

**CIVIL LIBERTIES
TODAY**

VAZE S. G.

S. I. S.

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ARTICLES BY
S. G. VAZE.

Senior Member, Servants of India Society, Poona,

AND

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Member, Servants of India Society, Poona.

MESSAGES FROM

P. R. DAS.

Retired High Court Judge & President, Indian Civil Liberties Union, Patna.

AND

N. M. JOSHI,

President, Bombay Civil Liberties Union, Bombay.

With an Introduction

BY

L. N. RAO

Member, Servants of India Society, Calcutta (Bikrampur)

Price, Four Annas.

CIVIL LIBERTIES TODAY.

INTRODUCTION.

(L. N. Rao)

A few friends felt the need for organising a Civil Liberties Conference for Malabar in the third week of August. Most people whom I met in this connection strongly urged for it and I tried my humble best to organise the conference but could not succeed. The Conference could have been arranged but for the fear that political parties may misuse the platform of the Civil Liberties Conference. Considering the circumstances now prevailing in Malabar and the possibility of party conflicts, and in view of enough number of strictly non-party men not coming forward, it was decided to drop the idea of holding a conference on 20th August 1949.

But the question of Civil Liberties is of great importance at this juncture in the history of our country, as can be seen from the following letter of Mr. P. R. Das.

Dear Mr. Rao,

Patna, 6th August 1949.

I am very glad to hear that you are holding a Civil Liberties Conference at Calicut under the distinguished-pre-sidentship of Mr. P. Chenchiah.

We are living in very difficult and anxious times. The liberty of the subject is being assailed on every side; and it is absolutely necessary that a strong opposition should be put up by the people.

I cannot imagine how democracy can function unless "the Rule of Law" is assured. It is essential that there should be separation of judicial and executive functions; but I see no evidence that the Congress Governments are at all serious about it.

I am glad that the different High Courts in India have taken a very serious view of the curtailment of civil liberty. There never was a greater need for an independent judiciary than there is today; and, I hope, your conference will stress this point in the resolutions which you will pass.

Yours etc.

P. R. Das

Though the Conference could not be organised, two of the articles, specially written at my request for the occasion by two of my esteemed senior colleagues in the Servants of India Society, are published in this brochure, which, I hope, will open the eyes of the discerning public to the danger of governmental encroachment upon the fundamental rights and civil liberties of the citizens.

I am giving below the letter from Mr. S. G. Vaze, Senior Member, Servants of India Society, Poona, forwarding the first article.

My Dear Mr. Rao,

Poona, August 4, 1949.

I am very glad to see that you are organising a Civil Liberties Conference for your district. I would certainly have attended it with the greatest pleasure but for the distance, both in space and time that separates us.

You ask for a message. I am much too small a person to send you one. All I can say is that you are doing a great public service in focussing attention on a question which is gravely neglected by our leaders, much to the detriment, I have no doubt, of our infant democracy, and that I wish your Conference every success.

While I cannot send you a message, I send you an article as desired by you.

Yours etc.

S. G. VAZE.

The message from Mr. N. M. Joshi, the veteran leader of the Trade Union Movement and the President of the Bombay Civil Liberties Union, is given below.

Dear Mr. Rao,

Bombay, 2nd August, 1949.

I am glad to hear that you are holding a civil liberties conference for Malabar under the presidentship of Mr. D. Chunchiab. The lead for such a conference is very great. The attack on civil liberties is still continuing all over the country and Malabar has not escaped it. We must therefore make every effort to protect the liberties of the people.

In his autobiography, Pandit Jawahar Lal Nehru says, "Large numbers lie in prison and spend their young lives, year after year, eating their hearts out." In the footnote he draws our attention to the statement of Sir Harry Haig, the then Home Member in the Legislative Assembly, on July 23, 1934, that the total number of detenus were 2,000 to 2,100. Referring to this, Mr. P. R. Das observed in his presidential address at the Indian Civil Liberties Conference held in Madras in July 1949, that over 3,000 persons were in confinement today though they had not been convicted of any offence and that history would record how the Congress leaders, champions of democracy and liberty, abandoned the principles of democracy and liberty as soon as they came to power. He also pointed out how, by the suppression of civil liberties, dictatorship was established in Hitler's Germany, in Mussolini's Italy and in Stalin's Russia.

