Indian Press (Emergency Powers) Act, 1931.

(2) If any person contravenes any order made under sub-section (1), then, without prejudice to any other proceedings which may be taken against such person, the Provincial Government may declare to be forfeited to His Majesty every copy of any document published or made in contravention of such order and any press, as defined in the Indian Press (Emergency Powers) Act, 1931, used in the making of such document.

(3) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

The existence of these powers is itself a denial of the rule of law ; but a Madras paper put a question to me after the Madras Conference, are these powers being exercised ?

The "Nation" in its dak edition of December 7, 1949, gives a list of about 30 journals—dailies and weeklies—which had to close down publication, after, in most of the cases, they had been confronted with precensorship orders by the Government. The orders of the Government required submission of all press matters to the Provincial Censor office before they could be published. I may mention in this connection the order of the Director of Publicity, West Bengal Government, suspending the press cards of the "Nation" and "Loksevak". How is it possible to say that India enjoys a democratic form of Government when the executive governments have power to suppress newspapers at their discretion?

The difficulty of applying the law, as contained in section 4 of the Indian Press (Emergency Powers) Act, 1931, in the present changed set up of the country, was recently emphasised by a Special Bench of the Calcutta High Court, consisting of the Chief Justice, Mr. Justice Chatterjee and Mr. Justice Banerjee, while delivering their judgments in the application of the petitioner Benoy Kumar Chattopadhaya, printer and publisher of "Saptaha", a Bengali bi-weekly newspaper (now defunct), against an order of the Government of West Bengal, forfeiting a sum of Rs. 1,000 out of the security deposits furnished by the paper. Delivering his judgment, the Chief Justice observed that the writer criticised the Congress Governments of the various provinces in India for their treatment of political prisoners. The Chief Justice pointed out that since Independence the conditions had changed and the form of government at the centre and in all the provinces was now a democratic form of Government. His Lordship observed that it was a matter of considerable difficulty to apply the Act to criticism of measures of government before India obtained Independence and after the adoption of a democratic form of government it was practically impossible to place a construction on section 4 which would not stifle a good deal

of legitimate criticism of government. He added that the right to criticise was inherent in a democracy and that the opposition were entitled to, and indeed it was their duty in proper cases, to expose the misdeeds or acts of omission of the government in power and that this they were entitled to do with a view to winning over the electorate so that the government in power may be thrown out and the opposition placed in power after securing a majority in an election. He said that if the words in section 4 of the Indian Press Act were strictly applied, then newspapers supporting the opposition to the government in power would be muzzled and could indulge in nothing but very mild criticism, and that the opposition newspapers might find it difficult to publish facts concerning the government which were true, because the publication of such facts might well tend to bring the Government into hatred or contempt. In a concurring judgement Mr. Justice Chatterjee inter alia said that it was difficult to reconcile section 4 of the Act with the working of responsible government in free and democratic India. He added that if the words of the Press Act were to be taken literally, opposition newspapers would come within the mischief of the section almost every day.

This really explains why the responsible newspapers in India with enormous circulations do not criticise the acts of the governments at all. I have said that if a Viceroy of India had made an attack upon the High Courts, it would have been received with one universal hiss of indignation from one end of India to the other; but there was no criticism of the speech of the Prime Minister in the Constituent Assembly when he undoubtedly attacked the independence of the judges. The explanation is that the press has been effectively gagged, first by the Press Acts, and, secondly, by the Security Acts. They dare not criticise the governments at all. And yet we are told that the Rule of Law prevails in India, and that India enjoys a democratic form of government.

