

STATE Vs. LIBERTY
AND OTHER
SPECIAL ARTICLES

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*The Madras Civil Liberties Union,
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Re. I.

CONTENTS:

	Page
The Condition of detenus by N. M. Joshi	1
Political Prisoners by One Who Knows	3
Security and Liberty	3
Liberty and Political Organisation by S. V. Puntambekar.	6
Fundamental Principle of Democracy by S.V. Puntambekar	9
The Red Signal	9
The Right of Free Assembly	12
Implementation of Human Rights	15
The Bombay Public Security Measures Act, 1947 by Dr. R.G. Kakade, M.A., LL.B., P.H.D., (Member, Servants' of India Society)	16
Some Judgments of Madras High Court	26
Social Disabilities of Scheduled Classes and Minorities by K. G. Sivaswamy	29
Press Laws in India by C. V. H. Rao, Editor, Indian Republic	31
Some aspects of Civil Liberties in Bombay	35
Civil Liberties in W. Bengal by Prof. K. P. Chattopadhyya.	40

The Condition of Detenus

N. M. JOSHI.

(President, Citizens' Committee).

The Committee is firmly of the opinion that the demands of 350 detenus in the several jails of the Bombay Province are just and minimum demands and wants to place them before the public so that the people themselves can see the justness of these demands and raise their voice in support of them.

These detenus, workers, peasants, Communists, Bahujan Samajvadis and others have been detained, many of them for over a year now, without trial. Elementary principles of democracy demand that a citizen cannot be deprived of his liberty until and unless he has been proved guilty of the charges made against him. It is incumbent on a Government which lays claims to democracy that it gives an open trial and proves the charges which it has been levelling against these detenus, or else release them unconditionally and immediately.

A major demand of the detenus is for the abolition of invidious discrimination between detenus and detenus. Their second demand is that as political prisoners, they are entitled to be treated with reasonable human comforts. Detenus of working-class and kisan origin have been put in Class II and are condemned to live half-starved and in cells which can better be described as stinking holes.

According to published facts and information received from various jails, the condition of Class II detenus is worse than those of convicted criminals. They are denied good and adequate food. They get one bhakri of 4.5 oz. every meal while the jail regulations prescribe 85 oz. meal even for convicted criminals. In 1940-12, under the rule of the British, Class II prisoners used to get wheat chapatis, potatoes and mutton thrice a week. Today, when the Congress is in power, the detenus are denied all this. This insufficient bhakri is supplemented with jaggery, groundnuts, and beans so as to make up the prescribed 20 oz. of 'cereals'. In the name of vegetables, all that they get are 'bhopia' and coarse leaves.

Such is the unnutritive diet to which they are condemned. Moreover, even this diet is cooked in such a way that it is almost impossible to eat. Although the Government's own Jail Reform Committee has recommended it, Class II detenus in most jails are not allowed facilities to manage their own kitchen. In theory, the detenus are supposed to have the right to supplement their jail rations at their own cost. In practice, this is a farce because the detenus who come from the working-class and who have been deprived of their livelihood cannot afford to do it. In addition Class II detenus are forced to live in tatters as, despite regulations, they have not been issued with clothes at Government expense for months after their arrest.

The authorities also do not give reasonable allowances to the families of the detenus which it is their moral duty to do after putting the detenus in jail without trial. Most of these detenus were the only bread-winners of their families and by their arrest and detention, the authorities have forced hundreds of their families literally to starvation. Instances of this have been brought before the authorities. At least in one case, a child has died of such starvation. But the Government have remained callously silent.

In Nasik Jail alone, out of the 85 Class II detenus, 66 are actually textile or railway workers who were at their jobs when they were arrested. They were the only or chief wage-earners of their families, earning Rs 7,500 a month between them—an average of over Rs 100 per person per month. The Government has a duty towards the families of these detenus and they should be paid family allowances.

In Bengal, in Madras and in every major Province except Bombay, the practice of family allowance for detenus has been accepted as reasonable and just. In Bengal the public by their support to the demand of the hunger-striking detenus, have succeeded in securing better treatment to the detenus. All detenus in Bengal will henceforth be treated as political prisoners and all under-trial political prisoners as Class I prisoners. The daily diet allowance for all the detenus has been raised to Rs. 2-8-0 per day and in addition the detenus will get an initial allowance of Rs. 210 and a further monthly allowance of Rs. 40 to provide themselves with clothes and other personal requirements. The demand for family allowance too has been secured. An interim family allowance of upto Rs. 50 will be available to dependents to mitigate hardships. The maximum monthly allowance will equal the earnings of the prisoner about the time of his arrest less the amount ordinarily spent on himself. In unusual circumstances of distress caused by the detention of the earning member of a family, this maximum may be raised to Rs. 500 per month. All literature, including Marxist literature, will be allowed into the jails. The weekly interviews of prisoners with their relations and friends are to last for one hour each.

When these above demands of the West Bengal detenus have been conceded by the Government of West Bengal, there seems no justifiable reason why the detenus in Bombay jails, detained on the same grounds as their comrades in Bengal, should not be given at least the same facilities.

When Mr. S. A. Dange wrote to Premier Kher just before he began his hunger-strike, detailing the horrible conditions inside jails, a Government statement denied this claiming that the detenus were getting all facilities and were demanding luxuries. But after the termination of the hunger-strike, the Government has announced some 'concessions' to the detenus which throw some light on the earlier statements. According to these recent concessions, the detenus in Bombay jails will be given both rice and 'chapatis' as part of their regulation allowance of cereals. Where the detenus are given clothes at Government cost, these will be made to measure. Latrines will be provided with foot-rests and chamber or urine pots will have covers. By granting these minor concessions, the Government has admitted that conditions of the detenus needed

improvement. But these concessions are meagre and do not affect the major demands of the detenus.

The detenus have given up their hunger-strike. But they should not be allowed to continue to remain in the present humiliating conditions. The Citizens' Committee takes a very serious view of the situation and demands that the Government immediately move to meet the demands of the detenus.

Political Prisoners

BY ONE WHO KNOWS

The most reasonable demands for which leaders of the working class movement, including Communists and Forward Blocists, went on hunger-strike in Nagpur, Raipur, Mandla and other jails, have not been met. Government's notification in this regard is unsatisfactory. In reality, except grant of interviews, nothing is conceded.

What is the actual condition to-day of Political Prisoners?

1. 957 of them are in 'C' class. The daily allowance of food is -/8/-; while in Bengal it is -/2/-.

2. No toilet soap, tooth paste, oil etc. The declaration of Government that soap is doubled sounds big. But do you know how much soap? Hardly worth to 4 clothes a month once! While in Bengal Ra 5 p.m. for toilet is given.

3. No allowance for clothing. No family allowance. And magnanimity is shown by allowing more *personal* expenditure.

4. All leading members are kept in cells locked not only from 6 p.m. but also in daytime and are not allowed to talk to others. Especially Communists are not allowed to sleep outside!!

5. A new order is made that even legal books are to be censored by D.S.P.! This means 3 months to get even ordinary books!

Such are the so-called concessions! Hope you will not let down the cause of the Political Prisoners, whether Detenus, Under Trials or Convicts; and agitate for removal of their just grievances. —(With acknowledgements to Hitavada).

II

Security and Liberty

It is idle to ignore that the curtailment of these liberties, against which the Hon. Mr. Justice Chagla sought to focus attention, is taking place not only with the support of the majority which the ruling party commands in the legislatures but also with the tacit approval which they command from the majority outside the legislatures. This they are able to secure by pandering to the nationalist sentiments, by whipping up the irrational emotions of the unthinking masses, and by exploiting the ignorance, superstition, blind faith and authoritarian temperament of the people. An independent judiciary is hardly a remedy for the evil; although the

point in favour of such a judiciary has undeniable merits. For the function of the judiciary is to see to the proper application and execution of laws. When the laws themselves are undemocratic, are framed with non-democratic purpose—and such laws can conceivably be framed with so-called popular sanction—and are tantamount to liquidation of the basic impulse of democracy itself, law, howsoever majestic, is no more than a handmaid of injustice and reaction. In our times we have had the classic example of such liquidation of democracy in the rise of Hitler to power with the sanction of a regimented majority. Coming nearer home, we find in India to-day similar process. The constitution which is to determine the character of the "free, democratic, republic of India" makes provision for the denial to the people of their basic right to free thought, civil liberties and freedom of association, on grounds of security and considerations of what is euphemistically termed as "public morality." The constitution has the sanction of the Constituent Assembly; and so far no effective opposition to it has been possible. Neither has the Press as a rule thought it fit to inform public opinion on the point, in order that a healthy opposition to the move might be crystallised. And it needs no telling that the constitution of a country is its first basic document of laws. The judiciary, independent or otherwise, is bound to act in conformity with it.

The situation can undoubtedly change if enlightened opinion is aware of the dangers we are faced with; and if they undertake to inform, educate and mobilise the people in the manner of the Jacobins of the French Revolution. The failure of their awareness in the matter is the measure of the tragedy we have already walked into, willingly. Those few who are aware of the danger, have the preconceived and out-of-date prejudices of the effete liberal era ranged against them as formidable first hurdles. Added to these are being piled up the various public security measures which are progressively hamstringing the opportunities of free propaganda, through the Press as well as the platform. That is the immediate problem of vital import in a consideration of the question under discussion. And the Press, upon which devolves the responsibility of the third estate in a democracy, needs to face it clearly and understand the implications of it fully before it can undertake to express the voice of democracy against the encroachments of reaction. Tied to the totalitarian concept of a monolithic nation, and zealous about preserving the security and sanctity of this mythical god, it can hardly hope to undertake that task.

Since the happy days of *laissez-faire* Liberalism, both Democracy and its economic foundation, Capitalism, have had to traverse through tears and tribulation. The people in the bargain lost faith in the basic values which inspired the transition from medieval subservience to modern self-reliance of man on himself and his creation. And in the crucible of melting values was cooked the unmaking of man by invoking his spirit as an economic entity, either subject to *laissez faire* or the Marxian prognosis which endeavoured to reduce him to a creature of a new god called productive forces. The appeal to reason, morality, to higher values, and the import of the sovereignty of the individual, were all lost in a maze of empty formalism and legality on one side, and irrational assertion of economic well-being as the *sine qua non* of liberty and

fraternity on the other hand. The conflict is the major crisis of our times, and vitiates the thought and action of even the devout champions of the democratic principles all over the world. In our country the crisis is acuter because both politically and economically we are witnessing the incorporation of a democratic facade on the existing patterns of medieval economic and social foundations. The political consequence is therefore the emergence of a popularly backed dictatorship which hopes to thrive on feudal economy and cultural back-wardness of the people. The eclipse of freedom witnessed today is only a symptom of the serious malady we are affected with. The malady curses the enlightened sections of the population even more effectively than others. The opinions expressed in the Press on Mr. Chagla's speech are an index of that unfortunate fact. Being themselves nationalists, and believers in the nation's security being in danger, they cannot reasonably turn against the Government and blame it for adopting measures which the latter considers necessary for precisely nationalist reasons.

To be fair to the Press, however, it must be conceded that, besides its nationalist creed, the faith in formal democracy is a contributory factor for their confusion. So long as democracy is considered to be representative Government where the people's sovereignty is wielded on their behalf by those chosen through elections, the identification of the fiats of popularly elected legislators with the will of the people is unavoidable. In view of the fact that these chosen few alone today control power and sources of power, the whole procedure of formal representative democracy is in point of fact a big fraud. And it is bound to be so, unless democracy is re-enlivened through a structural transformation making for direct control of the legislative as well as the executive functions of the state by the people themselves. The consummation of that structural modification of democracy is, however, impossible without a basic revaluation of values with the object of enabling man, the individual, to become the arbiter of his destiny—politically, spiritually and materially.

Judged from this point of view it should be clear that neither nationalism nor independent judiciary are the armours for protection against inroads into the people's right to individual freedom. The protection lies in a dynamic concept of democracy and its acceptance by the people. No Government which rules in contravention of the principles of democracy in this sense can claim the support of the people; and it will not have it as soon as the democratic ideal has been sufficiently permeated among the people. It can continue to rule through a reign of terror and repression. But as has been well said, no people's Government ever rules through fear; nor need it invoke imaginary dangers to the security of the state. The liberty of the individuals comprising a state provides the best defence against in security. Where such liberty is denied, security is a convenient plea for negation of people's rights—a basic value in democracy.—*Independent India 25-7-48.*

Liberty and Political Organisation

(Extracts of an article from Radical Humanist 24-4-49)

BY

S. V. PUNTAMBEKAR.

We cannot be a crowd state. It deadens independent thought and indulges in an unthinking unanimity and uniformity. It does not promote any genuine collective thinking. Groups stimulate such thinking through the creative power they set free. The crowd does not tolerate differences. Groups tolerate it. The crowd seeks unison. Groups seek harmony. The crowd does not allow choice. Groups allow it, for choice is necessary for vital progress. The crowd submerges and smothers the individual. Groups release and enrich his personality. So democracy would reach its true end if men will and acted in groups, not in one group or one kind of groups, but in many groups. The crowd is not a community conception. It is a vital consideration in a democracy that the individual should participate in the working of the group or groups, for in this participation he finds his true self and loses his apathy, narrowness and isolation in society. In the absence of the group conception he and his fellows are not likely to resist or revolt against despotism. The maintenance of this vigilance for liberty is the greatest responsibility on the citizen. He must bear this. We find however that he mostly prefers security to freedom. Thus our problem, is, shall we have happy slaves or responsible active freemen. We must remember that not a little part of the life of the individual must necessarily remain outside the province of the state and unregulated by its law.

The more groups to which the individual belongs, the more aspects of life he develops, the better; for they develop the multiple side of his social and individual personality and give scope to his general and specific activities and inclinations. No one group can suffice or cover and develop all aspects of his life. His nature and needs are many-sided. His values and ways are manifold.

For this purpose we must avoid and set aside the power-politics and herd politics of one party or one political organisation. All of us must not enter the cave of one political party and become blind.

If freedom is to remain secure, it must rest on the various functioning groups which work in relation to one another. Groups provide competing authorities which give social status and freedom to individuals by developing their rights and duties.