Let me hope that the leaders who are shaping the future of our country will protect Civil Liberties and lay strong foundations for the Rule of Law and democracy.

By

S. G. Vaidya

On July 29, the High Court of Madras dismissed an application filed by Mr. K. Anandan Nambiar, a Communist member of the Madras Legislative Assembly, held in detention under the Madras Maintenance of Public Order Act, praying that he be given facilities to attend the sittings of the Assembly when in session. The application was not one for a writ of habeas corpus challenging the order of detention passed against him and seeking his restoration to liberty, but one requesting the Court, by exercising its inherent powers under Section 561-A, Cr. P. C., to grant him freedom only to attend the Assembly sittings while in detention. One cannot be surprised at the Court's decision in this case. It could have considered the validity of the detention order on a habeas corpus application and set aside the order if it had found that any of the provisions of the Maintenance of Public Order Act had been infringed by reason, say, of the fact that the grounds supplied to the detenu for detaining him were too vague to enable him to make a representation for the cancellation of the order. But this was not the relief sought by Mr. Nambiar, and the Court did not feel called upon or even empowered to give him the relief of "restricted freedom" which he had asked for.

However, the Governments in all the provinces may themselves give this kind of relief to detained persons who are members of the legislatures. Deprivation of personal liberty without trial is a highly autocratic and arbitrary proceeding. Assuming that its adoption has now become necessary, it will be admitted on all hands that every care must be taken while applying the Acts to mitigate as much as possible the hardship and injustices likely to result from their application. A very large number of persons have been detained in jail on mere suspicion. Their terms of detention have been indefinite, and in fact many of them have been incarcerated for quite a long time. Several of the detained persons are members of the legislatures, and while they suffer along with others from all the disabilities associated with imprisonment, they suffer from an additional disability inasmuch as they are prevented from attending their legislative chambers. And this is a disability which

wider aspect. It deprives the constituencies which the detained persons represent in the legislatures of the service of their representatives. Indeed, it was on this specific ground that Mr. Nambiar asked to be allowed, though in jail, to serve his constituency in the Assembly. He begged that whatever happened to him personally, the suspicions he had aroused in the mind of the Government should not be instrumental in making his constituents go unrepresented, but that he should be allowed even as a prisoner to take part in the Assembly proceedings when the Assembly is in session. This is a very reasonable suggestion, and all Governments would do well to accede to it. When it is urged that reasonable maintenance allowances should be granted to the families of detained persons, the answer often made is that these persons have brought hardships on their families by their own prejudicial acts and that the Government need not recognise it as its duty to do anything to support the families. In the same way perhaps Governments may argue that if any constituency chooses a representative who lands himself into jail, it must suffer for its choice. The Government is not responsible for the constituency going unrepresented and is not bound even by moral considerations to make special arrangements for its continued representation by letting the detained persons participate in legislative proceedings. But such a plea will not be considered rational by anyone who remembers that no guilt has been proved in a court of law against the detained person, but that he has lost his freedom on account of an act of the State which, till the guilt is proved, must be looked upon as arbitrary.

This permission to attend the legislatures and take part in its proceedings is not claimed as a recognised privilege of membership of the legislature. Such privileges as are awarded to a member are designed to enable him to attend to his legislative duties without interference, and one of the privileges recognised in England and some other countries is that he cannot be arrested or imprisoned while Parliament is in session. But it is admitted that this privilege protects him from arrest or imprisonment only under civil process. It gives him no protection from arrest in any criminal action, though it is held that if he should be arrested, that the arrest should be reported to the Speaker. This is the rule that is followed when a member of Parliament is arrested in civil proceedings, and the same rule is followed when he is arrested under an extraordinary legislation giving powers to arrest persons on suspicion. "Several Acts

which have been included in a time the Habeas Corpus Act have contained provisions to the effect that no member of Parliament shall be imprisoned during the sitting of Parliament, until the matter of which he stands suspected shall be first communicated to the House of which he shall be a member, and the consent of the said House obtained for his commitment." (Hoskins May in "Parliamentary Practice.") It is true that this rule only provides for the causes of commitment of a member of Parliament to be communicated, and not for his being allowed to take part in Parliamentary proceedings. But it will at least show that a different kind of treatment is meted out to members of Parliament from that meted out to others, and that there is good ground in reason for such differential treatment. And in India, where special legislation of a drastic kind is in force throughout the country for years on end without a break, which has led to imprisonments without trial of not a negligible proportion of the legislators in every province, the Governments might well go a step further and not only communicate to the legislatures the cause for which the members are detained from their service in the legislatures, but also abolish such detention altogether for the time being, allowing them to perform their legislative duties without interruption.