I now come to another head of fundamental rights, the right to assemble peaceably and without arms. This

includes the right to hold public meetings. In England and in America the subject enjoys no statutory or guaranteed right in this respect; and the problem has to be solved by the application of the rule of law. The right of assembling is nothing more than a result of the view taken by the courts as to individual liberty of person and individual liberty of speech. If A, B, C, D and hundreds of others say whatever he or she likes so long as he or she does not say anything which brings them or any of them, within the mischief of the general law, they must have the right to assemble and say whatever they like, subject to the law of the land. Interference, therefore, with a lawful meeting is not an invasion of a public right of A or B and must generally resolve itself into a number of assaults upon definite persons, members of the meeting. This is illustrated by a very simple example. The right of A to walk down a high street is not taken away by the threat of X to knock A down if A takes his proposed walk. A is the victim, and not the author of a breach of the law. The plain principle is that A's right to do a lawful act, namely, walk down a highstreet cannot be diminished by X's threat to do an unlawful act, namely, to knock A down. This principle is established in the case of *Beatty v. Gillbanks* (9 Q.B.D., 308). The Salvation Army met together at Weston-super-Mare with the knowledge that they would be opposed by the Skeleton Army. The Magistrate had put out a notice intended to forbid the meeting. The Salvationists, however, assembled but were met by the police and told to obey the notice. X, one of the members, declined to obey and was arrested. He was, subsequently with others, convicted by the Magistrates of taking part in an unlawful assembly. It was an undoubted fact that the meeting of the Salvation Army was likely to lead to an attack by the Skeleton Army, and in this sense cause a breach of the peace. The conviction, however, of X by the Magistrates was quashed on appeal by the Queen's Bench Division. "What has happened here", says Field, J., "is that an unlawful organization (the Skeleton Army) has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts

to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition."

At the present moment in India under section 144 of the Code of Criminal Procedure and in many parts of India under the Security Acts public meetings are illegal unless previous permission had been obtained from the district magistrate. This is a clear breach of the rule of law and interference with the liberty of the speech. I propose to give a few cases here.

The Socialist party had organised a public meeting to be held in Jamshedpur on the 22nd August, 1948. They obtained sanction of the Deputy Commissioner, but the permission was withdrawn before the meeting was held without any reason being assigned for the same. The party had arranged to hold a meeting on the 13th March, 1949, for the purpose of forming a Trade Union of the Tata Iron & Steel Company employees. Sri Asoka Mehta and Purshottam Trikumdas, well-known names in the Socialist party, were to be present at the meeting. Permission was refused by the authorities. Permission is very often granted subject to the condition that nothing provocative is said in the meetings. As the District Magistrate is the sole judge of what is provocative, it is difficult to hold meetings under those conditions. Permission to hold meetings is constantly refused. The District Magistrate of Darbhanga refused permission for holding meetings which were to be addressed by Ramanandan Misra, then President of the Bihar Provincial Kisan Sabha and now the Provincial Secretary of the Socialist Party, Bihar Branch, on the ground that in meetings held in the past he 'criticised the Government and the officers in an objectionable manner'. Thereupon Misraji wrote to the District Magistrate and asserted that he had a right not only to criticise the Government but also ask the people to exchange the Government in a democratic manner. Ultimately, the District Magistrate granted permission for the meetings to be held at Mauzi and Madhubani and not at Lohat, as it was a labour centre

It is unnecessary to pursue the matter further. The existence and exercise of the right to detain a person in jail for an indefinite period without bringing him up for trial, the existence and the exercise of the right to suppress the liberty of the press, the existence and the exercise of the right to ban processions and public meetings without the permission of the District Magistrate constitute a complete denial of the rights of democracy and of the rule of law. In these circumstances, it is impossible to say that India enjoys a democratic form of Government.

