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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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The Editor wishes to tender an apology for the delay that has occurred in the appearance of the Bulletin this month. The detention bill was being debated in Parliament when the Bulletin was due for publication, and the Editor felt that the readers would like to have the Bulletin's comments on the bill as passed, even if it involved delay, rather than have the month's issue go to them without such comments. The Bulletin has from the beginning taken such a deep interest in the problem of Personal Liberty (which right the constitution has failed to guarantee) that the Editor, conformably, as he believes, to the general wish of the readers, decided to hold up the publication of this issue for a little while.

THE CREDO OF INDIVIDUAL FREEDOM

The essential aspects of democracy are the freedom of the individual, within the framework of laws passed by Parliament, to order his life as he pleases, and the uniform enforcement of tribunals independent of the executive. These laws are based on Magna Carta, Habeas Corpus, the Petition of Right and others. Above all, they secure the freedom of the individual from arrest for crimes unknown to the law, and provide for trial by jury of his equals. Without this foundation there can be no freedom or civilization, anyone being at the mercy of officials, and liable to be spied upon and betrayed even in his own house. As long as these rights are defended the foundations of freedom are secure. I see no reason why democracies should not be able to defend themselves without sacrificing these fundamental values. — *Winston Churchill in World War II.*

GUILT BY ASSOCIATION

These experiences (e. g., that of the sixteenth century England when the Catholics persecuted as a body for their supposed disloyalty "rallied loyally [at the time of the Spanish Armada] to defend their homeland against Spain and its Catholic troops") underline the wisdom of the basic constitutional precept that penalties should be imposed only for a person's own conduct, not for the beliefs or for the conduct of others with whom he may associate. Guilt should not be imputed solely from association or affiliation with political parties or any other organizations, however much we abhor the ideas which they advocate. Like anyone else, individual Communists who commit overt acts in violation of valid laws can and should be punished. But the postulate of the First Amendment is that our free institutions can be maintained without proscribing or penalising political belief, speech, press, assembly, or party affiliation. This is a far bolder philosophy than despotic rulers can afford to follow. It is the heart of the system on which our freedom depends.—*Mr. Justice Black in American Communications Association, C. I. O., v. Douds (1949) 339 U. S. 382.*

ARTICLES

THE NEW DETENTION ACT

The Preventive Detention (Amendment) Bill was passed by Parliament on 19th February. That day the right of Personal Freedom, which, as Mrs. Sucheta Kripalani reminded the House, is "the most basic of fundamental rights," may be said to have disappeared from this land. Parliament in any case chose the day for depriving Indians of this right with very great appropriateness, for 19th February is known in India for the passing away of the great leader, Gopal Krishna Gokhale, who, unlike the present-day patriots, was no less solicitous, as a liberal, for achieving the freedom of his countrymen than, as a nationalist, for achieving the freedom of his country.

The new Act extends the life of the old Act by one year, but the Home Minister left the public in no illusion that detention without charge or trial would cease to be in force after March, 1952, for he made it plain that such detention might have to be resorted to even later for an indefinite period. And indeed the structure of the Act is such that there will be as much need, on the Government's reasoning, for the enforcement of some provisions therein, like the one relating to "the relations of India with foreign powers" in para. (i) of sub-sec. (1) (a) of sec. (3), at any future time as there is at present. The Act makes only one major amendment in the existing law, viz., that it requires reference of all cases of detention to an Advisory Board. The scope of the amendment, in so far as form goes, is no doubt vast, for, as the Home Minister himself said, "most" of the cases of detention that happen now are withheld from the Advisory Board, whereas in future all of them will be subject to be reviewed by it. And if the Advisory Board were in fact placed in a position to perform its functions well and efficiently, this amendment would undoubtedly have marked a great improvement on the present state of things. As it is, however, the tribunal has deliberately been left impotent for carrying out its work in a proper way, and the mere extension of its jurisdiction cannot therefore be expected to achieve any real good.

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As we have repeatedly said about these reviewin bodies, they will be unable to make a searching investiga

tion for getting at the truth and thus give relief to those kept in custody without good cause unless (i) full information is made available to them about those held in detention; (ii) the person concerned is given an opportunity of appearing before the tribunal in person or through a legal representative; and (iii) he is enabled in suitable cases to call evidence and cross-examine witnesses. All these three requisites of securing justice were present in the procedure of the Advisory Committee appointed in England under Defence Regulation 18 B, for the Advisory Committee was made master of its own procedure, and it provided all these necessary facilities to the detainees.