The greatest danger which faces liberty of individuals and political organisations is the sheer secularism in which the state indulges. It strips the state of all moral functions. Its business then becomes simply to maintain those in power by ballot box electioneering methods, and to prevent its citizens from picking each other's pockets and from flying at each other's throats. This picture of the state appears nothing more than anarchy plus the policeman.

This will result in the ultimate demoralisation of the citizen. Political and economic corruption are the direct results of this

secularisation of the sovereign power of the country. It is not by creating fear but by evoking love and respect that we can lay the foundations of a great state and society where freedom and authority will be properly co-ordinated and harmonised, and citizens will have scope for their creative activities and organisations of life. The state should not become a merchant, dealing out only political and economic goods.

Two rights are essential to an individual in a civilised and democratic society : namely, the liberty of thought and speech, and the liberty of assembly and association. The one safeguards his individuality, and the other his sociality. I however do not ignore his other rights, namely, freedom from want and from fear. These are the minima of his existence in all societies.

Liberty has meaning for the individual and the group in the state. It may mean not only absence of restraint on them but also providing conditions for the pursuit of their activities which are not against the common good or social morality.

Every constitution has protective aspects and promotive aspects. For their achievements a variety of parties and groups or organisations are possible. To maintain unity, security and independence and to promote ethico-cultural aspects of life a number of organisations and associations or institutions are possible. But those who think in terms of one party or organisation, one policy or aim, and one leader or philosopher and want to destroy others are fascists or communists. In their organisation of life the people become apathetic, non-active and non-political, and the state then becomes inactive and subordinated to the party. Rule of law or constitutionalism is destroyed by them. There is no way left for constitutional agitation or opposition to arise. Democratic process is destroyed. There is no faith in the power of reason felt to settle difference, and there are no habits of tolerance created to develop other approaches to life. They are not prepared to abide by the results of discussion and deliberation. They would define the premises and provisos within which reason must argue but not necessarily prevail. They would take care that the power of the state can be used to prevent any danger to their legitimacy and continued hold on state power. They would also define rules so that those who question their authority may be by that fact expelled from the game or pursuit of power.

This is what is meant by their possession of state-power. It helps them to use force against opponents in order to decide the result of the contest for power beforehand if they challenge their handicaps by strikes or satyagraha or other forms of resistance. Their laws make it a crime to utter words or slogans individually or in groups or in procession. They control the press, the platform and the pulpit, the radio, the cinema and the educational institutions. There is no limit to the possible range of penalty or prohibition they prescribe. In these circumstances of possessing the state power by one determined party, there is no chance of any effective opposition to their authority, unless there is a defeat in war externally or an economic collapse and moral corruption within. Men who have willingly lost political freedom without any constitutional resistance or organised opposition to those in power will be unable to organise themselves easily for its conquest. An habit of passive obedience is difficult to disturb or disestablish.

The plant of liberty is delicate and fragile. Its flowering depends on security of conditions favourable to it. But when ordinary security is threatened, even in the name of liberty, those who are guardians of the existing order or possession of state power have no difficulty in admitting its abrogation under the name of general security. A contempt develops for liberty in the political organisation when claimed by factions or individuals within and against other organisations when claimed by parties in opposition:

Today we have entered a totalitarian epoch. The old attitude towards liberty as seen in Great Britain or the U. S. A. amongst Liberals is not practised or even admired. There is no tolerance, no sense of justice and no agreement to differ. All over the world there is a new barbarism and a new fanaticism, where passion, not reason, dominates. There is a despotic suppression of other parties groups and organisations which differ from the ideology or views of those in power. Penalties and tortures are inflicted by those in power. There are no moral restraints accepted on the exercise of power. Power is for power's sake, for secular ends. Arrests and detentions without trial are defended by those in power. Eminent jurists and judges justify them being helpless under the existing laws or being influenced by the logic of necessity and security of the state, without knowing or stating what the emergency or peril is. The power is held to be a supreme good. Those who hold it are considered benefactors by the fact of its very possession. Therefore the ways of its attainment or preservation do not matter, nor would they raise any protest against illegal or unlawful actions of those in power. There is no voice of freedom and reason left. They are drowned in the passionate and loud clamours of masses and their methods of direct action. The democratic process of discussion and consent is abrogated. Weapons and violence conquer. Nothing succeeds like excess. Different views, values and ways of life are considered a threat to the foundations of the state and society which they are taught to believe in. Political forms, democratic or otherwise, are merely masks or mosques in which believers hide or pray for success. Therefore it becomes the chief task of political philosophy to examine the character of the state in its actuality, that is, those who are holding state-power rather than the ideas which are present in theory in the form of Government. We must not look to the claims made, but to the actions performed.

In order to know whether liberty exists, we must see whether the Habeas Corpus Act is suspended or rendered ineffective, general warrants are allowed, organisations are banned, meetings, associations and movements are prohibited, outworn regulations, lawless laws and emergency ordinances are used, opinion and speech are suppressed; person and property are penalised. If there is a rule of law, a due process of law and an ordinary system of courts doing all these, then only these can be at all justified. Otherwise liberty and democracy in substance would disappear, whatever may be the forms which are retained. We must have liberty and political organisations which will give scope for its expression and development.

IV

Fundamental Principle of Democracy

S. V. PUNTAMBEKAR.

The primary function of the state is not to make individuals disappear or to absorb them in the scheme of a general or ideal will as embodied in the state, but to recognise them as such outside the state.

The state has to confine its activity to regulating matters which all or majority of its members at a particular time consider to be sufficient to justify the use of coercion for the common good.

Today the politician—the man struggling to capture power and to retain it as a member of a powerful party—is getting stronger than the despot of yesterday. He considers the maintenance of law and order as the only essential functions of Government. He does not like to tolerate opposition. It is likely that unless there is respect for fundamental rights and democratic processes, democracy and freedom may go or be endangered, and one party totalitarian state may be established for want of successful opposition. To day the power of the state and of the party in power is enormously increased. Therefore it is necessary that there should be limitations or controls on the authority, of that power embodied in the constitution itself. The danger to democracy in modern states arises not only from minorities determined to subvert the foundations of the state but also from a majority who continue to control it in its interests and to perpetuate its own power.

The problem of the freedom or rights of man individually and in association become very important from the point of view of moral humanity and creative citizenship and civilisation. We cannot exhaust or cover the whole life of man individual or social, merely in organised groups and institutions. A large part of it is still unknown or unorganised. We must therefore, leave it to him as an individual and social being to find out and develop new springs of conduct and sources of action which carry humanity forward in virtue, wisdom and welfare. Man is the hero of history, science and philosophy. He must be provided with conditions which will promote common good not only on the political and economic plane but also on moral and spiritual plane where values and virtues of life are revalued and transvalued. (Extracts from a talk broadcast from the Nagpur Station of the A.I.R.—(Reprinted from Independent India of 6—3—49.)

V

The Red Signal

(Extracts from Notes and Editorial, *Radical Humanist*, Bombay).

Happenings in Calcutta.

The happenings in Calcutta and nearby places must attract the serious attention of all those who are interested in peace and progress. Not a day passes without some incident of a violent

character and retaliatory action by the police resulting in injuries and loss of life.

They must in unequivocal terms dissociate themselves from those callous and inhuman activities and unreservedly condemn those who are exploiting innocent men, women and children for their sinister political ends. They must also build up a strong public opinion against this open invitation to disorder and anarchy.

Policy of suppression.

The West Bengal Government, in common with the Central and other Provincial Governments, is trying to counteract the communist menace with the usual method of repression, suppression of civil liberties, arrests, detentions, lathi charges and firings. The method has not so far proved effective. It may be granted, however, that given the superior power and resources of the Government, it may prove effective in the end, unless in the meanwhile the international situation undergoes a change and communists get help from outside. Suppression of communists by police methods will only result in the establishment of a semi-military totalitarian dictatorship. Communists may be suppressed but the danger of communism will not be eliminated. It will be ever present, haunting the Government like a spectre and compelling it to be always on a war footing, with civil liberties superceded and individual freedom abolished. That is a prospect which no man of intelligence and culture will be prepared to regard as a lesser evil. He cannot therefore approve the Government's methods of suppressing communism and communist activities. Communism and communist activities can be eradicated only by abolishing the social, economic and cultural conditions which act as their breeding ground. Poverty, misery, insecurity and ignorance provide a fertile soil for their birth and development.

Towards Dictatorship.

A people living on the verge of starvation and immersed in ignorance and superstition can fall an easy prey to the seductive appeals of communism. They can also with equal ease provide a powerful mass basis for a dictatorship of the Right. Unless therefore the people are liberated economically and also culturally, there is always the danger of their falling a prey to a dictatorship of the Right or the Left.

The time may not be far distant when the democratic frills and trappings may be thrown to the winds and a naked dictatorship may be established. There is, however, still some time to avoid that fate, which is not necessarily inevitable. A dictatorship of the Right as well as the Left can be avoided and a democracy can be established. But in order to make that possible it is necessary to awaken amongst the people a liking and a zest for the values of democracy. Economic betterment alone will not ensure them. It must be accompanied by a cultural regeneration which will enable the people to appreciate and treasure the values of human dignity, individual freedom and social progress. It is the task of those who abhor dictatorship, of the Right or the Left, to hold up those values before the people and to secure their acceptance and appreciation.

The vast bulk of the people are not necessarily keen about peace, nor again passive towards outbreaks of frenzy and violence but generally sympathise with or acquiesce into them. It may not necessarily be "political" sympathy or support. It is perhaps, on the contrary, a result of a growing mood of cynicism in which they hardly find anything worth supporting or defending. It is not the manoeuvrings or plans of an anti democratic political party but this atmosphere that constitutes the real danger to peace.

The repetition *ad nauseam* about the activities of an undemocratic opposition party being responsible for the continuous disturbances of peace can hardly be expected to produce the desired results. One may doubt whether in the prevalent atmosphere, such an argument would be at all helpful in weaning people away from communism. It can be perhaps effective only if they are possessed of democratic consciousness. The absence of the latter being almost complete at present, at least so far as the vast bulk of them are concerned, the argument either falls flat or rouses sympathy for communism. Besides, what after all is the choice presented to them? Those, witnessing corruption, nepotism, squabbe, unscrupulousness, lust for power and personal gains, can hardly be convinced that the communist cataclysm would be any worse than the present state of affairs. Those indulging in persistent and endless vituperation of the opponents should therefore realise that they only damage their own case by that method. Their being in power lends a *prima facie* plausibility to the argument against them. And they simply reinforce it by a show of temper.

It is true that in a country with an appalling poverty and sub-human level of existence, the economic problem must have fairly high priority, and the economic appeal will be considerably stronger. But to believe that it determines the responses of the people or to hope that an increase in the quantum of rations from nine to twelve ounces, howsoever welcome in itself, will register an improvement in the situation is to endorse in a sense the communist case. As a matter of fact the strength of even the communist appeal does not lie so much in its promise of bread and security as in its argument for equality of human beings expected to be established in the millennium. It is that which lends the otherwise highly objectionable practices of communism the requisite moral sanction. Communism devoid of that sanction would simply amount to a vulgar pursuit of collective selfishness and would scarcely have any appeal at all. Its strength, if any, is therefore not a result, as Dr. Roy would have us believe, of merely the fact that "the people's needs in food and other necessities of life are not fully met." It is rather a consequence of the fact that the moral foundations of the authority of those who are supposed to meet these needs have been thoroughly shaken.

Confidence in the constitutional methods can be restored only in an atmosphere of mutual respect and tolerance. The minority can acquiesce into the will of the majority only if it can have reasonable confidence inspired by those in majority that no interference will be made with its normal endeavours to convert itself into the latter. The rulers in the provinces and at the Centre by their behaviour appear to be undermining that confidence. Their lust for power and the consequential endeavours at grabbing

at, and holding on to it are all indicative of tendencies which are bound to militate against any normal constitutional change of Government. Given the experience of these tendencies almost all over the country, it is natural that they are not taken seriously when they argue, as the Premier of West Bengal did, that the "people should remember that it is the democratic system of Government that is now functioning. If a particular type of Government does not suit you, it is for you to come together and oust the Government and substitute it by another type of democratic Government." That it is possible to do so must be realised by the people in terms of their own experience, a good deal of which depends on the actual behaviour of the majority. The argument that there is at present no party in the country which can take "it" over from the Congress, that therefore the only alternative to Congress in power is chaos can hardly be convincing. Perhaps a more crucial question is as to whether the congress in power can prevent chaos overtaking us. It is no use its trying to do so through suppression of criticism, elimination of opposition, and establishing totalitarianism in the country. Such a state of affairs would indeed be worse than chaos. The time indeed is fast approaching when those in power have to do a little heart-searching. Refusal to do so may easily spell ruin and disaster. The West Bengal incidents are perhaps a straw indicating the way the wind is blowing. Let those in power learn the proper lessons from this red signal before we are actually overtaken by a storm (3-7-49).

VI

The Right of Free Assembly.

The U. N. O. and the Right of Free Assembly.

The sub-commission of the U.N.O on human rights has adopted the articles in the draft covenant. These articles laid down that everyone shall have the right of freedom of peaceful assembly and association subject only to requirements of public order and security and the fundamental rights and freedoms of others.

(June 10th P. T. I. Reuter).

This covenant is valuable only so long as the courts have the power to decide whether executive orders prohibiting peaceful assembly and association are necessary in the interest of public order and security.

The right of peaceful demonstration came into question recently in the Delhi Magistrate's Court in the case of Dr. Ram Manohar Lohia. A summary of the case is given below :—

The Case of Dr. Ram Manohar Lohia.

Dr. Ram Manohar Lohia, Socialist leader, to-day submitted before the New Delhi Resident Magistrate that the Prime Minister, Pandit Jawaharlal Nehru, among others, be summoned to appear in the court as a witness.

Dr. Lohia, was arguing his defence in the case against him and 46 others for taking out a procession on May 25 in defiance of the District Magistrate's order prohibiting meetings and processions.

In a statement submitted before the court, Dr. Lohia accepted full responsibility for taking out a procession in defiance of the ban and said that in order to secure material evidence in relation to the issues raised by him in the statement, the Prime Minister and seven others should be summoned as court witnesses.

Dr. Lohia said that emergency laws of free India were the same as those of ten years ago when India suffered emergency rule of one kind or the other under the foreign domination. He said: "The emergency laws are not being used for the maintenance of peace and order in this country, but for the maintenance of the present Government in the office."