I should now like to refer to the speeches which the Prime Minister of India has recently delivered in America and in England. In the great speech which he delivered in the House of Representatives on October 18 last he said: "it may interest you to know that in drafting the Constitution of the Republic of India we have been greatly influenced by your Constitution." He added: "We have placed in the forefront of our Constitution those fundamental human rights to which all men who love liberty, equality and progress aspire—the freedom of the individual, the equality of men and the rule of law. We enter, therefore, the community of free nations with the roots of democracy deeply embedded in our institutions as well as in the thoughts of our people". I suggest with great humility that there is no resemblance whatever between the fundamental rights of the Constitution of America and those recognised in the Constitution of India. The American Constitution provides that no State shall deprive any person of life, liberty, or property, without due process of law. The Indian Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The difference lies in this. The Constitution of India secures procedural due process only. It affords no protection against tyrannical laws. The American Constitution, however, gives complete protection against tyrannical laws. This is one point of difference between the American Constitution and the Indian Constitution. In America the press is completely free; in India the different Acts in operation place the press completely at the mercy of the

executive governments. In America the people have the right to take out processions and hold public meetings. In India orders have been passed throughout India which make it impossible for public meetings to be held without the previous permission of the District Magistrate.

I suggest, therefore, that it is absurd to say that in drafting the Constitution of the Republic of India the Constituent Assembly has been influenced by the American Constitution. It was in fact influenced by one article of the Japanese Constitution. The Prime Minister in the course of his speech said: "We are neither blind to reality nor do we propose to acquiesce to any challenge to man's freedom, from whatever quarter it may come. Where freedom is endangered, or justice threatened, or where aggression takes place, we cannot be and shall not be neutral." He should have added "except in India".

He was, however, closely questioned on the condition of civil liberties in India, when he was received by the New York Press correspondents. In answer to one of the questions put to him, he said that the first thing they had to consider on achieving independence was the unity and stability of the country which could not be allowed to break up whatever happened. He added that there was something approaching a rebellion and that they had arrested and convicted those who resorted to violence. In point of fact, they were arrested and detained but not convicted. He held his final Press conference in America on November 7, and he was closely questioned on civil liberties in India. He said that no person had been imprisoned unless he had committed or preached violence. I beg to ask the Prime Minister, who has told him that no one has been imprisoned in India unless he had committed or preached violence. He did not personally examine any of these cases. The Prime Minister of India, of course, has the greatest confidence in the prime ministers of the different provinces, The prime ministers of the different provinces have the greatest confidence in their police officers. It comes to this, that arrests are made on police reports, and I do not believe that they are examined critically by the home

ministers of the different provinces. They have not sufficient time for that purpose. Numerous orders of release which have been made by the different High Courts show that the orders of detention were made on insufficient grounds. I have myself come across fantastic grounds being given for detention of individuals.

Civil Liberties Union is in no sense a political organization. We have nothing to do with politics, or with political parties as members of the Union. We are, however, bound to enter our solemn protest against the serious infringement of civil liberties in India. We are bound to point out that the want of confidence of the Executive Governments in the judiciary—as shown by the speech of the Prime Minister in the Constituent Assembly does not justify the proud claim made in the preamble to the Constitution of India that “we, the people of India” have solemnly resolved to constitute India into a democratic republic. We are bound to point out that the Security Acts, the Press Acts, and the Criminal Law Amendment Acts constitute a grave menace to the liberty of the subject and therefore to democracy. For many of us the situation in the country to-day is one of great perplexity. Many of us believe that there would have been chaos in the country if the Congress had not taken up the burden of governing the country when independence came. Many of us sincerely believe that no alternative Government is possible in India to-day and for many years to come. But we also believe that the possession of these large extraordinary powers must ultimately pave the way for Congress dictatorship; and we will not have dictatorship in the country at any cost. I do not suggest that the Congress leaders are consciously aiming at dictatorship. But such is the corrupting influence of power—as Pandit Jawaharlal Nehru has reminded us in his autobiography—that the exercise of those powers must inevitably pave the way for dictatorship. Emergency legislation has a habit of staying for all times in this country; and it will be proper for the Congress leaders to consider seriously the wise words of Dr. Sachchidananda Sinha which I have already quoted. Our choice is clear.

**We cannot , we will not, we dare not support the Congress Governments so long as those Governments persist in their repressive policies.**

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