What is contemplated here is very simple, something like what was done recently in the Federal District Court in New York in the trial of the Politbureau officials of the Communist party of the United States. One of the defendants in this trial, offering himself voluntarily as a witness, refused to answer a question put to him by the prosecution in his cross-examination. The question was relevant and would have elicited information damaging to the case of the defendants. His refusal to answer the question as a witness was obviously not protected by the provision in the constitution against self-incrimination, and he was held in contempt of court and remanded by the judge. Similarly two other defendants were remanded for staging a disorderly demonstration in the court room against a ruling of the court. What happens when defendants are so remanded? Their bail is revoked, and they are taken to jail by a marshal of the court at the end of each court session and brought back to court every day at the following day's session. Thus the sentence of the court is enforced, and yet the trial proceeds uninterrupted. This practice could be followed in India, and members of the legislatures who are held in contempt of court remain in detention, they being free to perform their legislative

under habeas corpus applications if they can, and the general public being free to work for the repeal of the Public Safety Acts in any way open to it. But while in detention, the members are brought to the legislative chambers under proper escort in order that they may attend meetings of the legislatures and after the day's sitting is over they are marched back to their place of detention. This goes on till the legislative session is completed. Whatever may be the danger to the public security on account of these members being at large and being free to carry on activities considered by the Government to be fraught with peril, there can possibly be no danger which cannot effectively be guarded against if, while still in detention, they are allowed under proper precautions to take part in the proceedings of the legislatures. It is due to them that they be accorded such freedom of action as need not for imperative reasons be denied to them. But, far more important than this, it is due to the electorate that it be given an opportunity to be served by the men whom it has chosen as its representatives without any break which is not made necessary by security reasons. To deprive any member of the legislature to attend to his duties without any compelling reasons is to do injustice not to him alone but also to the people who have elected him. And when we find that quite a sizeable proportion of the legislators in all the provinces have been so deprived of their right for several legislative sessions in succession, we cannot but protest strongly against all the legislative bodies being thus rendered wantonly unrepresentative.

We have no protection against tyrannical laws; we have no protection against the arbitrariness of the Executive Government. The Constitution has deliberately provided for "executive justice" instead of "rule of law".

P. R. DAS.
(July 1949)

The Madras Maintenance of Public Order Act, 1947.

A BRIEF APPRAISAL

By

H. G. Kakade

It is proposed in this small article to examine some of the provisions of the Madras Maintenance of Public Order Act, 1947, in so far as they affect the personal liberty of the subject. The manner of enforcement of the Act is, however, not intended to be discussed here.

Section 2 of the Madras Maintenance of Public Order Act, 1947, is too familiar to be described in details here. It confers upon the Provincial Government powers to restrict certain actions and movements, by way of detention, externment, internment, parole, etc. of any person, with a view to preventing him from acting in a manner prejudicial to the public safety or the maintenance of public order. This is just like the Public Safety Acts in various other provinces in India. But the Madras Act goes further. A reference to clauses (c) and (f) of sub-section (1) of section 2 will bear this out. The first clause empowers the Provincial Government to prohibit any person from being out of doors between specified hours except under the authority of a written permit. The other clause enables the Government to prohibit any person from travelling except in accordance with a given permission. It may not be disputed that these clauses curtail the scope of personal freedom of the subject in a manner which may prove in practice to be extremely irksome and offensive to the self-respect of the subject. Again, as they seem to be of minor character, they are not likely to attract public attention as detention usually does, and are consequently prone to be misused or abused. It will be of some interest to point out that such or similar clauses are not within the Rules framed under the Defence of India Act, 1939, or in any of the Provincial Public Safety Acts in India. It might be argued in defence that the situation in Madras is of such a grave nature as to require such a step.

additional powers to cope with it. To an on-looker, this does not seem to be borne out by facts. It may, however, be mentioned that these unique clauses did not find place in the Madras Ordinance No. 1 of 1947 which two months later was replaced by the Act under review. What compelling considerations made for their inclusion in the Act within two months, it is very difficult to find out!