Demanding a complete reorientation of the law on illegal assemblies, Dr. Lohia said that illegal assemblies all over the world were riotous and force was used by either side, the Government as well as the crowd. Mahatma Gandhi established that assemblies may violate lawless orders and stupid laws and yet remain peaceful. This principle received legal and practical recognition even under foreign rule, as is evident from the clauses of the Gandhi-Irwin Pact or the actual manner in which peaceful but illegal processions were handled by the British. "The Government of India proclaim themselves to be successors of Mahatma Gandhi but seem determined to squander this great juristic treasure."

Referring to the view that international complications may arise when demonstrations were held against independent countries like Nepal, Dr. Lohia said: "The right to the use of roads in front of Embassies by political parties for purposes of peaceful demonstration is undisputed. It is sometimes their duty to make use of this right for that is the only way to express democratic solidarity with the peoples of foreign lands." (A. P. I. June 13).

Arguing the application to-day, Dr. Rammanohar Lohia suggested the constitution of a people's tribunal in every province to protect the civil rights of the people.

He said: "I should like to avail of this opportunity which probably is the last to make two constructive suggestions to the court. It is, of course, true that so long as the people of India do not eat and are not housed properly, a fictitious emergency will exist to enable the executive to strangle discontent.

"Meanwhile, in order to protect the citizen in the fulfilment of his duties and the enjoyment of his right, a Tribunal of the people on the Swedish model must at once be erected for every province on the basis of adult franchise. Furthermore, a committee must at once be appointed to clear the jungle of existing laws and revise or reframe them." (P.T.I. June 21).

Dr. Ram Manohar Lohia, Socialist leader, and 42 other Socialists were to-day sentenced by the Resident Magistrate, New Delhi, to two months' simple imprisonment and a fine of Rs. 100 each in default two weeks' further imprisonment.

Delivering the judgment, the Magistrate observed: "The defence plea was that the Punjab Public Safety Act which was an emergency measure, was invalid, redundant and kept alive by the

Government with malicious intentions. I am afraid I cannot agree with this view.

On the point raised by Dr. Lohia that peaceful picketing and satyagraha had been recognised as legal and constitutional methods of public protest by the Gandhi-Irwin Pact, the Magistrate stated: "Strictly speaking, this point is not very relevant to the issue involved in this case. But even if it is presumed that peaceful picketing and satyagraha had been accepted as legal and constitutional methods of protest in the Gandhi-Irwin Pact, they had not excluded from the scope of the law existing at that time or at the present moment. Until and unless the same has been incorporated in an Act of Legislature, it cannot override the provisions of law."—(June 23, Hindu.)

Dr. Ram Manohar Lohia has since been released and the Government of India have issued a communique explaining the need for prohibiting meetings and procession Sec. 144 in the Delhi area.

Calcutta Judge's Ruling on the Right of Free Assembly.

Mere disobedience of Section 144, Criminal Procedure Code without establishing that the provisions of Section 188, Indian Penal Code, had been violated was not punishable under the latter section. This was the decision taken by Mr. Justice Sen of the Calcutta High Court while delivering judgment in a reference made by the Sessions Judge of Burdwan who recommended the conviction of and sentence on Darbarilal Shaw by the Asansol Magistrate, under Section 188, I.P.C. be set aside.

Mr Justice Sen observed that Section 188 laid down that a person who disobeyed an order under Section 144, Criminal Procedure Code was guilty of an offence punishable under that section only if such disobedience had the effect mentioned in the latter part of that section. Disobedience must cause or tend to cause danger to life, health or safety or cause or tend to cause obstruction, annoyance or injury to any person lawfully employed. If this was the result of disobedience, then the person guilty of this disobedience would be liable to certain punishment.

His Lordship added that if such disobedience caused or tended to cause a riot, affray, etc., then the punishment was more serious. It was obvious, therefore, that before a person could be punished under Section 188, the disobedience of the order passed by the Magistrate must have one or other of the results mentioned in the section.

In the present case, His Lordship observed, the Magistrate had stated that the disobedience tended to cause injury to the Government and, therefore, it came within the purview of Section 188. His Lordship said he was unable to understand what the Magistrate meant by injury to the Government. Such injury, His Lordship added, must be to any person lawfully employed. Government were not a person and, therefore, it could not be said that Section 188 could be invoked.

His Lordship set aside the conviction and sentence and directed the refund of the fine if any had been paid.—(F.O.C. Hindu June, 24.)

VII

Implementation of Human Rights

The U. N. Commission on Human Rights heard pleas from two non-governmental organisations that the United Nations establish some machinery to deal with petitions by individuals about violation of human rights.

The Commission was discussing measures to implement the covenant on Human Rights which it is at present framing.

Mr. Roger Baldwin, Chairman of the International League for the rights of Man, told the Commission, that the publicity given to such machinery would in itself, to a large extent, promote the protection of human rights. If it was argued that this would result in interference with the sovereignty of States, the reply was that any convention implied a voluntary restriction of sovereignty by contracting States.

Mr. Moses Moskowitz, representing the Consultative Council of Jewish Organisations asked for the establishment of permanent central and regional commissions, composed of independent persons, who would act on complaints of violations of human rights, whether by States, individuals or "qualified non-Governmental organisations." This alone Mr. Moskowitz said, would satisfy "the minimum requirements for the international protection of human rights"

Stating that the rights of individuals to initiate procedures by way of petitions was "founded on important historical precedents," Mr. Moskowitz said the very fact that an individual could appeal to an international body would be a protection of his human rights.

Soviet Objection.

Mr. A. P. Pevlov, Soviet Russia, opposed the envisaged "measures of implementation" arguing that they were designed to undermine national sovereignty.

The Commission discussed the question whether the Covenant on Human Rights and measures for its implementation should form a single instrument or two instruments, to be ratified separately, but after a long debate postponed decision on the subject.

(PTI. Reuter, June, 3).

After a debate lasting five weeks, the United Nations Commission on Human Rights has taken a decision on the question of permitting individuals and private organisations to petition the world organisation on Governmental violations. (PTI. June, 18.)

The Bombay Public Security Measures Act, 1947.

SOME JUDGMENTS OF BOMBAY HIGH COURT

BY

R. G. KAKADE, MEMBER.

Servants of India Society, Poona.

The Bombay Public Security Measures Act, 1947, like similar enactments in other provinces, vests in the Provincial Government very wide and special powers, *inter alia*, to order detention or to impose any restriction on movements or actions of any person on being satisfied that he is acting or is likely to act in a manner prejudicial to the public safety, the maintenance of public order or the tranquility of the province or any part thereof. These powers under section 2 are allowed to be delegated to any officer or authority not lower in rank than a Deputy-Commissioner of Police in Greater Bombay or the District Magistrate or Additional District Magistrate elsewhere. Under section 22 any Police Officer may arrest without warrant any person who is reasonably suspected of having committed an offence punishable under the Act. The Act further provides for the constitution of Special Courts of criminal jurisdiction, with Special Judges, for any area to try such offences or cases as the Provincial Government may direct. When powers of such extraordinary character are entrusted to the Executive, the High Court is prevented by section 18 (3) of the Act from transferring any case to any Special Judge or making any order under section 491 Cr. P. C. from providing for a writ of *habeas corpus*.

Section 3 of the original Act (which is later amended), however, purports to afford a safeguard to the subject. It makes it incumbent upon the Provincial Government to communicate to the detenu the grounds on which the order had been made, without disclosing facts which it considers to be against the public interest to disclose. The object of furnishing these grounds is to enable the detenu to make a representation to the Provincial Government against the detention order; attempting thereby to remove any misapprehension on its part. This is the only opportunity given to the detenu of having his liberty restored. On having considered the representation, the Provincial Government may either annul, modify or confirm its preliminary order of detention. (Sec. 4.)

The position under the Act being what is described above, it may be of some interest to pass under review, even if cursory, some of the orders passed by the High Court of Bombay when its intervention was sought to secure release from detention under the Act. This may throw light on some of the excesses or abuses on the part of the Executive in wielding the powers conferred upon it by the Act. It may also indicate what efforts have been made by the High Court to defend the personal liberty of the subject whenever and wherever any opportunities offered themselves to it.

It is obvious that the High Court can afford protection to the subject only to the extent permitted by law. Howsoever repressive or arbitrary the law may be, it is as binding on courts of law as a good and reasonable law is. Courts cannot go beyond the letter

and spirit of the law. At the most, what they can do is to put on a law restricting the liberty of the subject a construction most favourable to the subject. When the personal freedom of the subject is at stake, the duty of the Court is always to see that all the requirements of law are strictly observed by the authority making a detention order, that the order made is within the ambit and scope of the Act, and that the Government has not exceeded or abused the powers conferred upon it by the Legislature.

Scope of the Act:—The scope of the original Act was restricted to, as it should have been, to present and future actions of prejudicial nature of a person. This will be clear from the case of *Hirji Shivram Vyas (Petitioner) v. The Commissioner of Police*, (50 Bom. L. R. 210 or A. I. R. (35) 1948, Bombay 417). On 17th October 1947, the detenu was arrested in connection with a bomb outrage at Warden Road on 3rd October 1947. Charged with offences under Ss. 302, 307 and 114, Penal Code read with Ss. 5 and 6, Explosive Substances Act, he was remanded to Police custody the next day. On 1st November 1947, the Chief Presidency Magistrate ordered him to be enlarged on bail. The bail was furnished the same evening and when he was about to leave the C. I. D. office, he was not allowed to do so. On 3rd November 1947, order under Sec. 2 (1) (a), Bombay Public Security Measures Act, 1947, was served on him. This order was signed by the Deputy Commissioner of Police instead of the Commissioner of Police and as such was considered to be open to the objection that it was of no binding force. On 15th November 1947 another application was made by the Sub-Inspector of Police, C. I. D., to the Chief Presidency Magistrate, requesting him to extend the bail period of the accused till 29th November 1947. This request was granted. On 18th November 1947, the detenu was served with another order and notice under the Act, which this time was signed by the Commissioner of Police, Greater Bombay.

On considering all the issues raised, the High Court held that the orders of detention were bad and directed that the detenu be set at liberty forthwith. While interpreting the words "is acting" in S. 2 of the Act, his Lordship remarked. "The word 'is' is capable of only one meaning namely, that within a reasonable distance of time as compared with the date of making the order by the Commissioner of Police, the detenu has acted or was acting in a manner prejudicial to public safety. It is not within the scope nor is it the intention of the Act that for acts done by the detenu in the remote past or what may be considered as remote past having regard to the distance of time which separates the alleged acts from the date of the making of the order, that the detenu shall be kept in custody." On referring to the circumstance that when the second order of detention was served on the detenu, he had been in custody for nearly a month, his Lordship remarked, "I am unable to persuade myself to take the view that the order dated 17th November 1947, was passed within the limit of the powers given under the Act, or in the due and proper discharge of his duties by the respondent (Commissioner of Police), or that it was passed *bona fide*."

In regard to the prosecution and detention on the same ground, his Lordship observed: "I do not think that this Act...contemplated that there should be prosecution first for the purpose of securing

conviction, and that when after that long drawn-out process was over, the Police Commissioner should have recourse to those special powers and arrest the accused on those very grounds on which he should in the very first instance have been detained."

The fact that the accused was served with an order of detention by the Commissioner of Police when he was enlarged on bail by the Chief Presidency Magistrate, was taken note of by his Lordship very seriously. This will be evident from the following extract from his judgment: "I do feel, and feel strongly, that it is not permissible for the Commissioner of Police to lend himself to any course of action which suggests that he arrogates to himself the right to review the judgment of the Magistrate. He must respectfully abide by it. Where then a situation arises which lends itself to the construction that the action of the Police Commissioner is an attempt to supersede the order of the Magistrate, Courts of Justice must be vigilant to see that justice is not brought into ridicule and rendered impotent and that a tendency towards autocracy does not prevail in the minds of the representatives of democracy."

The expression "is acting" in S. 2 of the Act came for interpretation before the High Court of Bombay in a later case—*In re Moinuddin Abdullamia Koreishi* (50 Bom. L. R. 579 or A. I. R. (36) 1949 Bom. 86). In that case their Lordships held: "It has been held in several cases on this point that the expression 'is acting' refers to a reasonable period which could be regarded as present and not past, so that acts done in the approximate and immediate past might legitimately form the basis of an order of detention. An act may take some time for being reported to the police, and thereafter further time would be required for investigation by the police, for their making report to the District Magistrate and for latter officer's considering the report before making an order. In view of such requirements, we do not think that a period, say of two months, prior to the date of the order can be considered as outside such period as may reasonably be regarded within the scope of the expression 'is acting'.

Whatever the interpretation put upon the expression 'is acting' by the High Court at different times may be, it stands to reason that recourse should not be taken to an emergency Act, like the Public Security Measures Act, when an offence can and should be dealt with according to ordinary law of the land, especially when option is left to the Executive to do either. The fundamental difference between a criminal trial for an offence already committed and preventive detention for the same reason needs to be borne in mind. In the case of a criminal trial, the accused is being prosecuted for what he has already done. In the case of preventive detention, which is the only object of emergency legislation, on the other hand, the detenu is detained for what he is expected to do if at large, and not for what he has done. As observed by their Lordships in *Om Prakash Mehta and others v. Emperor* (A. I. R. (35) 1948 Nagpur 199i, the expression 'is acting' does not allow the "past actions to be visited with detention". But in case the Executive elected to proceed against a person under the criminal law, an acquittal by the Court should be deemed to oust the Executive's power to proceed against him also under an emergency Act. But the Bombay Act now authorises detention of persons for their past

acts by inserting the words 'was acting' before the words 'is acting or is likely to act' in sub-section (1) of Sec. 2 of the Act by the Bombay Public Security Measures (Second Amendment) Act, 1948. Neither the Defence of India Act, 1939 (Rules Nos. 26 and 129), nor the Maintenance of Public Order Act of any province in India provides for detention with reference to any act the detence may have done in the past. The Bombay Act has the unique distinction of restricting the personal liberty of the citizen in a way which no other province has dared to do.

Grounds and particulars of detention.