In regard to (i), the Regulation itself provided in clause 5 that " it shall be the duty of the Chairman (of the Committee) to inform the objector (i. e., the detainee who objects to the order for detention) of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case. The Chairman would obviously decline to act as Chairman unless he was himself supplied and could thus supply the detainee with all the material relevant to the case. The duty thus cast upon the Chairman in express terms of furnishing full material to the detainee indirectly but inevitably cast upon the Government the duty of furnishing this material to the Committee. The requirement that the Government should supply full information to the detainee was thus indirect, because there might be reasonable objection to making all secret official records available to the detainee who might make improper use of them, but there could be no possible objection to making them available to the Committee (which sat *in camera*) and relying upon it to pass on such of them to the detainee as in its opinion were necessary in the interests of justice. And it was the invariable practice of the Home Office, as well in World War I as in World War II, to place all available evidence, including secret dossiers, at the disposal of the Committee, leaving it to the latter to use it with proper circumspection and discretion in hearing cases of the detainees. There was nothing in the Home Office files which was kept back from the Committee. The Home Secretary said in the House of Commons on October 31, 1939 : " The Advisory Committee have before them all the evidence which is in possession of the Secretary of State. " Nor did this evidence fail to reach the person whose case was being considered. The Under Secretary told the Commons on July 23, 1941 : " It is the invariable practice of the Advisory Committee to put before these persons, as explicitly as they can, all the facts which are known against them. "

In glaring contrast to the provisions of the English Regulation, our constitution itself provides in art. 22, after saying in cl. 5 of the article that the grounds of detention shall be furnished to the detenu, that " nothing in cl. 5 shall require the authority making such an order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose. " The exception thus made would be thoroughly intelligible if it was accompanied by a requirement on the part of the Government to disclose even such " dangerous " facts to the Advisory Board. The Advisory Board, in sec. 10 of the Preventive Detention Act, is no doubt given power to call for any more information than the detaining authority might have chosen to give, but no obligation is laid upon the authority to give to the Board the information asked for. [And how chary the detaining authority generally is in giving the necessary information will be seen from the words of stern reproof uttered first by the Chief Justice of the Bombay High Court and afterwards by the Chief Justice of the Supreme Court in the Vaidya case, quoted on a later page in this issue.] The provision in Eire's Offences against the State Act, 1939, in this behalf we have already reproduced in the BULLETIN at p. 124. It is as follows :

> The Minister for Justice shall furnish to the Commission such information and documents (relevant to the subject-matter of such inquiry) *in the possession or procurement of the Government* or of any Minister of State as shall be called for by the Commission. [Emphasis supplied.]

Our Home Minister dealt very light-heartedly with an amendment on this subject as with other amendments moved by non-official members. He said in effect : " Why worry about this small matter ? The detaining authority will in its own interest have to supply the necessary information, as default in this respect will entail the consequence of the release of the detenu by the Advisory Board. But in fact it will tend to have the opposite result. As the constitution itself gives power to the detaining authority to hold back any information whose disclosure in its opinion might be against the public interest, the Advisory Board, however impartial and fearless its personnel may be, would be so impressed with what had been kept back that it would be inclined to report against the release of a detenu, though the evidence adduced by the Government against him was ever so slight. For, as Mr. C. K. Allen has said in the "Law Quarterly Review " for April, 1942, in commenting on the Liversidge case : " It would be affectation to pretend, and, in our opinion, it would be wrong to maintain, that in time of war [and in our country in what the Government regards as a peace-time crisis] the Courts [and in our country the Advisory Boards] can shut their eyes to the necessities of a perilous situation or allow mere technicalities to prevail over the demands of public security. " And if public security necessitates withholding of relevant information, the Advisory Board will, we believe, more often than not decide the case rather on the basis of information that has been withheld, which is presumably of overriding weight, than on that of what the Government has vouchsafed to supply.