When emergency conditions obtain, which we do not think prevail in the country at present, curtailment of the personal freedom of the subject is inevitable. But even then adequate safeguards need be provided in a number of ways in the Act itself. The Madras Act undoubtedly provides some safeguards. But opinions may differ about their adequacy or effectiveness. Section 3 of the Act provides safeguards of two kinds. The first relates to the duty statutorily cast upon the Provincial Government to communicate to the detainee such of the grounds (subject to reservation) and particulars of detention as would be sufficient to enable him to make a representation to the Government against the detention order. As by making the representation the detainee gets an opportunity of disabusing the mind of the authority, making the detention order, of the misapprehension or suspicion about his alleged activities and thereby of proving his innocence, it is considered to be the most important safeguard from the view-point of the subject. Section 3 specifically concedes this right. But to exercise this right, the detainee must be in possession of the grounds for his detention. Within what period should the grounds be communicated by the Provincial Government to the detainee? The Act is silent on this important point. In respect of this, a phrase "as soon as may be" is found inserted in the Public Safety Acts of all the other provinces in India. Whether this omission from the Madras Act is deliberate or accidental cannot definitely be said. The Government of Madras cannot be presumed to be unaware of the fact that the above phrase had come up several times for interpretation before different High Courts in India. The practice in Madras does not show that the omission was accidental. Whatever that may be, the fact remains that grounds are not usually communicated by the Provincial Government as soon as possible. In *State of Madras v. Venkatasubramanian*, His Lordship observed: "In several cases which have come to my notice, I have found that, until the proper legal issuing direction in the nature of a writ, no grounds had been given in

all, and only after notice of the application went to the concerned authorities, the grounds were despatched." The period intervening the detention and the furnishing of grounds to the detenu is found to have extended over a couple of months in some cases. How this affects the aggregate detention period of the subject will presently be seen.

The other safeguard lies in the fact that sec. 3 makes it incumbent upon the Provincial Government to constitute an Advisory Council of three members to consider the grounds of detention of a person (which the Government is bound to place before it) along with the representation by the detenu and to make its report to the Provincial Government. It must be admitted that Madras is the only province in the whole of India which provides for such an Advisory Council. In this respect, it seems to have copied the Emergency Powers (Defence) Act, 1949, in Great Britain. But besides this democratic formality, there seems to be very little in common between the Advisory Committees in England and the Advisory Council in Madras. The Madras Act does not specify the composition of the Council; as to how many of the three should be non-officials. It is also silent about the minimum qualifications required for the members of the Council. It may be mentioned here that even in the notorious Rowlatt Act (The Anarchical and Revolutionary Crimes Act, 1919), the qualifications or status of the Investigating and Reviewing authorities (Part II and III) were clearly stated. The review provided for in England was quasi-judicial. The Advisory Committee in that country saw to it that all the facts known against the detenu were put to him as explicitly as possible; that he was put in possession of all the detailed evidence upon which he was being held in detention. The detenu could call witnesses. Again, it was always within the competence of the Committee to decide that a detenu should be assisted by a solicitor to help him in presenting his case. As against this, the Advisory Council in Madras can call for 'such further information from the Provincial Government or from the person concerned' but cannot allow witnesses to be called by the detenu or allow him to take legal advice in preparing the representation. There was a further difference in England in regard to this. It was required of the Secretary of State there that he must report every month to the Parliament the action taken by him under the Act, and also the number of cases in which he had exercised his power

Disadvices of the Advisory Committee. In Madras no such safeguard exists. The Madras Act does not specify the period within which each case should be placed before the Advisory Council and in what time the latter should make its report to the Provincial Government. The recent case of *R. Rajagopalrao & 10 others* illustrates as to what can happen in the absence of such specific provisions in the Act itself. In that case it was revealed that the detenus were detained on 21st May 1948 under detention orders passed on the 10th and 11th of April 1948. The grounds of detention were forwarded by the District Magistrate to the Provincial Government on 1st June 1948, which were communicated to the detenus in June-July 1948. The detenus submitted their representations to the Government in July 1948. The Provincial Government took about 7½ months to refer these cases to the Advisory Council, the exact date being 14th March 1949. The matter was still pending before the Advisory Council when the detenus' petitions under sec. 491 Cr.P.C. came up for hearing before the Madras High Court on the 20th April 1949. The inordinate delay involved at all stages in this case clearly shows how necessary it is to specify time limits in all such matters in the Act itself.