When one remembers that the only opportunity the subject has of having cancelled an order of detention passed against him is to make a representation to Government in respect of grounds furnished to him, it becomes apparent how important it is that everything should be done to see that the detenu known why exactly he has been deprived of his liberty. In *In re Rajdhar Kalu Patil* (50 Bom. L. R. 183 or A. I. R. (34) 1948 Bom. 334), the Full Bench of the High Court held that "the grounds furnished must be clear, precise and accurate; otherwise they would fail to serve the purpose for which they were intended by the legislature... We are most anxious that this safeguard afforded to the subject, which seems to be the only safeguard under this Act, should be maintained intact and should not be in any way whittled down." As regards furnishing particulars to the detenu, the same Bench observed in the same case as follows: "Without encroaching upon the right of Government to decide what particulars to furnish and what particulars not to furnish, it is necessary to state that the grounds must be given with sufficient particularity for them to serve the purpose they were intended to serve. In our opinion grounds which are vague and indefinite are no grounds at all within the meaning of Sec. 3 of the Act." The detaining authority is thus expected to apply its mind to the grounds and particulars supplied and see that they are sufficient to enable the detenu to make a representation.

Following the axiomatic principles set out in the above extracts, the Bombay High Court has declared grounds furnished in several cases as bad if they did not comply with those principles. Thus, in *In re Anant Mahade v. Mandekar* (50 Bom L.R. 590 or A.I.R. (36) 1949 Bom. 95) the High Court ordered that the detenu be set at liberty immediately, on the ground that the notice was vague and indefinite and that the particulars given were not such as to enable the detenu to make a representation to the Provincial Government against the order. The detenu in this case was a record clerk in the New Kaiser-i-Hind Mill in Bombay. The notice containing the grounds said, "that you have been inciting workers to commit acts of violence and thereby acting in a manner prejudicial to public safety and tranquillity of Greater Bombay". His Lordship pointed out in his judgment that the notice does not mention the class of workers or the locality in which the workers were residing or working nor is it mentioned in the particulars the time during which the detenu is supposed to have incited the workers. In an earlier case of *Bhavyaji Kulkarni* Bom.) (Crl. Appln. No. 524 of 1947) the language of the notice of which was similar to that of the one quoted above, the learned Chief Justice in his judgment said: "workers" is an extremely comprehensive and all-embracing

expression. In these days one might almost say that everybody is a worker, and it seems difficult to understand why such an expression was used when proper and adequate information could easily have been supplied to the person detained by the use of a proper expression."

When there are several grounds given by Government, some of which may be good and some bad or outside the ambit and scope of the Act conferring the power upon the Government to detain, when some of the reasons given are *ultra vires* the legislature or are not within the scope and ambit of the Act, it has been held in 46 Bom. L. R. 22 that the whole order is vitiated notwithstanding the fact that the other reasons given are good. In that famous case of *Keshav Talpade*, the Chief Justice of India in the course of his judgment remarked: "it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before it". In *Bhayyaji Kulkarni's* case it was held that all the grounds were indefinite and bad; but even if one of the grounds was good and the others bad (in the sense of being vague) the notice would not be valid. But in *Rajdhar Kalu Patil's* case a sharp distinction was drawn between a ground which is outside the purview of the statute and a ground which is bad because it lacks precision and accuracy. While doing so, the Full Bench of the High Court remarked, "In the later case the ground has to be completely ignored as if no ground was furnished at all. If after eliminating the grounds which are no grounds at all, in as much as they furnish no precise information to the detenu, there still remain a ground or grounds which are precise and accurate and which can justify the order, then we see no reason why the order made by the detaining authority should not stand. If the Court can come to the conclusion that there is a ground or grounds which are within the ambit of the Act and which the detaining authority can legitimately consider in order to be satisfied that it is necessary to detain the person concerned, than the Court must uphold the order".

In furnishing grounds and particulars the authority often lays bare the process of his thought which led to his satisfaction that detention of the person concerned was necessary, though Sec. 3 allows him to withhold such facts as he considers it against public interest to disclose. The detaining authority is, therefore, expected to exercise that degree of care and caution which the law requires, and to apply its mind to the material details of each case. He must take meticulous care to see that whatever is stated in the grounds is stated with absolute accuracy. In *re Krishnaji Gopal Brahme* (50 Bom. L.R. 175 or A. I. R. (35) 1948 Bom 360) the question of accuracy of the recital of the order was raised. The order omitted to mention the place of the detenu's activity. It was, therefore, contended on behalf of the detenu that the District Magistrate had not applied his mind to the order. It was, however, held that the defect was more or less technical and not fatal one, as on that very day of the order a communication under Sec. 3, was served on the petitioner giving the grounds for the order of detention, and this made it clear that the District Magistrate had satisfied himself that the petitioner was acting in a manner prejudicial to the public safety and tranquillity of Amalner and that what was sought to be maintained was the public order and tranquillity of the town. Some of the grounds

communicated to the detenu were: (1) that he was an active leader of a subversive organisation at Amalner, (2) that he had been carrying on subversive propaganda among the people to prepare and use illegal and violent ways. The High Court thought that the first ground conveyed no precise information to the detenu and did not enable him to make a proper representation to the District Magistrate. As regards the second, their Lordships considered the sentence to be little ungrammatical and some what cryptic, and found some difficulty in ascertaining the real meaning sought to be conveyed, which fact itself indicated that the District Magistrate had not applied his own mind to the issue and the wording of his order. They, therefore, held that the communication under Sec. 3 is defective, that the final order based on the representation made on such a defective communication cannot be held to be good, and directed release of the detenu. In respect of the first ground their Lordships observed: "The first question which naturally arises is: subversive of what? If the order refers to an organisation which is subversive of say, foreign domination or blackmarketing, it may be a very desirable thing to belong to and be a leader of such an organisation, and it could not be that the District Magistrate had such an organisation in mind. The learned Government Pleader argued that though the ground was not as clearly expressed as it might have been, the word "subversive" meant subversive of the present order of the society. That again would be much too vague. What order of society has the District Magistrate in mind—social, economic, political or religious? If the detenu belonged to or was a leader of more than one such organisations, with reference to which of these was he to read the communication addressed to him by the District Magistrate? The learned Government Pleader said that in such a case the detenu was to ask his own conscience. But even if he did, how was he to discover which organisation the District Magistrate had in mind when he passed the order?"

In another case. *In re Shollen Dey* (50 Bom. L. R. 596 or A. I. R. (36) 1949 Bom. 75), the detenu was detained for the reason of inciting on a section of labourers of Tata Air India, Bombay, to use violence against the officers of Tata Air India, and that he was also inciting this section of workers, to acts of sabotage. But there is no such company in existence as "Tata Air India". In this case the High Court did not lay so much emphasis on the accuracy, or on the nature or extent of the error; but on the state of mind of the detaining authority. Their Lordships remarked: If the state of the mind of the detaining authority discloses that he has been casual in his approach and that he has not applied his mind with that diligence which it is necessary, when you are taking away the liberty of a subject, the Court will certainly interfere and will set at liberty the detenu arrested by the order of the detaining authority. In this case we are satisfied that there is an error. The error is by no means trivial and it shows want of due care and caution on the part of the detaining authority: The detenu was ordered to be released immediately.

In the case of *Bashan Madar Karbu* (50 Bom. L. R. 290 or A. I. R. (36) 1949 Bom. 37) the grounds mentioned in the order of detention under Sec. 2 was at variance with the grounds mentioned in the notice served upon him under Sec. 3. The order stated that the detenu was acting in a manner prejudicial to the public safety, etc.

of the Sholapur City; while the grounds mentioned in the notice have no connection whatsoever with the tranquility of the City of Sholapur. As this itself clearly showed that the District Magistrate had not even applied his mind to the facts of the case when he signed the order of detention, the order was held to be bad and the detenu ordered to be set at liberty with costs from Government. The District Magistrate in this case required the detenu to be detained at Yeravda. Following the decision in *In re Baboorao Sripat Deshmukh*, their Lordships held "that the order of detention, passed by the District Magistrate is illegal. As we hold that the original order passed by the District Magistrate, Sholapur, was illegal, the Government have no power to revalidate the same under Sec. 2 (4) of the Act." It was brought to light in this case that the detenu was detained without being shown an order of detention for about a fortnight. He was served instead with a notice under Sec. 3 setting fourth grounds of detention. Adverting to this fact, their Lordships observed: "We think that this is not a satisfactory position. The attention of the Government is invited to this unhappy position and it is hoped that such thing will not occur again."

Another important case raising the issue of accuracy of recital of the detention order is that of *In re Pandurang Govind Phatak* (50 Bom. L. R. 446 or A. I. R. (36) 1949 Bom. 84). In the statement of grounds furnished to the detenu under Sec. 3 of the Act it was stated: "You engage in objectionable and harmful activities and insite people to violence." The place of the detenu's activity is not mentioned either in the order under Sec. 2 or in the grounds of detention furnished under Sec. 3 or even in the affidavit of the District Magistrate. In *In re Krishnaji Gopal Brahmé*, which also raised the same issue, though the place of the detenu's activities was not mentioned in the detention order, the defect was not considered fatal and was regarded as cured because the place was mentioned in the statement of grounds furnished under Sec. 3. The defect in the present case indicated that the District Magistrate did not apply his mind to the facts of the case. In the words of their Lordships, "if the District Magistrate had from the beginning applied an unbiassed mind to the facts, he would want to be as fair as possible to the detenu, and this would ordinarily be shown, when he furnishes the grounds of detention under Sec. 3, by his giving him (subject to the reservations indicated in the said section) as clear and precise grounds as reasonably possible. One thing which the authority has to apply its mind to is the question of its jurisdiction. From this point of view the place where the detenu is regarded as having been acting in any of the manner mentioned in Sec. 2 assumes importance; this is one of the particulars which would be required to be stated in the detention order or the statement of grounds". It is only 'satisfaction' in this sense that would give to the District Magistrate the jurisdiction to make an order. It is the condition necessary to the valid making of a detention order. The satisfaction is of the authority making the order, and the court is not entitled to consider whether the grounds of the order are such as would satisfy itself. "But the Court, when the order is challenged, is entitled to enquire, whether the alleged satisfaction is real satisfaction or something else indicating an omission on the part of such authority to apply its mind to the facts of the case and to draw legitimate conclusions therefrom. If the authority has not applied an unbiassed mind to the facts is must be held that it is not

a case of real satisfaction'. Application of the detaining authority's mind to the relevant facts and considerations being the necessary pre-requisite to satisfaction; it is open to the detenu to contend and to show that the application of its mind was non-existent or so faulty as to render the alleged satisfaction questionable and uncertain. As the District Magistrate did not seem to have applied his mind to the relevant facts in the present case, their Lordships could not hold that he was satisfied in fact about the detenu's alleged prejudicial activities at any place within the area. Such being the case, the order of detention against him was bad and invalid. They, therefore, directed the detenu to be set at liberty forthwith.

In the course of their judgment, Sen and Jahagirdar, JJ. pointedly brought out how the presumption *omnia esse rite acta* which holds good in the United Kingdom, cannot be applied to emergency cases in India. Their observations are so important and valuable that they deserve to be quoted fully. They said; "In a proper case, e.g., *Liversidge v. Sir John Anderson* (1942) where the power of detention was exercised by a high official of the State like the Secretary of State, who was answerable to the British Parliament in carrying out his duties, and where the Court was concerned with an emergency war measure, in enacting which the Legislative Act had recognised the temporary need for subordinating the liberty of the individual to the safety of the realm, the well-known presumption *omnia esse rite acta*, would apply, and order would be taken *prima facie* to have been properly made, the requisite conditions having been complied with. But when under a statute enacted in more peaceful and normal times an executive officer of the status of a District Magistrate has been given the authority to interfere with the liberty of a subject, and it has become manifest to this Court in numerous instances that such an officer is often prone to be careless, arbitrary and mechanical, and even to act *mala fide* or with an ulterior object, in making use of the power of detention conferred on him, we should not, we think, be justified in relaying on the said principle. In such circumstances it becomes our plain duty to scrutinise the order made and the grounds given there-fore with the utmost care and anxiety and to make every legitimate inference in favour of the subject."

To sum up, the position seems to be as follows. In view of the fact that the Legislature has placed in the hands of Government, and in case of delegation to its authority, wide and special power to interfere with the liberty of the subject, it is incumbent on Government and the authority directing the detention to apply all possible care and attention to the materials placed before it before making an order of detention. 'Even a slight error, (defect) or evidence of carelessness would tend to show that the necessary amount of care and attention had not been bestowed in the examination and consideration of such materials by such authority.'

Where grounds furnished to the detenu were neither vague nor bad in law and showed that the detaining authority was satisfied that the detenu is acting in the manner prescribed by Sec. 2 of the Act, an oral order of detention was upheld by the High Court. In *Anwari Begum w/o Gulzarkhan—Petitioner v. Commissioner of Police, Bombay* (50 Bom. L.R. 593 or A.I.B. (36) 1949 Bom. 82), the detenu, a mawali of Falkland Road locality, was detained by an oral order

and the order in writing served on him a day later. It was contended that having regard to this fact it was clear that the detention came first and the satisfaction which is essential pre-requisite of a valid order under Sec. 2 (1) of the Act being made against the detenu came later. The Court found that the grounds of detention sufficiently complied with the requirements of the Act, and the detention was valid. His Lordship observed in course of his judgment: "There is nothing in the terms of the section to lay down that the detention order should be an order in writing and that it cannot be an oral order passed by the detaining authority after taking into account all the circumstances of the case which go to satisfy him that the detenu is acting in a manner prescribed by Sec. 2 (1) of the Act before a valid detention order can be made by him against the detention . . . the onus lies on the detaining authority to satisfy the Court by proper materials put before the Court that in fact the satisfaction came before the actual arrest of the detenu was effected . . . and that the detention was in pursuance of and in consequence of such satisfaction on his part within the meaning of S. 2 (1) of the Act."