As to (ii), nobody ever thought that an examining body could proceed even one step without summoning the detenu, putting questions to him and getting from him answers to the charges made by the Government. It was never thought possible that any tribunal could do much by just looking at the information furnished by the Governmment and thereafter looking at the written representation of the detenu which may not be even available in all cases before the tribunal takes up the case for consideration. And yet our existing Preventive Detention Act in sec. 10 (3) forbids a detenu to appear in person before the Advisory Board. This particular prohibition has now been removed in the amended Act on a suggestion made by such "loyal" members of the Government party as Mr. Ananthasayanam Ayyangar and Mrs. Durgabai. Even these members thought it would be too bad otherwise. But, as for the detenu appearing before the Advisory Board through a legal representative, the Home Minister was adamant; to the suggestions for allowing this privilege as being necessary for doing justice, his answer was an emphatic "no". We have already stated what the procedure in England was under Regulation 18 B in this respect. But the pronouncement made by the Home Secretary in the House of Commons on December 10, 1940, is worth quoting again. It is:

> If the Advisory Committee came to the conclusion that in the circumstances of any case there would be advantage to the proceedings by the bringing out of facts and that this would result from legal assistance being available, that tribunal or Committee has the right to say that such legal assistance could be provided. ... It is not the Home Secretary who settles whether legal assistance shall be available or not but the Committee outside. (The Advisory Committee ask a legal representative, if the detainee has given him instructions,) to appear before them to give evidence on behalf of the appellant or to assist the Committee on the appellant's behalf in the investigation of the facts of the case.

The legal assistance thus allowed is not a matter of just academic interest. It is of the greatest consequence to the detenu. Mr. C. K. Allen says in "Law and Orders" at p. 239 on this subject:

> Speaking from considerable experience of the examination of conscientious objectors, the present writer can say without hesitation that legal aid may make all the difference to that large class of persons who are inarticulate or discursive and quite unable to present their own cases; and this must be so, however eminent, experienced or sympathetic the examining tribunal may be.

Legal assistance may be quite essential in the interests of justice, but our Home Minister will just not allow it.

And, as for (iii), if the Home Minister has such a deep-seated aversion to a lawyer appearing on the scene, is it any wonder that he offered blank opposition to the calling of evidence and cross-examining of witnesses? The practice that prevailed in England in this respect is given in the following statements made by responsible officials:

> The Advisory Committee can "call in any person who, in their opinion, may be able to assist in elucidating the matter with which the Committee have to deal."—Home Secretary (October 31, 1939). "In some cases witnesses may be available, in others not; and where witnesses are available, it is for the Committee to decide whether the attendance of witnesses is necessary."—Under Secretary (February 13, 1941). "Witnesses can be called, and are called in many of these cases."—Home Secretary (July 23, 1941).

The only answer that the Home Minister made to the amendments moved by Pandit Kunzru and Mr. Sarvate for allowing the Advisory Board to settle its own procedure, thus approximating the practice in all these respects to the practice of the Advisory Committee in England, was that that would involve great delay in the proceedings of the Advisory Board. He pointed to the provision in the Act prescribing a maximum period of ten weeks from the time of detention within which the Board must decide cases and said that if all this complicated procedure was followed, the Board would rather take ten months to reach a conclusion than as many weeks. But how long did the Advisory Committee in England take in deciding cases, although it followed this procedure? In the early stages it took about three months, but later it took much less time. Moreover, what is the advantage in having a quick decision, if it is a decision not properly arrived at? One would prefer the provision about the time-limit deleted altogether from the Act to a slapdash decision which is very often likely to be against the detenu. The Home Minister at no time displayed an anguished sense for the terrible condition of the detainee, nor did he make the slightest concession necessary for enabling the Advisory Committee to come to a just conclusion.

* * *

The extension of the Advisory Board's jurisdiction was heralded as a great liberalisation of the existing Act, but Mr. Kamath told the Home Minister quite bluntly that real liberalisation would consist in giving to the Advisory Board the status, the functions and the powers which should properly belong to it. He remarked:

> If the Home Minister was really earnest about liberalisation of the measure and seeing that the detenus were fairly and justly dealt with and not arbitrarily, then the Government must accept the features of the amendments of Mr. Sarvate and Pandit Kunzru. . . . If the Home Minister cannot accept this moderate and democratic procedure, I for one may feel that that all his praise of the liberalisation of the measure is mere pretence.