Section 4 of the Madras Act envisages the making of final order of detention by confirming or modifying the preliminary or initial order served on the detenu. This final order is to be passed after considering the report of the Advisory Council. The facts in *R. Rajagopalrao's* case stated above may serve to indicate how much time may possibly elapse before the final order of detention is made. The Madras Ordinance No. 1, which was replaced by the present Act, had provided in sub-section (2) of section 2 that when the order of detention was made by the Chief Presidency Magistrate or a District Magistrate it was to remain valid for a period not exceeding fifteen days. Such provision is found in Public Safety Acts of some other provinces also. But this sub-section in the Ordinance was dropped from the later Act of Madras. In its absence, there is no hurry now for the Provincial Government to look into the matter for making final orders. Coming to the possible period for which any detenu can be kept under detention, one has to refer to sec. 4 of the Act. Section 4 at section lays down that the period to which the order under sec. 2 shall not exceed six months, but that period is to be computed from the date of final order. It is to be noted that though the period of detention is

limited by the Act to six months, the actual period for which any person may remain under detention may be much longer. This is because the making of the final order may take a long time as seen earlier. The section further provides for the extension of the duration of the final order by six months every time. But before doing so, it is incumbent upon the Provincial Government to give another opportunity to the detenu to make a new representation in writing, to place the matter again before the Advisory Council and then to consider its report. This is a kind of safeguard so far as it goes, but one does not know how effectively it operates in practice. For extending the period of detention each time the above procedure has got to be gone through. The Act does not say us to how many times in all the period of detention can thus be extended. By making use of this provision, the Provincial Government can technically keep any person under detention for the entire duration of the Act itself, which is three years. A reference to the amended sec. 3 of the Assam Maintenance of Public Order (Amendment) Act, 1948 (Assam Act XXII of 1948) may be interesting in this connection. That section also provides for the extension of the duration of detention orders. But it puts a clear limit to the aggregate period for which a detenu can be kept in detention. The pertinent portion of that section reads as follows:

“ Provided that the Provincial Government mayafter a further consideration of all the circumstances of the case direct that the order shall continue in force for such a period not exceeding in the case of detention orders *one year from the date of commencement of actual detention under the initial order.....*”

Why should there be so much limit set in the Madras Act to the aggregate period for which any person can be kept under detention without trial?

In England the powers conferred by the Emergency Powers (Defence) Act, 1939, have to be wielded by the Secretary of State alone. They cannot be delegated to any officer or authority subordinate to him. But in India all the provincial Public Safety Acts authorise the Provincial Government to delegate the powers conferred by the Act to their subordinate officers. When such delegation of powers is allowed it is always desirable, and necessary, that the Act should specifically state the officers to whom the

should not receive such extraordinary powers. For illustrating the point, sec- 21 of the Bombay Public Security Measures Act, 1947, may be cited. But the Madras Act does not specify the ranks of officers to whom powers of the Provincial Government may be delegated. The omission may be accidental, but nevertheless material from the view-point of safeguarding the interests of the subject.

Even some Provincial Governments admit that the Public Safety Acts confer very wide and special powers upon them but they assure that these powers would not be used a day longer than is absolutely necessary. If this assurance is real, one fails to understand why a Government like Madras should by the amending Act get life of such repressive measure extended to three years. Why should it not approach the Legislature every year and after convincing the latter about the necessity of extending the life of the Public Order Act by another year, get its sanction? The U. P. Maintenance of Public Order (Temporary) Act, 1947, provides for the extension of its life only by a resolution of the Legislature. If U.P., being much nearer to scenes of communal disturbances in post-partition days, could follow this procedure, why should Madras not be able to do so?

SANKEY DECLARATION

Unless a man is declared by a competent authority to be a danger to himself or to others through mental abnormality, a declaration which must be confirmed within seven days and thereafter reviewed at least annually, he shall not be restrained for more than twenty-four hours without being charged with a definite offence, nor shall he be remanded for a longer period than eight days without his consent, nor imprisoned for more than three months without a trial. At a reasonable time before his trial he shall be furnished with a copy of the evidence which it is proposed to be used against him. At the end of the three months period, if he has not been tried and sentenced by due process of the law, he shall be released. No man shall be charged more than once with the same offence.