In the normal case, the existence of a recital in a duly authenticated order of detention will, in the absence of any evidence as to its inaccuracy, be accepted by a Court as establishing that the necessary condition of satisfaction of the detaining authority was fulfilled. When the order is thus *ex facie* good and valid, the Court cannot consider the adequacy of the reasons or of the information available to the detaining authority which led to his belief or satisfaction. The Court cannot go behind the detention order in such a case. But in *In re Moinuddin Abdillamia Koreishi* (50 Bom. L.R. 579 or A.I.R. (36) 1949 Bom. 86) the High Court held that in suitable cases the Court would be competent to go behind the order of detention even if it was *ex facie* good and enquire into the truth of the information on which the detaining authority had acted. Ordinarily, where the Court would not go behind the order, it would assume 'that the authority had made every reasonable endeavour, consistently with his responsibilities, to ascertain the facts correctly. Where a fact relied on is found to be false and the said authority, by applying his mind to materials before him, could have found out the falsity of the said fact, such falsity would vitiate the order as showing an insufficient application of mind on his part to the facts before him . . . It is legitimate for the detenu to rely on the statements of grounds and particulars furnished to him in order to show that a fact alleged therein is false. While answering to the probable criticism against this view—that it would result in bringing in interference of the High Court from the back door, so to speak, although it is recognised that the order of detention is an executive order made by an authority responsible for the public safety and public order and that such order is justified by the authority's satisfaction in terms of Sec. 2, their Lordships observe: "Where the basis of the order is as a matter of fact found to be erroneous, at least in some essential particulars, it is not possible to hold that the deprivation of the subject's liberty is justified". But in the present case, they were satisfied that no sufficient grounds had been made out suggesting that the order of detention was not properly made or was not justified and so the detention was held valid."

On reviewing all the cases in which the question of detention order was raised, it would be seen that the High Court of Bombay has allowed the detenu to show that the order was not made *bona fide* but for ulterior purposes, or that it was made without sufficient application of the mind of the detaining authority to the facts or requirements of law, or that it was passed on a ground outside the scope of the Act, or that it was passed, at least partially, on a proposition of fact which is shown to be false. But it should be remembered that the Bombay public Security Measures Act, 1947, has restricted the power of the High Court only to examining whether or not the order was within the four corners of the law and complied with all its requirements. But if the order is *ex facie* good and valid and made *bona fide*, the High Court cannot question or enquire into the sufficiency or reasonableness of the grounds on which the satisfaction of the detaining authority about the alleged prejudicial activities of a person is based, which state of mind is the pre-requisite condition for making a valid order of detention. Within these limits set on its power by the Act itself, the High Court has striven to restore the personal liberty to some detenus by strictly interpreting the law.

Perhaps having been annoyed even with this little interference on the part of the High Court, the Executive has tried to make such interference more difficult or less effective by enacting some amendments to the Act. For instance, the newly inserted sub-section 2-A allows the Provincial Government to make order either for externment, internment or parole in lieu of detention. In the case of detention at least the grounds for it are required to be furnished, but, when it is changed into any of the restrictions, mentioned in the sub-section, no grounds need be supplied to the person affected by it. Further other restrictions do not attract public attention so widely and forcibly as the detention does, but their effect on the person concerned is more or less similar to that of detention. Another amendment of far-reaching importance is made in Sec. 3 of the Act. According to the amended section, there is no legal obligation on the part of the Provincial Government to communicate, as soon as may be, to the person affected by the order the grounds and particulars (subject to reservations) for his detention and also to 'inform him of his right' to make a representation to the Government. The Provincial Government may now furnish the grounds etc., to the detenu upon his application only. The grounds and particulars for detention when furnished, give ground to the detenu for seeking intervention of the High Court if they do not comply with the law. But if for some reason or other the detenu fails or if it become impossible for him to apply for grounds, the Government is not legally bound to furnish to him the grounds for his detention in the absence of which the detenu cannot approach the High Court. The non-furnishing of grounds to the detenu may also result in the denial of an opportunity to him to show that his detention was illegal or improper. It is the moral and should also be the legal duty of Government to furnish grounds and particulars for his detention to the person whose liberty it had chosen to deprive, no matter whether the detenu asks for them or not. No Provincial Government, except that of Bombay, has thought it advisable to treat so lightly the only safeguard afforded to the detenu under the emergency legislation, or to whittle it down in this manner.

Some Recent High Court Judgments

Mr. Matha Ramamurthi, Vice-President of the Scindia Shipping Yard Workers' Union, Visakhapatham, who had been under detention, was ordered to be released to-day at the Madras High Court by Their Lordships, Horwill and Balakrishna Aiyar, JJ., on a *habeas corpus* petition, filed on his behalf, challenging his arrest and detention under the Madras Maintenance of Public Order Act.

The case against the petitioner was that as the Vice-President of the Union, he was carrying on intensive propaganda among the workers exhorting them to resort to direct action against the Management of Scindia Shipping Company for the redressal of their grievances. It was alleged that the Union was a Communist organisation and that the petitioner was engaged in Communist activities. He was arrested and detained in September 1948. On his behalf, a *Habeas Corpus* application was filed in the High Court contending that his detention was illegal.

Their Lordships, allowing the application, observed: "Apart from the weakness and vagueness of the grounds of detention formulated, there can be no doubt that the petitioner was detained for a very long time unreasonably and without proper justification. It needs no re-assertion, on our part, of the elementary principle that a person should not be detained without proper cause, for a day longer than necessary and it is, therefore, incumbent upon the Government to expedite consideration of every detenu's case, so that he shall not be detained for a single day unless it is necessary.

"It has been argued on behalf of the Government that they have a large number of such cases to consider and therefore, the delay is excusable. That might have been a good excuse in the early days of this Act, when the Government had had no time to make the necessary arrangements to deal with such cases expeditiously. But, this Act has been in force for nearly one and a half years and if persons originally employed for the purpose of dealing with reports and representations were inadequate for the prompt disposal of those cases, it is the duty of the Government to have enlarged such staff".

Their Lordships also allowed three more *Habeas Corpus* applications filed on behalf of Messrs. M. S. Jesudas, M. R. Nagarajan and V. Srinivasalu Naidu of North Arcot.

In directing the release of these detenus, Their Lordships stated that these persons were arrested in the first instance under Section 3 of the Mysore Public Security Act and detained in Bangalore. After some period, they were brought to Katpadi and were allowed to visit their relatives in Vellore on April 16, 1949. Later, they were arrested and detained by the Madras Government.

The public Prosecutor contended that the activities of the petitioners in the Mysore State might be taken into account in considering whether the appropriate authorities in Madras had reasonable grounds to feel that it would be prejudicial to public safety and for the preservation of law and order if they were set at liberty.

But in these cases. Their Lordships observed, it did not appear that except in Mysore, the activities of the petitioners had been

prejudicial. They were considered by the Mysore authorities as a nuisance because they were preaching and speaking to the labouring classes and instigating them to resort to strike as a means of remedying their grievances.

"Apart from their actions in the Mysore State," Their Lordships further added, "the only allegation against them is that they contacted some Communists in Vellore. But they had very little time in Vellore to engage themselves in subversive activities. No allegation as to their subversive activities while at Vellore had been made. When they reached Vellore, they only wanted to see their friends and relatives. And their friends and relatives might have been persons whose activities were regarded with suspicion by the police. But, that was not sufficient reason for thinking that they were acting in a manner prejudicial to public safety or maintenance of public order. Further, in the case of all these petitioners, their activities in the Mysore State have not been shown to be illegal"

Mr. N. S. Mani instructed by Messrs. Row and Reddy appeared for the petitioners and the Public Prosecutor for the Government. —(Hindu 7-7-49).

The General Secretary of the Municipal Kamgar Sangh, (the body which originated the Municipal strike on May 13 last), Mr. C. J. Mane, was ordered to be released by Mr. Justice Bavdekar and Mr. Justice Chainani, at the Bombay High Court to-day on a *habeas corpus* petition filed on his behalf challenging his arrest and detention under the Public Security Measures Act since may 14 last.

Their Lordships delivered separate judgments but held that the strike in an essential service might be perfectly lawful and might not endanger public safety. The grounds furnished by the Police Commissioner either in his order of detention or in his affidavit did not show that the strike was unjustifiable. Mr. Justice Chainani further pointed out that from the materials placed before the Bench, it was not clear that the Commissioner was justified in issuing order of detention. The Bench also ordered the Government to pay the cost of the petitioner—(Hindu 6-7-49).

At the Madras High Court, Their Lordships Horwill and Balakrishna Aiyar JJ., disposed of to-day three *Habeas Corpus* applications, filed on behalf of three women detenus, Maniconda Suryavathi (Krishna district), Vimala Devi (Godavari district) and Subbaiah Kamalam of Mathurai. Suryavathi was ordered to be released and the applications of the other two were dismissed.

The case against Suryavathi was that her husband Maniconda Subba Rao was an ardent Communist in Krishna district and that he was the Secretary of the Andhra Provincial Mahila Sangh, Gudivada Taluk. It was stated that she took a procession in defiance of a prohibitory order in April 1948. She was arrested on July 26, 1948 and was detained in the Vellore jail. Seven months later, the Government placed her papers before the Advisory Council. No final orders had yet been passed. On her behalf a *Habeas Corpus* petition was filed in the High Court, challenging her detention, contending that the detention order was illegal.

Their Lordships held that this was a case in which the petitioner ought to be released. The only unlawful action alleged against her was that she took out a procession in defiance of a prohibitory order, though the grounds of detention ran to several typed pages. It was not stated by the Government whether the case against the petitioner for defiance of the prohibitory order was pending or whether the petitioner was convicted—an omission which suggested that the case probably ended in an acquittal.

Barring this single allegation, Their Lordships observed, nothing which could be regarded as unlawful had been attributed to the petitioner. The grounds for detention merely stated that "her husband was an ardent Communist and that, under his influence and that of his friends, she became a member of the Communist Party. She was entrusted with the task of organising what was called 'Mahila front', possibly a subsidiary organisation of the Communist Party." The grounds also alleged "that she gifted her entire property worth Rs. 20,000 to the Party."

"Granting all these to be true." Their Lordships observed "the fact remains that so long as the Communist party has not been declared an unlawful association, none of these acts involves transgression of the law. There is another feature in this case that we must advert to. Nearly a year has elapsed since the petitioner was arrested and final orders remain yet to be passed. It is noticed that nearly seven months have elapsed after the petitioner had made her representations to the Government before her case was finally placed before the Advisory Council.

"Part of the explanation offered for the delay is that reference was made to the District Magistrate on October 26, 1948 and his reply was received only on February 24, 1949. The delay was clearly unconscionable. The explanation furnished by the District Collector for the delay is, to an extent, revealing. He says that his reply to the representation of the detenu was held up, because of the time taken by the police in making enquiries. This explanation lends some support to the criticism made by the counsel for the petitioner that she was arrested without full enquiry at the outset and only after she made her representations that a proper and complete enquiry was set on foot. Taking all the circumstances in this case into account, we consider that the petitioner should be released forthwith and we make an order accordingly."—(*Hindu* July 8.)

At the Madras High Court, their Lordships Horwill and Balakrisena Aiyar, J.J. delivered judgment to-day in a *Habeas Corpus* application, ordering the release of S. K. Samuel, a detenu in Vellore Jail, holding that his detention order was illegal.

The detenu was a petty shop-keeper in Bangalore, taking interest in the labour movement. The Mysore State in January 1948 under the Mysore Public Safety Act, detained him till February 1949. He was later released from Jail in Bangalore and was served with an externment order to leave Mysore State. He came to Ambur in North Arcot District. The local police at Ambur arrested him on March 8, 1949 and detained him under the provisions of the Madras Maintenance of Public Order Act. On his behalf the present *Habeas Corpus* application was filed in High

Court, challenging the detention order of the Government on the ground that it was illegal.

It was contended on behalf of the petitioner that he was living in Bangalore for the past ten years and had not lived in this province. The petitioner also denied having taken part in any subversive activity while he was in Ambur.

Their Lordships held that there was no reason to feel that the activities of the petitioner were such as were prohibited by law. As stated in the three similar cases disposed of by them last week, the only allegation against this petitioner also was that he was likely to engage himself in subversive activities. Nothing specific had been urged against him, apart from his activities in Mysore State. This was a fit case in which the order of detention must be set aside and the petitioner released forthwith—(*Hindu 11th July.*)

X

Social Disabilities of Scheduled Classes and Minorities.

BY K. G. SIVASWAMY

Though the law panalises any obstruction to scheduled classes from using public services as wells, schools, roads, hospitals, transport buses, post offices, ration shops etc., in practice they are not as accessible to them as to the higher castes. Though the law is against discrimination in public places, they are not allowed generally in rural areas in hotels and shaving saloons. Special schools and hostels only aggravate the situation. The existing segregation of these communities in the midst of fields far removed from the village is another social disability. The principle of equal wages for equal work does not apply to them. For the same kind of work a person belonging to the scheduled class is paid less. For certain work which needs free movement in the house of a casteman scheduled classes are not employed. Masons and carpenters etc., prefer only caste people for unskilled work. "Discrimination in employment damages lives, both the bodies and the minds, of those discriminated against and those who discriminate. It blights and perverts that healthy ambition to improve one's standard of living. It generates insecurity, fear, resentment, division and tension in our society." (Report of the President's Committee on civil rights, U. S. A. 1947. P. 53).

Fast indebtedness and living on the land of the landlord result in involuntary servitude. Millions of scheduled class wrokers are not provided with any site by the government to put up their huts.

False cases are easily foisted on them and generally the Magistrates convict them on such cases. Inhuman treatment by landholders and police brutalities on these classes is not resented by public opinion nor brought to book by the state. A recent instance is the burning of about 100 houses of scheduled classes by a landholder at Vilampatti (Madura District), while no case has been instituted against the latter. So much these brutalities have increased that Mr. V. Kurmayya, a member of the Legislative Assembly

of the congress party and till recently a minister has been forced to condemn his own party in the following words:—

It looked as if India got freedom in order to suppress and put down the Harijans (scheduled classes) and agricultural labourers. In several villages many Harijans who were members of the congress were being unnecessarily persecuted by the police, dubbing them as communists, and Harijans were subjected to many other hardships.'

Where social inequalities have their roots in economic conditions the latter should be effectively tackled. Past debts should be cancelled. Minimum wages should be ensured, House sites should be provided. Common hostels and schools, and mixed housing should be promoted.

Violation of civil rights often happens in the case of weak and unpopular communities. The later are unable to take advantage of the civic amenities of the state owing to local prejudices,

In the U. S. A. a civil rights section works under the Criminal Division of the Department of Justice, with a view to enforce federal laws against the violation of civil rights of Negroes. The president's committee on civil rights U. S. A. has made a number of recommendations to improve the working of this section. Firstly they have recommended that this section should be elevated to a full division in the department of justice. This section would investigate public complaints against the violation of laws which prohibited discrimination, and local brutalities of the police and the public. It would prosecute the offenders. It would keep under constant scrutiny the activities of persons and institutions who fomented group quarrels. It would educate and mediate.