The Home Minister had adopted a completely non-possumus attitude in regard to all amendments about the

procedure of the Advisory Board. He had said: "Either the House wanted the Preventive Detention Act or did not want it. If the Act should be passed, then they could not have elaborate procedural provisions which would make the whole thing a regular legal trial." Pandit Kunzru declared that it was "sheer cussedness" on the part of the Home Minister to oppose these amendments "strenuously" as he did, and when the Home Minister appealed to the House to co-operate with Government in making the Act a success, Pandit Kunzru said that the Government could have accepted the amendments "without endangering in any way the efficacy of the Act" and that since the Government had chosen to refuse all of them, it was not entitled to receive and would not receive the co-operation it was asking for in enforcing the unnecessarily and extraordinarily drastic powers it was assuming to itself.

* * *

Because in too many cases unaccountably long delay has occurred in informing the detenu of the grounds on which action had been taken against him, it was proposed that an obligation should be thrown on the detaining authority to serve the grounds on him within four days—or at most a week—from the day of his detention (even Mr. Ananthasayanam Ayyangar was in favour of prescribing a time-limit of a week), though facts and particulars in support of the grounds might be supplied later. The Home Minister would accept no such obligation, saying that it would "put the Government in an embarrassing situation," though the object of the proposal was merely to secure that the detaining authority should not first detain and then be on a search for grounds therefor. But the most astounding part of the discussion on this subject was the brazen-faced attempt made by the Home Minister to get round the Supreme Court's decision in the Vaidya case (vide infra), of which he was reminded by Pandit Kunzru. The decision in this case was to the effect that the grounds of detention must be supplied almost forthwith, though particulars in respect thereof might be supplied within a reasonably short time thereafter, and that the grounds originally given could not be added to, as these must be in existence when the detention was ordered. The Minister argued that when the Act was defective, the courts were "compelled" to interpret it in a particular way; but now that the gaps in the Act were filled "the position would be different." No gap in this particular respect has in fact been filled by the new Act, and merely because the Advisory Board's jurisdiction has been widened the Supreme Court's decision cannot cease to have force. If the Home Minister feels that the detaining authority can go on varying and amplifying the grounds it might have given in the beginning (and he said as much, remarking that "in a particular case the detention might have been effected under one ground, but the appropriate Government, while scrutinising the papers, might feel that the case fell under some other ground"!), notwithstanding the Supreme Court's clear mandate to the contrary, he will surely come to grief. Whatever he may actually do in future, this attempt at circumvention shows how little deference he is really willing to pay to the commands of the Supreme Court.

Several other amendments that were moved principally with the object of bringing the Act into consonance with the provisions of Regulation 18 B were unceremoniously turned down by the Home Minister. It was proposed that, instead of leaving it to all district magistrates in the country to exercise "subjective" discretion and pass detention orders, this power should be confined to the Home Ministers of the States, requiring them to look personally into each case. In England personal investigation of each detention case by the Home Secretary himself was regarded as a great safeguard against too wide and arbitrary exercise of this power, and it was thought desirable by many non-official members that the same safeguard should be available in India. But the Home Minister would not agree to provide it as in his opinion it would cause inconvenience to Government. It was also proposed that the presiding officer of an Advisory Board should be a High Court judge nominated by the Chief Justice of India, so that the general public would be satisfied that the final examination of detention cases was in the hands of persons of unimpeachable impartiablity. The Home Minister equally opposed this amendment. It was similarly proposed that, as in England, the Government should report to Parliament once a month, when it was in session, the action taken by the Central and State Governments under the Act and the number of persons detained. The Home Minister promised to publish in the Gazette of India the number of detenus "once in six months"! It was proposed, with a view to carrying out the Supreme Court's own recommendation for a periodical review of every detention case by the Government (so that no one may remain in detention longer than necessary) that all detention cases be reviewed every six months. The Home Minister would not agree. What is the good, he asked, of placing before the Advisory Board the same material every now and then? He forgot that in England the detainee often asked his case to be reconsidered by the Advisory Committee and that the Home Secretary himself often submitted detention cases to the Committee for reconsideration. "It is principally in this manner," says C. K. Allen, "that the orders have been suspended (which term was used in England for 'revoked') and releases made."