At present the law permits the individual victim in the U. S. A. to apply for a writ of injunction and to sue for damages in civil rights cases but the individual has to invoke them. The president's committee has proposed that the civil rights section should have suomotto, authority to make use of these civil sanctions on behalf of the victims.

Another device proposed by the committee is that, before a threatened right is invaded, the court might be used for a declaratory judgment. This court would declare in advance what one's rights were. Another proposal of the committee is that an administrative commission should hear complaints and settle issues and issue cease-and-desist orders against those who violate civil rights. These orders would be enforced by the courts.

The Committee also recommends the application of the sanction of grants in-aid. This sanction is already in vogue in Madras when grants are refused to institutions which discriminate.

The Committee has made an important recommendation about improving the cadre of police forces in the following words.

The Committee believes that there is a great need at the state and local level for improvement of civil rights protection by more aggressive and efficient enforcement techniques. Police training programme should be instituted. They should be oriented so as to indoctrinate officers with an awareness of civil rights problems.

Proper treatment by the police of those who are arrested and incarcerated in local jails should be stressed."

According to Section 51 of title 18 of the U. S. Code, it is a crime for two or more persons to "injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States." The Committee has proposed that the same liability should attach even to a single person. Section 52 provides for penalties against police brutality and related crimes. The Committee's proposal to expand the powers against public officers have an exact application to Indian conditions. The Committee proposes the following:

"This Act (Section 52) should enumerate such rights as the right not to be deprived of property by a public officer except by due process of law; the right to be free from personal injury inflicted by a public officer; the right to engage in a lawful activity without interference by a public officer; and the right to be free from discriminatory law enforcement resulting from either active or passive conduct by a public officer."

Finally the Committee has recommended the establishment of a permanent commission on civil rights. It will continuously appraise the status of civil rights, collect data, audit periodically the extent of security of civil rights, issue regular reports and plan policies for dealing with broad problems. It should have authority to call upon any department of Government for assistance. It should be provided with a full-time director, staff and funds.

These recommendations of the president's committee on civil rights in the U. S. A. might be adapted to Indian conditions. Every high court should have a civil rights section. It should receive complaints, investigate them and prosecute the offenders. The existing criminal law should be examined with a view to stiffen its sections. This section should empower the civil rights section to prosecute on its own motion. Not only the law against individuals and organisations that commit violence should be made more severe, but the law against police brutalities should also be made severe.

Some sort of a permanent commission exists in the commissioners of labour and the Harijan welfare departments in India. But they have no defined duties and responsibilities similar to those proposed for the permanent commission by the U. S. president's committee. Their work should be defined and responsibility fixed on them for appraising civil rights. More than all the committees, recommendation about police training on civil rights problems need immediate attention in India.

XI

Press laws in India,

C. V. H. RAO.

Political liberty under the modern democratic set-up predicates the existence of a free press as an essential ingredient in the working of that system. In India we have recently entered a new era in regard to our political and constitutional progress and the Indian press must be in a position to discharge the responsibilities and

duties as well as enjoy the rights and privileges entailed by a freedom regime and incidental to it. The development of the Indian press to its present position and influence has proceeded correspondingly with the development of constitutional and political freedom. When the Indian people had to endure the rigours and sacrifices involved in the repression by a foreign regime of their freedom of expression in demanding political rights and privileges, the Indian press did not escape the attention of the bureaucratic goods, who imposed unconscionable fetters on its free functioning. Now that India is politically free, the Indian press has a right to demand that the various legal inhibitions to which it has been subjected should be snapped and it be allowed to breathe the air of freedom, subject to the well-known moral limitations under which any institution or individual can exercise its or his freedom.

To that end, it becomes essential that the repressive laws and regulations in the Indian Statute Book that have special and direct bearing on the working of the Press should be scrutinized and reviewed with a view to their repeal or modification to suit the requirements and conditions of the present set-up. You cannot have a freedom dispensation on the one hand and a restricted and fettered press on the other. They are mutually incompatible factors. The Government of India did well, therefore, in appointing a Committee to enquire into the existing laws which related to the press and to make recommendations as to their repeal or revision after comparing them with laws in a similar category in foreign countries. The laws which the committee was asked to consider covered most of the enactments which either specially govern the functioning of the press in this country or sections of other laws which have a bearing on the publication of news and comments. On the other hand, from the terms of reference of the Committee were excluded some sections of the Indian Penal Code and the Criminal Procedure Code, which despite their not having a direct bearing on the freedom of the press or not affecting specially the working of the press, constitute measures with which newspapermen have constantly to reckon such as, for example the law of Contempt of Court and the Law of Defamation.

Unfortunately, executive Governments have a dangerous tendency to disregard even theories which are universally accepted as inviolable, in their anxiety to prevent exposure of their drawbacks, limitations and wrong doings and even professedly democratic Governments are not immune from the temptation to regard the press as a medium which must subserve their interests and not as an agency which would be free to criticise or expose them when they are blatantly wrong. It becomes, therefore, necessary to remind them constantly that, as democratic Governments, they cannot escape the obligation of living and acting constantly in the glare of public comment, which can be provided only by a free independent and vigilant press, free in all aspects of that term. India's incipient democracy needs careful fostering and a free press can contribute a great deal towards preventing executive autocracy, even if it be of the popular variety, from prostituting the ideal of press freedom to facilitate its successful working. At the same time, democracy needs also safeguarding against forces which freedom has thrown up, which are out to subvert peace and peaceful

progress, and which cannot certainly be permitted to make headway. The press in India, while claiming freedom for itself to offer constructive, though unpleasant criticism of the Governments' policies and programmes, has also the undoubted obligation to cooperate with the Government in restraining subversive forces from endangering the security of the State. The relations between the Governments and the press in India, as elsewhere are, therefore, best based on the fullest acknowledgment by both parties of these mutual obligations. As democratic Government is invariably also likely to be a party Government, this mutuality of obligations must be more unequivocally emphasised. For it imposes an added responsibility on the Government formed by a particular party to respect the liberty of the Opposition press even as it impresses on the opposition press the responsibility to examine Governmental doings from the standpoint solely of national interests.

Having accepted this paramount position, it becomes inconceivable that the press in India, even after the attainment of freedom, should be subjected to special fetters in the shape of special laws and enactments, which probably exist nowhere else except in this country. They are an inconvenient and unwelcome legacy of foreign rule and must be liquidated lock, stock and barrel. The Indian press has no objection to be governed by the common law of the land and to accept the position that it should submit to the restrictions and penalties that the common law imposes on the ordinary citizen who commits any offence. But when it does not enjoy any kind of special immunity against autocratic encroachment into its freedom, there is no justification for its being subjected to special penalties imposed by special laws.

Acting on this very salutary principle the Press Laws Advisory Committee have recommended the repeal of the Indian Press (Emergency Powers) Act, 1931 and some other laws which are intended solely to regulate the working of the press. The Press (Emergency Powers) Act, has been a Damocle's sword hanging precariously over the head of the Indian press, capable of descending with great force on newspapers disliked by the authorities and lending itself to abuse in the shape of needless harassment of offending papers. Its provisions constitute a progressively inhibiting chain of penalties directed against the newspapers, beginning with conferring on authority the right to demand security from a newspaper at the time of its publication and ending with conferring on it the power to resort to outright suppression of a paper. It is a comprehensive measure which has no parallel in the press legislation in any country and is a galling reminder to the newspapers in India that this is a draconian legislation which can be wielded with great effectiveness by the executive Government at its discretion.

While recommending the repeal of the Act, the Committee have, however, suggested that certain provisions of it should be incorporated in the ordinary laws like the Indian Penal Code, the Press and Registration of Books Act, Criminal Procedure Code, the Sea Customs Act and the Post Office Act. This is done obviously as a sop to the Provincial Governments, almost all of whom have desired the retention of the Act, to enable them to deal with subversive movements and to provide a safeguard against the irresponsible section of the press exploiting the absence of the measure like that to indulge in attacks on authority. This is one

of the major recommendations of the Committee for which the press will be thankful to the Committee. The executive Government's right to demand security from a newspaper together with provision for its forfeiture and for further demands of security etc. are irritants which deserve to be extinguished, and the Committee's suggestion that in cases of repeated violation of the law, presses could be closed down only by an order of a law court is an equitable one.

The Press and Registration of Books Act and the Official Secrets Act should be repealed; the Foreign Relations Act in its present form should be repealed and replaced by another Act to protect heads of foreign States and Governments and diplomatic representatives from defamatory attacks; the Law of Sedition (section 124 A. I.P.C.) should be brought into line with the law in Britain. The Indian Telegraph Act should be amended to permit of interception of objectionable press messages in times of emergency—these are some of the other recommendations of the Committee. Lastly, as regards the provisions pertaining to the press in emergency legislations such as the public safety Acts, enacted by the Provincial Governments for the maintenance of public order and security, the Committee have expressly stated that they should be exercised in consultation with the Press Advisory Committees in the provinces and that they should not be allowed to remain on the Statute Book a day longer than is absolutely necessary and that their use should be confined to serious cases of deliberate mischief. It is in respect of these measures that a great danger exists of their being utilised to deal a death blow to the press freedom. The special provisions in these measures relating to the press can be misused or abused. That they have not been widely misused by the provincial governments does not provide a justification for their existence on the statute book. So far our provincial Governments have not unfortunately displayed enough appreciation of the fundamental role that the press has to play in a democratic set-up.

This needs saying despite the fact that there has grown up in recent months a section of the press which may not wield much influence, but which nevertheless has not exhibited the requisite amount of responsibility and sense of decorum, and which has for political purposes not hesitated to prostitute the ideal of press freedom. Reasonable journalists and news-papermen in future would unhesitatingly accept the principle underlined by the American Commission, which made a report on Press Freedom in the U.S.A., that the press must be accountable and that press freedom must be accountable freedom, that its moral right would be conditioned on its acceptance of this accountability and its legal right would stand unaltered as its moral duty is performed. It will also be agreed that the press itself should accept responsibility for its performance in the public interest and that professional opinion should assert itself and evolve a code of ethics with the same sanction behind it of the profession of journalism.

But when the Committee proceed to state that press laws cannot be fully understood unless one knows the evils against which they are directed, that "legal remedies and preventions are not to be excluded as aids to checking the more patent abuses of the press" and that "such legal measures are not in their nature subtractions

from freedom but, like laws which help to clear the highways of drunken drivers, are means of increasing freedom through removing impediments to the practice and repute of the honest press", they seem unconsciously or consciously to be doing some special pleading on behalf of executive authority. The Press in India is in fact more sinned against than sinning. It has in the past gone through experiences which are not very conducive to its ready acceptance of the plea that the authorities were or would be solicitous of its freedom. The Committee had, of course, the dishonest and the irresponsible section of the press in mind when it wrote the above. But the difficulty arises in drawing the correct dividing line between the responsible and the irresponsible, the honest and the dishonest press, and in seeing that the two are not mixed up and tarred with the same brush.

The Committee's Report cannot be considered a Magna Carta of the Press. The impression is inescapable that it considers press freedom from too technical a standpoint. But we are at present passing through a transition period and when we emerge from the present stage to a state of stabilised freedom, it is to be hoped that Governments will realise the importance of a Free press for the functioning of democratic freedom and will adopt the policy essential for ensuing it. Forces are also in operation to weed out the drawbacks in the working of the press and to evolve proper standards of conduct. I trust and believe that, the Indian press has a future, but much depends on the public also. They can get the press they want and deserve.

XII

A Note on some Aspects of Civil Liberties in Bombay.

I. The Bombay Public Security Measures Act 1947.

The authority making an order for detention under Sec. 2 of the Act asserts the existence of a state of mind and belief which satisfied the requirements of the section. Even the court was held not competent to go behind it and consider the adequacy or otherwise of the reasons.

An order passed under that section resting on the ground that the detenu was an active leader of a subversive organisation of a named place and that he was carrying on subversive propaganda among people and used illegal and violent way is bad. Orders passed by the Commissioner of Police against a person under the same section were thus held to be even beyond the limits of the powers given by the provisions as was held in the case of *Hirji vs the Police Commissioner*.

It was held that detention for acts done in the remote past a man could be detained. The court condemned however the use of it when there was first a prosecution for the purpose of securing convictions and that when that is over, the Police Commissioner had recourse to the special powers under the Act and arrested the

accused. The court observed that "where a situation arises which lends itself to the construction that the action of the Police Commissioner is an attempt to supersede the order of the Magistrate, courts of Justice must be vigilant to see that Justice is not brought into ridicule and rendered impotent and that ascendancy towards autocracy does not prevail in the minds of the representatives of democracy."

II. Vagaries in the Application of the Security Act.

The following instances came up before the High Court and they were criticised and the orders were set aside.

(1) A District Magistrate ordered detention of a person under Sec. 2(1) (A) and 2 (4) outside his jurisdiction. The District Magistrate of Sholapur passed an order of detention in Yeravada Central Prison in the Poona District outside his jurisdiction (Emperor vs. Bashan). Order being illegal, was set aside by the High Court. As the order was itself illegal, the Government was held to have no power to revalidate the order under Sec. 2 (4).

(2) Order passed without mentioning the place of the alleged unlawful activity nor the grounds furnished. The order was held illegal and the detenu was ordered to be released (*In re: Pandurang*).

(3) Order relying on an essential and significant fact was falsified by the petitioner. It being stated that the detenu was a member of a society which indulged in violent activities as a policy and was carrying out such policy of the society and it was found that the detenu was not at all a member of the Society which was not denied (*In re: Moinuddin*).

(4) The serving of notice under sec. 3 of the Act containing vague and indefinite statements and such as were not capable of enabling the detenu even to make a representation to the Provincial Government against it. It was held that such a notice was invalid where it did not mention the class of workers or the locality in which the workers were residing or working and it was also deficient as it failed to mention the time during which the detenu was supposed to have incited the workers. (*In re: Mondekar*).

(5) It was however held that under Sec. 21 of the Act the Provincial Government has absolute power to delegate its powers to subordinate authority mentioned in the section without specifying the circumstances under which the power is so delegated.

III. Bombay Public Security Measures Act—Amended Act 48.

The Act amending the Bombay Public Security Measures Act 1947 became the law by assent of the Governor-General on 7th April 1948. It was to remain for 3 years from that date. The new Section A1 lays down that any police officer not below the rank of the Superintendent of Police in Greater Bombay or the Deputy Superintendent of Police elsewhere, may, if he is satisfied that any person is acting or is likely to act in a manner prejudicial to the public safety, the maintenance of public order or the tranquility of the Province or any part thereof arrest or cause to be arrested such persons without a warrant and direct that he shall be committed to custody for a period not exceeding 15 days. The Officer is to report to the Provincial Government if he takes such action.

The Provincial Government, if satisfied, that such a person was acting or is likely to act as above stated, may make an order that he be detained. According to the Provisions of the Act of 1947, the Provincial Government must be satisfied, that any person is acting in the aforesaid manner. The amended part of the Act refers to the right to detain a person who was acting, is acting or is likely to act which means all the three tenses *viz*, the past, present, and the future. The authorities are thus invested with powers extending over a wide range and also of an unprecedented character. It remains to be explained as to how the words "was acting" are to be interpreted so as to relate to an action taken at present. The question that arises is should the past action have any bearing on the present one or not? In interpreting this the Madras High Court, however, held that the past act by itself was not sufficient unless the grounds show how a person being at large would continue to cause the apprehension of the continuance of activities prejudicial to public safety in future.

IV. Habeas Corpus Applications.

The Bombay High Court entertained several applications and issued writs of Habeas Corpus for the release of the persons detained. The same High Court, however, refused the release where it was convinced that the authorities exercised the jurisdiction under the provisions of law in force as it could not enter into the question whether the grounds of detention were adequate from the court's point of view. At any rate, for the first time in the history of this Province a very large number of petitions invoked the prerogative process known to law for securing liberty by release from detention alleging the same to be either unlawful or unjustifiable.

V. Change of Rules by High Court for Hearing Habeas Corpus Petitions.

The High Court of Bombay amended the rules last year governing the disposal of Habeas Corpus petitions. Till the time of amendment it was the practice for the petitions of persons detained in Greater Bombay to be tried by a single judge on the Original Side of the High Court. Petitions filed by those detained in the mofussil were taken up on the appellate side by a bench of judges ordinarily hearing criminal appeals from the mofussil. The High Court sought to remove the anomaly so as to make the practice uniform in both the cases so that the Habeas Corpus Petitions were heard by a Bench in every case. There is no doubt that the Petitions presented and heard on the Original side involved a heavier expense and costs not only to the Petitioners but also to the Government.

VI. Grounds of Detention.

According to the Bombay Act the grounds of detention are ordinarily to be served by the authorities on the detenu. Under the amended Act the same will be furnished if only the detenu asks for them. The duty to furnish grounds is thus qualified by the demand made by the aggrieved.

The High Court in Bombay found itself unable to examine under the law as it obtains, if any of the grounds of detention is within the scope of the Public Security Measures Act. However within the

limited powers when it actually proceeded to examine the grounds it found that in some cases they were not sound. For instance in a case, amongst the grounds mentioned was one which stated that a detenu assaulted a woman. The other grounds mentioned were that he incited the people in villages around to acts of violence, arson and looting. The High Court agreed that assaulting a woman could not be brought within the ambit of the Security Measures Act. Holding that it would not be possible to determine which of the grounds weighed with the authorities in detaining him under the Act, the Court ordered the detenu to be released.

VII. Collective Fines.

In September 1947 Mr. Morarji Desai the Home Minister of the Government of Bombay stated in the Legislative Assembly that all prisoners who were convicted of offences in connection with the Civil Disobedience Movement of 1942 were released. Later on the same Government commenced to utilise the provisions of the Bombay Public Security Measures Act. Under Section 6 of that Act, the Government is empowered to impose collective fines on the inhabitants of any areas if they are concerned in the commission or abetment of offences affecting public safety or the maintenance of Public Order.

VIII. Externment out of the Province & Detention of Men.

When asked about the alleged detention of certain members of the Communist Party in the Karwar Jail without trial, the Home Minister replied that Messrs. Darmavir Singh Arjunsingh and N. L. Upadhya who were in the Kanara District were externed out of this province under section 46 (3) of the District Police Act. The former has since been convicted for breach of the externment order and sentenced to one year's rigorous imprisonment and a fine of Rs. 200 or in default further 4 months rigorous imprisonment.

The same Minister stated that certain persons arrested under the same Act of 1947 were detained in Karwar sub-jail. They were eight in number. The requests of 1 to 3 and 6 and 7 that they may be regularly charge-sheeted and tried was refused by the District Magistrate, Kanara, without assigning any reasons as they were not charged with the actual commission of a criminal offence but are detained under that Act which provides for such detention without trial for the maintenance of public safety and tranquility.

IX. Mr. Karandikar's Detention and the Appeal to the Speaker, he being a member of the Legislative Assembly.

An appeal was made to the Speaker of the Bombay Legislative Assembly by Mr. S. L. Karandikar for his intervention in the Provincial Government's decision to detain him. Mr. Karandikar, M. L. A. stated that an order of the District Magistrate under the Public Safety Act was served on him on the 9th February 1947 and he was kept as a detenu. He asserted that the Act is a piece of legislation that deprives the citizen of his civic rights. The Speaker who gave a ruling replied in the House that under Section 71 Sub-Sec. (1) and (2) of the Government of India Act, he was unable to give redress to the member to attend the House and participate in the proceedings of the House as a member of the legislature.

X. Government Meddling in Judicial Proceedings.

In May 1948 the Bombay Government sought to interfere in the course of justice in declaring that the Government would conditionally withdraw prosecutions relating to Deccan disturbances that followed the assassination of Mahatma Gandhi. This attitude was condemned in the press as a piece of State—meddling in the dispensation of justice. The 'Hindu' of Madras observed that the condition for withdrawal of prosecutions laid down by the Bombay Government are such as may be easily reduced to a nullity. Whether an accused has made a clean breast of everything or not is not a thing that could be prejudged. It ought to be determined by a court of law. It stated further that "to say that where loot was not accompanied by arson the accused could have the benefit of the new concessions if almost the whole of the looted property is returned, may be broadminded but it is hardly calculated to inspire respect for law and order." It was characterised as resembling a kind of dispensing and suspending powers known to British history.

XIII

Civil Liberties in West Bengal.

PROFESSOR K. P. CHATTOPADHYA,

Working President, Civil Liberties Union West Bengal.

Civilization and progress have been the outcome of human co-operation over ever-increasing spheres of social, political and economic life. Such co-operation has meant on the one hand greater security of food supply, of personal well being, and of the chances of children growing up to adult life, and on the other hand of surrender of certain rights to society by conforming to a definite code of conduct. The rights that are surrendered are given up in certain respects to the central administrative body known as the State, and this power-vested unit in its turn is expected to ensure the secure enjoyment of certain fundamental rights like those noted. These fundamental rights are known as Civil Liberties, and it is for their enjoyment that the State has been given power over its citizens. Such Liberties are not enjoyed as an act of grace of the rulers but are of the people by right—by the same under which the State exists, and exercises its powers by delegation from the people.

Judged by this definition Civil Liberties have to a large extent disappeared in Bengal.

Security of Life:—The first right of a citizen is Security of life. The West Bengal State has failed in this respect to ensure this fundamental Civil Liberty.

During the past eighteen months there have been daring robberies in broad day-light in Banks, in Calcutta including the Imperial Bank, in which employees have lost their lives. There was also an attack with firearms by a gang on a musical soiree in March, 1948 at which two persons were shot dead and several injured.

No one has been convicted for these murders in March, 1948. Bombs were thrown at a procession of workmen in Bow Bazar Street near a thana, and at a meeting in a park front of the house of the Premier in May, 1948. None of the assailants were arrested on either occasion. A small and absolutely peaceful meeting of about forty people in the Burmahshell maidan in Beliaghata in February, 1948, was attacked by hooligans armed with iron rods and bamboo sticks. The police force which outnumbered the assailants actually helped them by beating the people assembled for the meeting, and allowing the hooligans to move off subsequently without hindrance.

Recently in June, 1949 when rival groups of Congressmen assembled to elect the President of the Provincial Committee, some of their supporters threw bombs at opponents, also Congressmen, within a stone's throw of the Premier's house. No arrests were made by the Police.

It would be a mistake to suppose that the Police lack powers to take steps. Under the Security Act which has just expired, under the Bengal Criminal Law Amendment Act of 1930 which the British rulers enacted to crush the Congress and Revolutionary movement, and the Ordinance promulgated a few days ago, any one can be arrested on mere suspicion and detained for long periods.

Actually, while some arrests and prosecutions have been made for the Bank lootings, no prosecutions were started for the Dixon Lane murders nor for the attacks on processions and meetings. On 11th May, 1948, the Police Commissioner referring to certain robberies remarked "The police had prepared a list of these suspects; but the police could not arrest them...because you cannot take away the liberty of men whom you merely suspect to be members of robbers gangs". Shortly afterwards, in June again and one year later, in May 1949 referring to the murders in Dixon Lane, similar reasons were given for failure by the Police Commissioner at conferences reported in the papers.

Reference has been made to attack on a peaceful assembly by the police when the assembled persons were actually being assailed by hooligans. Worse things have happened in and around Calcutta.

Use of Firearms by Police.

In December 1947, an Ambulance worker was shot dead while seated in his Red Cross Car (R. W. A. C.) In February 1948 several peasants were shot dead and a woman received a bullet wound in the village of Borah Kamlapore. The peasants had resented an assault by the Zemindar's men on a worker of the Kisan Sabha. Also they had agitated for Tebhaga. For insisting on two thirds share of the crops which the Government had promised to arrange early in a declaration, peasants have been shot down in numerous areas in Bengal, including Kakdwip in 24-Parganas and Dubirbheri in Hughli District. In another area of Dongajore, attempts by the local peasants to stop removal of paddy by black-marketeers resulted in police firing on these who were trying to help the law. In Kakdwip, most of the persons shot dead were women and children.

In Calcutta, inside the University precincts, students who were proceeding along a corridor of the University building to pay their

fees, have been shot down early this year by police bullets, fired from outside the building. There was no suggestion of a clash inside the buildings and the plea of self-defence could not arise. Quite recently in connection with the election of Sri Sarat Chandra Bose, a fracas took place before an election office. A youngman stated to have been a teacher in a college was shot dead more than a quarter of a mile away, where there was no disturbance. Obviously there was no question of self-defence by the Police in this case. There are similar other cases. Lastly, mention should be made of one of the worst of these cases in Calcutta proper. On 27th April, 1949, a procession of two hundred unarmed women came out, accompanied by perhaps a dozen or two student volunteers. They were registering their protest against treatment of prisoners in jail. They were proceeding peacefully along Bow Bazar Street when they were stopped by the police. At first teargas shells and grenades were fired. Then some hooligans threw bombs on the processionists apparently from a house nearby. There after the Police fired on the women killing four of them and also a volunteer, besides two passers by.

The Hunger-strike for settling which the women processionists went out on 27th April, terminated on 30th April as the Government accepted the terms, acceding to demands which had previously been won under British rule by the old freedom-fighters. The pledges were not however fulfilled in many cases and the prisoners registered their protest by refusing to be locked in at the due time. Such a step had been taken by well known Congress Leaders like Netaji Subhas Bose and Deshapriya J. M. Sengupta in similar circumstances in British days. As on those occasions, this was followed by lathes and baton charge by warders, and when the prisoners resisted firing by armed police. One prisoner was killed in Presidency Jail on 8th June and three in Dum Dum Jail on 9th June. The prisoners had no lethal weapons and made no attempt to escape. Inside a jail a detainee can only break up a chair and use its legs as clubs. Use of firearms by the police is unjustifiable in such circumstances.

The Government have invariably defended such action of the police as in "self defence". They have also refused to allow public enquiry or even an enquiry by Judges of High Court as was carried out after the killing of prisoners in Hijli jail in Bengal, under British rule.

Security of Property.

In the villages whenever the Police carry out raids and similar operations, the properties of peasants have been in many cases destroyed. An arrest of a person does not entitle destruction of his property. To mention one case, in Borah Kamalapur, such destruction of properties occurred on a large scale. Enquiries were conducted by the Civil Liberties Committee. The Peoples Relief Committee and other organisations among different sections of the people also fully confirmed this fact.

In industrial areas, hooligans have destroyed the household utensils and beaten up inmates of unionmen not approved by owners. An enquiry by the Civil Liberties Committee in a test case of Pottery workers in 1948 proved this to be the case there. Similar reports have come from other areas. No protection is afforded by the Police against such unlawful destruction of properties.

Freedom of Movement and Assembly.

On the other hand any person suspected by the police (i.e. an official of the rank of Sub-Inspector) to be connected with anti-Government activity or reported by a big employer to be of antagonistic views and therefore "Red" can be arrested and are being arrested. Several thousand persons are now in different jails of Bengal on various charges—large numbers undertrial and several hundreds in detention. Only two examples will be noted to describe the conditions.

(1) In village Sonarpur 24-Parganas a Congress man who was also Secretary of the local Civil Liberties Committee was arrested and detained in February, 1949. He had been active against black-marketeers and made some enemies. After three months' detention he was released for lack of evidence of alleged subversive activities.

(2) About the middle of June meetings were being held in different parts of Calcutta demanding settlement of hunger-strike in jails, and condemning the firing on prisoners in two jails. Due to the bye-election in South Calcutta, Section 144 had been lifted for a fortnight. Nevertheless, the Police, apparently thinking that a meeting was going to be held surrounded a park and arrested the entire population in it at the time, although no meeting was on or about to be held. The arrested persons are being harassed by compelling attendance at court, from time to time without production of any evidence. Similar false alarms and display of Police force occurred twice during the last fortnight in Dalhousie Square and in Deshbandhu Park. It may become risky to stroll in a park. Section 144 has been in operation in Calcutta almost without a break for nearly a year. The visit of Pandit Nehru earlier in this year and the bye-election forced its lifting, on these occasions. Meetings cannot be held in enclosed halls even, unless the Police grant permission. Attempts to hold two such meetings, by prominent citizens like Dr. Kadhya Benode Pal, Sri Sarat Chandra Bose, Sri Atul Gupta, Mr. Narendra Kumar Basu, Dr. Dhiren Sen and others once demanding an enquiry into (1) Police firing on women on 27th April, and (2) the next time on non-implementation of pledges by the Government with regard to political prisoners, their condition during the hunger-strike and the firing inside jails on such prisoners, were unsuccessful due to earlier police notification to the Hall authorities in this respect. In August last, volunteers of the Civil Liberties Committee distributing lawful notices of a meeting called by the Committee were arrested for alleged obstruction of traffic and harassed.