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Two or three amendments were moved, the cumulative effect of which, if adopted, would have been to limit the operation of preventive detention to acts prejudicial to "the security of the State" and to leave acts prejudicial to "public order" in the State or to "the maintenance of supplies and services essential to the community," etc., to be dealt with by the ordinary process of prosecution in law courts. Pandit Kunzru pointed out in moving his amendment for deleting the provision about essential supplies and services that as late

as the beginning of last year the normal method of a trial was employed in the case of such offences under the Public Sefety Acts, and said that where ordinary modes of punishing were found sufficient, extraordinary measures of prevention must not be resorted to. It was also pointed out that the Essential Supplies Act had been passed for the specific purpose of dealing with the evil practices of black-marketers, and that it had not been found that, if used with vigour, the Act was not adequate for the purpose. The Home Minister would not listen to the argument. He remarked that there was a great deal of discontent in the country with black-marketers, and there was no reason why, taking advantage of this wide-spread feeling, these people should not be dragged into the net of preventive detention, particularly when the new constitution permitted such a thing. He was impatient of mere theory on the subject. He said, there was great deterrent value in preventive measures. Therefore, there was much justification in coming down on the black-marketers occasionally in that way, "whatever the jurists may say." Similarly, he could not understand why recourse should not be had to preventive detention in suppressing acts leading to any undesirable complication in international affairs. When an amendment was moved by Sardar Bhopindar Singh Man calling for the deletion of the clause providing for detention for acts prejudicial to "the relations of India with foreign powers," the Home Minister, having Pakistan in mind, said: "It is not merely a matter of liberty of speech, but a matter of war. The danger we are protecting against is something enormously important. Could any person regard with equanimity the possibility of war with Pakistan? It would be a terrible thing." Yes, but this means that since Pakistan is to be a permanent neighbour of India, preventive detention must remain a permanent piece of legislation in order to give us the necessary protection. However, every country in the world has some other country in its neighbourhood, with which it wishes to remain in peace. Every country then, by this reasoning, must have the weapon of preventive detention in its armoury if it is to have a feeling of security. But, if so, why does every country go without this weapon? Is it only because of its utter imprudence? The Home Minister never pauses to consider such questions.

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The Act is aimed principally at Communists and secondarily at communalists who, it is suspected, indulge in subversive acts. Those who attacked its provisions have no sympathy with subversive elements of either kind and they will be foremost in suggesting strong measures to cope with subversion, provided the measures comport with democratic freedom. But such reasoning did not make the slightest impression on the Home Minister. He would take any short cut available to deal with those whose aim is to create some kind of strife, and he seems to have persuaded himself that the short cut he has taken on this occasion is indeed the highway. In answering his critics who pointed out that detention without trial was not the proper method to be brought into use against fomenters of civil strife by those who value liberty, he said:

> The liberty of the individual is always conditioned by the security and the interests of the State. So it is that when security of the State is affected or when public order is endangered, it is now an established practice of Government everywhere that we should tackle crime in the stage of plots and plans.

This is, according to our Home Minister, the lesson of history—that whenever disruptive forces are abroad, it is the practice of even democratic countries, a practice sanctified by the theory of democracy, to mount the strong guard of Preventive Detention on the battlements of freedom! And when the resolute determination of the U. K. and U. S. A. not to flourish this weapon against promoters of internal subversion was referred to by his critics, he just explained it away as not relevant to the problem facing India. Where is the danger in England from Communism, he asked, such as what we have to meet here? He will not admit that if the threat of Communism is not dire in England, it is just because England refuses to be panicky about it but proceeds to meet the situation by a suitable social and economic policy and above all by an unflinching adherence to the Rule of Law in all circumstances. Writing in connection with the revelations made in "I believed" by Mr. Douglas Hyde, a former news editor of the "Daily Worker" as to how in the opening years of the war "the Communist Party was actually working for the defeat of Britain as it is working for her enfeeblement today," the "Manchester Guardian" said recently: "The Communist will not be cured by abuse or crude methods of repression: in fact he thrives on them." That is typical British mentality of which our Home Minister does not appear to be aware. But what he said about the United States was really shocking. He observed:

> The procedure of the U. S. A. in dealing with Communists was much worse than it would be under the law that "we have or will have." He thought the Communists themselves would prefer to be under the Indian law than undergo the trials to which they were subjected in the U. S. A.

Does Mr. Rajagopalachari believe, one wonders, that in the Red leaders' trial of last year conviction was obtained by the employment of third degree measures or anything of this sort? Bodies like the American Civil Liberties Union condemn this trial because in their view the law under which they were tried needs to be repealed on the ground that under it advocating overthrow of the Government by violent means (which in itself comes within the ambit of the guarantee of free speech) is penalized even when unaccompanied by an overt act or when there is no "clear and present danger" of an

actual overthrow of the Government. But the trial itself was remarkable for the wonderful patience and meticulous fairness shown by the Judge in the midst of persistent obstruction and contumacy on the part of the accused and their counsel. And the law too, though condemned by lovers of freedom, has nothing in it which even remotely corresponds to the law which Mr. Rajagopalachari was enacting, embodying an odious doctrine productive of infinite mischief. We do not care to surmise whether this arrant nonsense about the U. S. A. for which he made himself responsible in a pre-meditated, written speech proceeds from sheer ignorance or from a desire to paint the United States in lurid colours with the deliberate object of improving our own showing, either of which hypotheses it is difficult to believe, but we feel certain that one who makes or " is likely " to make such a speech calculated to embroil the relations with the United States would suffer preventive detention in a country endowed with a law like the one which Mr. Rajagopalachari has given us, producing police-state conditions.

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We must somehow learn to keep cool in the midst of disruption and not to multiply any present danger by an obsession with catastrophes that these disruptive forces might possibly bring about later. Since Communism is going to be with us for some time, we must teach ourselves to live in its shadow, countering it by means which as a democratic people we can legitimately adopt and to which alone it will yield. By enforcing measures like that of preventive detention, we only undermine the chance of security by sapping our own freedom. And what a sharp contrast is there (as the " Radical Humanist " has so cogently pointed out) between the Home Minister's policy towards domestic Communism and that of the Prime Minister towards external Communism ! " If Communism is to be suppressed at home," the paper asks, " how can it be supported abroad ? " Mr. Nehru preaches at the Americans for crossing the 38th Parallel in Korea. It would call down, he thinks, the immediate outbreak of total war. The Parallel he and Mr. Rajagopalachari should together really worry about is the demarcation line between Justice and Repression, and there is a clear line which divides them.

The only good feature of the debate in Parliament was that several members belonging to the Congress Party refused to say " me too " to the high command and exercised their right of free thought and speech.

Grounds and Particulars

It has very frequently happened that the detaining authority furnishes to the detained person exceedingly meagre information about the causes of detention, but fearing that this meagreness of information will be considered by a court to infringe the detenu's right, conferred upon him by art. 22 (5) of the constitution, to make a representation against the order for detention, the detaining authority supplies to the detenu, almost on the eve of his habeas corpus petition being considered by the court, some additional informatian with a view to saving the detention order from being judicially set aside. Naturally such additional information is suspect in the eyes of the general public as partaking of the character of an after-thought. But different High Courts have dealt with this question differently. For example, the Bombay High Court refused to consider the supplementary information put in on bebalf of the Government in the case of Atmaram Shridhar Vaidya (B. L. R., p. 856 of the 1950 volume). On the other hand, the Calcutta High Court took it into consideration (vide p. 136 of the BULLETIN) in some cases that came before it. In the Vaidya case the grounds were furnished to the detenu on 29th April 1950 and additional grounds furnished about four months later, i. e., on 26th August, not only after the detenu had presented a habeas corpus application to the High Court, but (as the Chief Justice said) " after our decision was given." The decision of the Court was :

> It is not open to the detaining authority to furnish grounds in several instalments. . . . What has been furnished to the detenu now by the detaining authority on August 26, 1950, cannot constitute the grounds contemplated by art. 22 (5) of the constitution. The only grounds which we have to consider and which were furnished in the purported compliance of art. 22 (5) were the grounds furnished to the detenu on April 29, 1950 ; and if these grounds were not such as to enable the detenu to make a proper representation, then there was a violation of the fundamental right and a contravention of the statutory right. That violation and that contravention cannot be set right by the detaining authority by amplifying or improving upon the grounds already given.

The Court in consequence ordered the detenu-applicant to be released. But the Calcutta High Court followed a different course. Against both the High Courts' decision an appeal was filed with the Supreme Court by the Bombay Government in the former case and by the detenus in the latter case, and the Court gave a ruling on 20th January on the important law point concerning the construction of art. 22 (5).