Freedom of Press.

A large number of papers beginning with the Swadhinata, have been closed down. Any criticism of the Government is construed as an offence under the Press Act and other gagging Acts. The Paschim Banga Patrika, which is run by a group of Congressmen and former Congressmen has been asked to deposit a large amount as security for asking the Roy Ministry to resign, after the firing on women on 27th April, noting other cases of misrule. Pressure is also brought upon papers in other ways if they publish news, statements or editorials regarding Government repression.

The Right to Vote and Stand for Election.

During the past fifteen months, only one bye-election—that in South Calcutta has been fought without much interference with franchise rights. But during the bye-elections in Maldah, Hughli, and Bankura, there was serious interference with full exercise of franchise. In Hughli it was stated in a signed report published in the news-papers that the Security Deposit on behalf of a candidate was not accepted in time on frivolous pleas deliberately, another was in detention and the remaining candidate a Minister was declared elected unopposed. In Maldah large scale arrest hampered election work of a candidate opposed to the official nominee (another Minister). Complaints were also received from Bankura where the third Minister contested a bye-election in a rural area. Certain Labour Seats have been lying vacant for months. The South Calcutta Seat was also vacant for many months before a bye election was arranged.

Right to Form Unions and to do Union Work.

One of the legal rights of workmen is the right to form unions and also to proceed on strike if conditions of service and work are considered unfair. At the present moment, as soon as a strike notice is served, police forces take up their position at the gate, and arrests commence of Union Leaders and active members. Union Secretaries of well known organisations like the Civil Supplies Employees Association, the Oriental Gas Company, the Tramway Workers Union etc. are either in detention or have warrants issued against them. Well-known Trade Union Workers who are not Communists, like Malay Brahmachari and Sri Nikhil Das have also been harassed by arrests or issue of warrants. Quite recently the Secretary of the Union of Employees of Hindusthan Co-operative Insurance and the Organiser of a Nurse's Union attached to the Chittaranjan Seva Sadan have been arrested and detained. Reference has been made earlier on attacks on workmen, and the attitude of the Police to such hooliganism against Union Leaders and workers.

Rights of Peasantry.

The peasant who toils on the land, has the right to the major portion of the crop. In their Election Manifesto this was promised by the Congress M. L.A.'s now in office. In Bengal there has been a powerful agitation by share-croppers for two thirds' share of the crop instead of a division with the owner on a fifty fifty basis. Actual calculation of costs has shown an allotment of three fourth share to the actual cultivator as equitable. However, Official spokesmen, including the Premier Dr. B. C. Roy have promised this Tebhaga or only one third share to the non-cultivating owner. But although the latest promise was made in November, 1943, by the Premier, the share-croppers who insisted on keeping two thirds of the harvest found themselves up against ruthless repression by the landlords aided by the Police. The Tebhaga demand has grown powerful in the famous Congress bases of *Tamluk and Contai* in Midnapore District which rendered themselves immortal in 1942 by setting up and maintaining a National Government in certain thanas, for two months. It is in *this area* that large forces of armed police and troops have been sent to put down the peasant movement. From stray reports in papers and verbal statements by welfare

workers in these subdivisions, it appears that the repression that is going on is comparable to that which took place in 1942 in these areas. The Civil Liberties Committee has not been able to send any observers to these areas.

Reference has been made to repression of peasantry in other areas like Kakdwip, Borah, Kamalapore and Duberbhore, earlier.

Freedom of Artists, Writers and Students.

The curtailment of Civil Liberties has extended also to the field of Education and Art. The Cinema is one of the most powerful means of creating artistic taste and of education. As such the making of films is being rigidly controlled in this province. The well-known novelist S. J. Mohoj Bose had written a story of the revolutionaries of Bengal entitled "Bhuli Nai." The book was not proscribed even under British rule. But the making of a film of this story was banned by the Committee set up by Government to decide such matters. It includes the Police Commissioner, D.I.G. Police and a big Millowner. Public agitation compelled the issue of the permission but it was hedged by conditions to render innocuous the revolutionary urge contained therein. While objectionable foreign films which demoralise youthful visitors to screen houses are admitted without limit, the creation of films depicting the revolutionary struggle for Indian freedom has been practically stopped.

The office of the Progressive Writers and Artists' Association has been searched several times, an Art Exhibition interfered with and even their library sealed up for a few days, the editor of the well-known literary journal Parichay has been twice detained for long periods. Quite recently, the bookshop of the well-known publishers and stockists of progressive literature, the National Book Agency has been sealed by the Police although no prejudicial publication has been found in their premises. Principals of Colleges and educational institutions have been circularised by the Government to see that the students do not put up anti-Government posters. What is considered anti-Government may perhaps be realised from the fact that a procession of students on 11th January, 1949, demonstrating against the Dutch Imperialists and in support of the Indonesians, was teargassed and lathi-charged by the Police, injuring eight students.

The right to universal free primary education has found no place in the development schemes of the Government in the near future. On the other hand, a Bill of Secondary Education, designed to place the control entirely in the hands of the Government departments was brought out. Fees of Colleges were raised but scholarships to encourage meritorious students remained practically unaltered in value, and bear no relation to the increase in the cost of living and of education. A procession of students on March 22nd against such Government control of Secondary Education and increase in cost of education was teargassed and lathi charged shortly after they had come out of the University precincts.

Many of the students in Calcutta, and also its citizens are from East Bengal, now a separate Dominion. When Pandit Nehru came to Calcutta in January, 1949, the East Bengal refugees formed a procession, mainly of women and children and some young men, to represent their bad condition. The Police dispersed them with

lathi charges, teargas shells and it is alleged, also firing bullets. Several women were injured.

The student community as a whole was infuriated and demonstrated against this attack on refugees, on the following day. The result was a blood-bath in which a large number of students were killed and injured. One of the cases of indiscriminate shooting has been referred to earlier under the section on Security of Life.

Consumer's Freedom

The right to eat and live is inherent in all citizens. The Honourable Minister of Civil Supplies has however made it unlawful for a poor man to have two square meals a day. Rice and wheat are rationed, and the weekly quota is admittedly inadequate for an adult manual worker who cannot purchase highly priced non-rationed food like meat, fish, eggs, milk, or fruits. Nevertheless specific suggestions made for proper procurement, storage and for adequate distribution, demonstrated to be satisfactory in practice, have been brushed aside, and reports of inadequate supply and wasteful storage have been common. For a year, the people of Calcutta and suburbs have had cereals adequate for four days' food in the week from Government shops. The remainder has come for those who can pay the price-from the blackmarket. The rich tradesmen who have a chain of small vendors of such rice live in impunity while the poor purchasers and small agents are prosecuted. Public opinion in this matter was reflected in a recent judgment in a court of law where strictures were passed on rationing as it exists in Calcutta, and only a very small fine imposed on the offender. The High Court Judges to whom Government appealed to expunge the lines containing the stricture, upheld the decision of the lower court and stated the comments to be justified. While people thus suffer from shortage of food, mismanagement has led to the spoiling of thousands of maunds of rice and wheat. Some details are given in the Nation of 11th July. Other instances were reported last year in the now defunct Swadhinata, as well as other papers. No reference into the cloth scandal and the arrest of an ex-M.L.A. who lived in the same house as the Minister of Civil Supplies is made here as it is not directly relevant to Civil Liberties. Indirectly however it has compelled hundreds of thousands of families to limit their consumption of cloth rigidly and go about in semi-tatters, and thus curtailed their freedom in this respect.

Freedom to Serve the People.

Ever since Florence Nightingale and others took up the question of medical relief to the wounded in war, and the Red Cross Organisation grew up, it has been acknowledged that in war, riots or clashes between political groups and Government forces Medical Relief Organisations should be allowed to work unhampered and to tend the injured, without attacks on them or without use of such personnel of vehicles for aggression. Even during the horrors of the communal riot in Calcutta the sanctity of Ambulance vans and Ambulance workers of different organisations was recognised.

The first Ambulance worker to be killed, died from a police bullet as noted earlier, while sitting in his Ambulance car. Sisir

Mondol who thus died at his post was a member of the Relief Welfare Ambulance Corps. Quite recently the police hampered relief work by the Peoples' Relief Committee by seizing the Ambulance Van on a flimsy pretext and unlawfully detaining it for more than a week. On 28th April, 1949, a police sergeant had taken shelter in the Ambulance Van during a disturbance. This was allowed but when he tried to shoot down people from this shelter, the medical officer present stopped him. He left with threats. Two days later the Van was seized and various pleas put forward for keeping it in custody. All of these were proved to be unfounded and a lawsuit was threatened to be filed against the offending Deputy Commissioner of Police. Thereafter the van was released. The offices of the Peoples Relief Committee have been searched four times since then, and a patient being treated in the Dispensary for some ailment, arrested.

The Indian Medical Association (Bengal Branch) and other Relief organisations sent their protest to the Police authorities against interference of relief work and seizure of the Ambulance Van. They asked for an explanation. No reply has been vouchsafed.

The Mahila Atmaraksha Samiti was organised during the famine of 1943 and rendered splendid service to the poor. Its present President (elected only in March 1949) organised and ran a number of free milk kitchens and free rice relief to widows without earners, in an urban area. The Calcutta centre organised a co-operative paper making (hand made) industry run by poor women. This industrial centre actually receives Government aid. Nevertheless, for criticism of the Government's reactionary economic policy and for having organised the peaceful demonstration of women on 27th April as a protest against treatment in jail, a large number of workers of the Samity were arrested. Immediately after the killing of women on 27th April, public opinion was however roused to such a fury that the women arrested on 29th April and thereabouts were all released. Last week most of these women have been re-arrested, as also Sm. Monjueree Chattopadhyay, President of the Mohila Atmaraksha Samiti—all under the Criminal Law Amendment Act 1930.

Legal Opinion.

Recently an application for habeas corpus was filed on behalf of an entire family arrested in May, 1949. The High Court held that the Security Act had ceased to be valid and the arrests were invalid. This family was released. But orders under the Criminal Law Amendment Act of 1930 were served on the rest of the detainees and fresh arrests were made under this ill-famed enactment. Regarding this Act, the Chief Justice of the Calcutta High Court discussing an application for habeas corpus of some detenus on 5th July, 1949, remarked that a "more sweeping Act giving the Executive more arbitrary power I have never known. A cursory glance into this Act shows that the Executive intends to take away personal liberty to an extent never contemplated before." His Lordship further remarked that the Act out at the "Very roots of personal liberty." An ordinance has now been promulgated giving similar powers to the Executive.

Name and addresses of organisations interested in
Civil Liberties in India and co-operating
with the Indian Civil Liberties'
Conference

UNITED STATES OF TRAVANCORE & COCHIN:

Sri T. K. Narayana Pillai, Advocate,
Ernakulam.

MADRAS PROVINCE:

- | | | |
|----|---|---|
| 1 | <i>Tinnevely:</i> | Sri R. Jagannathan, Advocate |
| 2 | <i>Karaikudi:</i> | Sri Ramakaruppan Chettiar, (Secretary) |
| 3 | <i>Thiruppathur:</i>
(<i>Ramnad</i>) | Sri G. Subbials, Advocate |
| 4 | <i>Madurā:</i> | Sri V. Rajayyah and Sri G. Gopalaswamy,
Advocates |
| 5 | <i>Coimbatore:</i> | Sri S. Venkitaraman, Advocate |
| 6 | <i>Dindigul:</i> | Sri S. Lakshmanan, Advocate |
| 7 | <i>Thiruturaiyandi:</i> | Sri R. Ramachandra Iyer, Pleader |
| 8 | <i>Cuddalore:</i> | Sri T. R. Chakrapani Iyengar, Advocate
Sri P. Srinivasa Iyengar, Advocate
Sri D. Sundararajayar |
| 9 | <i>Mayavaram:</i> | Sri S. Krishnamoorthy, Advocate |
| 10 | <i>Erode:</i> | Sri Venugopal, Advocate |
| 11 | <i>Gudur:</i> | Sri Kakani Ramana Reddi |
| 12 | <i>Nellore:</i> | Sri V. Ananthanarayanayya, Advocate
Sri K. L. Narayana Rao, Advocate |
| 13 | <i>Bapatla:</i> | Sri B. Narayana Rao, Advocate |
| 14 | <i>Tenali:</i> | Sri A. Gopalakrishnamurthy, Advocate |
| 15 | <i>Masulipatam:</i> | Sri K. Venkatarama Sastri, M.A., B.S. |
| 16 | <i>Bellary:</i> | Sri T. B. Kesava Rao |
| 17 | <i>Rayadrug:</i> | Sri G. Nagabushanam, Advocate |
| 18 | <i>Ananthapur:</i> | Sri R. Hanumantha Rao, Bar-at-law
Sri Ramanatha Rao, Advocate |
| 19 | <i>Penikonda:</i> | Sri K. Hanumantha Rao, Advocate |
| 20 | <i>Kurnool:</i> | Sri P. Kesava Rao, Advocate |
| 21 | <i>Nandyal:</i> | Sri Radhakrishna Moorthy, B.A., B.L. |
| 22 | <i>Prodattur:</i> | Sri G. Krishnamurthy, B.A., B.L. |
| 23 | <i>Malabar-Calicut:</i> | Mr. L. N. Rao, Servants' of India Society |
| 24 | MADRAS PROVINCE: | |

Madras Civil Liberties Union.

- * Mr. K. G. Sivaswamy, President, and
 Mr. O. V. Rajagopalachari and
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Minister)
38 **DELHI :** Janadhikar Samiti, 30, Ferozshah Road
Sri Tilak Raj Bhasin, Advocate

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Union, 5, Hassan Building, Aaminabad
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2, Palmlace, Calcutta-19
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