The Attorney-General argued that while " grounds plus particulars must be sufficient to enable a detenu to make a representation, " it should be open to the detaining authority to furnish the material (i. e., grounds and particulars) in instalments or several " baskets. " Chief Justice Kania, in the preliminary hearing of the case, admitted this argument but added: " Provided all these "baskets" are received (by the detenu) before making a representation, and not after a long time when he has already approached the courts (pleading) that his fundamental right guaranteed under art. 22 (5) had been violated. . . . One can visualise that a man is detained on December 1, grounds are served upon him on December 4,

and particulars on which the grounds of detention are based on December 7." Indeed, this is exactly what used to happen in England under Regulation 18 B. At the time of his arrest, he was given a brief statement of the grounds of his detention. This was little more than a definition of the part of the Regulation which was put in force against him, i. e., whether he was of hostile origin or associations, or whether he had been recently concerned in acts prejudicial to the defence of the realm, etc. But shortly thereafter he was supplied with particulars of the facts, incidents, allegations or sources of information, so that "when he gets to the Advisory Committee every fact which can possibly be put to him is put to him by the Chairman of the Committee at the hearing." No such question arose in England as has arisen in this country because the Regulation itself made a distinction between "grounds" and "particulars." Clause 5 of the Regulation says: "It shall be the duty of the Chairman to inform the objector of the *grounds* on which the order has been made against him and to furnish him with such *particulars* as are in the opinion of the Chairman sufficient to enable him to present his case." But in India, as Mr. Justice Mukherjee observed, "the constitution does not say anything about particulars." Art. 22 (5) speaks only of grounds. This has caused confusion. The commonsense view of the matter is that (as was remarked by the Chief Justice in the preliminary hearing): "Supplementary grounds may cover particulars of what has already been given, but additional grounds which were not before the detaining authority at the time of the passing of the detention order would not come within its ambit." There might be an interval between the communication of grounds and the communication of particulars, provided that the interval is so brief as not to conflict with the requirement of art. 22 (5) that the detaining authority "shall afford him (the detenu) the earliest opportunity of making a representation against the order." This commonsense view was affirmed by the Court.

It made a distinction in its judgment between "grounds" and "particulars" as Regulation 18 B did and stated that the detaining authority after serving "grounds," which in themselves must be full and incapable of being added to later, might subsequently, in order to substantiate the grounds, give "particulars" which must be sufficient to enable a detenu to make a representation. The Court said through the Chief Justice:

> In order that a representation can be made the person detained must first have knowledge of the "grounds" on which the authorities conveyed that they were satisfied about the necessity of making the detention order. If the representation is to be intelligible to meet the charges in the grounds, the information conveyed to the detained person must be sufficient to attain that object.
>
> Without giving information sufficient to make a representation against an order of detention it is not possible for the man to make the representation. Indeed the right will only be illusory. The right to receive grounds is independent, but it is intentionally bound by and connected with the right to make the representation. Although these two rights are linked up, the contingency of a further communication between furnishing of the grounds on which the order is made and exercise of the right of representation granted by the second part of article 22 (5) is not altogether excluded.
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> But one thing is clear from the wording of this clause, and that is that after the grounds are once conveyed to the detenu there can be no addition to the grounds. Such additional grounds will be either grounds which were not an element to bring about satisfaction of the Government or if they were such grounds there has been a breach of the provisions of the first part of article 22 (5) as these grounds for the order of detention were not conveyed to the detained person "as soon as may be."
>
> The grounds for the order of detention must be before the Government before it is satisfied about the necessity of making the order and all such grounds have to be furnished as soon as may be. Particulars of facts mentioned or communicated in the grounds initially supplied or additional incidents which, taken along with the facts mentioned or communicated in the grounds already supplied, lead to the same conclusion of the fact (which is the ground furnished in the first instance) stand on a different footing. These are not new grounds within the meaning of the first part of article 22 (5). Provided these are furnished so as not to come in conflict with giving "the earliest opportunity" to the detained person to make a representation, they will not be considered an infringement of article 22 (5).

His Lordship said if the information supplied to a detenu is insufficient for the purpose of making a representation, he "has a right to approach the court and complain that there has been infringement of his fundamental right and even if the infringement of the second part of the right under art. 22 (5) is established, he is bound to be released by a court." He then pointed out that in too many cases had this right in fact been infringed. He said:

> In numerous cases that have been brought to our notice we have found that there has been quite an unnecessary obscurity on the part of the detaining authority in supplying the grounds for the order. Instead of giving information with reasonable details there is a deliberate attempt to use the minimum number of words in the communication conveying grounds of detention. In our opinion this attitude is quite deplorable.
>
> While the constitution gives the Government the privilege of not disclosing in public interest facts which it considers undesirable to be disclosed by the

words used in article 22 (5), there is a clear obligation to convey to the detained person materials (the disclosure of which is not necessary to be withheld) which will enable him to make a representation. It is but right to emphasize that the communication made to the detained person to enable him to make a representation should, consistently with the privilege not to disclose facts which are not desirable to be disclosed in public interest, be as full and adequate as circumstances permit and should be made as soon as it can be done. Any deviation from this rule is a deviation from the intention underlying article 22 (5) of the constitution.

A number of judges have said the same thing before. For instance, the Chief Justice of the Bombay High Court said in the Vaidya case:

> In all the matters which have come up before us, we have been distressed to find how vague and unsatisfactory the grounds are which the detaining authority furnishes to the datenu; and we are compelled to say that, *in almost every case*, we have felt that the grounds could have been ampler and fuller without any detriment to public interest. (Emphasis supplied.)

In this case of Mr. Vaidya the further material supplied by Mr. Chandusama, the Commissioner of Police, four months after communicating the grounds was not such as would have damaged, even in the opinion of the detaining authority, public interest. For, as the Chief Justice said, "Mr. Chandusama states that there are more facts relating to the activities of the detenu which he cannot disclose as being against public interest. Therefore, Mr. Chandusama did not think that the disclosure of particulars which he has now (on August 26, 1950) made would in any way have gone against public interest if such a disclosure had been made when the grounds were furnished on April 29, 1950."

In the above-mentioned decision of the Supreme Court delivered by the Chief Justice (viz., that if the grounds supplied to a detenu are not sufficient to enable him to make a representation at the earliest opportunity, he is bound to be released) was concurred in by Mr. Justice Fazl Ali, Mr. Justice Mukherjee and Mr. Justice Chandrasekhara Aiyar. But the two other judges of the bench, Mr. Justice Patanjali Sastri and Mr. Justice Das were of a different view. Mr. Justice Sastri said: "I find nothing in article 22 (5) to warrant the view that the grounds on which an order of detention has been made must be such that, when communicated to the person detained, they are found by a court of law to be sufficient to enable him to make what the court considers to be an adequate representation." Mr. Justice Das thought that "clause (5) of article 22 imposes no constitutional obligation on the authority to supply the particulars so as to remove the vagueness of grounds or to enable a detenu to make a representation, and non-supply of further particulars does not constitute an infraction of any fundamental right."

BANNING OF POLITICAL PARTIES

That the Bombay Civil Liberties Conference passed an amendment on this subject in opposition to the original resolution is an indication of the regrettable fact that even prominent workers in the cause of civil liberty do not yet fully appreciate the principles underlying some of the basic freedoms for the protection of which every such worker is supposed to have dedicated himself. The resolution sought to protest against the ban imposed on the Communist Party in some States and based its protest on the universally accepted principle that no individual should be held guilty and penalised merely on account of his association with organizations which may be regarded as dangerous. The amendment that was ultimately passed by a majority vote professes to pay homage to this principle but attaches to it qualifications which in effect stultify it. If an organization is guilty of violence or subversive activities, or is contrary to the broad principles of law and order in a democratic society or is against national interests and security of the country, then (the amendment amounts to saying) it can legitimately be proscribed. The meaning of it is (and Mr. Ashok Mehta, the Socialist leader, who moved the amendment said as much) that civil liberty is for those groups alone which, being democratic, extend civil liberty to others; but it can well be denied to those groups which themselves deny it to other groups. As a matter of policy or expediency, there may perhaps be something to be said in favour of this position, but looked at from the point of view of principle, the position is wholly untenable. Those who have pledged themselves to maintain civil liberty must work for all they are worth to secure the benefits of such liberty even to undemocratic and totalitarian parties, however ruthless these parties themselves might be in suppressing the civil liberty of others who happen to come under their control.

Evidently the supporters of the amendment, or at least some of them, thought that if they urged the raising of the ban against the Communist Party, they would in an indirect way be encouraging Communism or violent and subversive activities in which they believe members of the Communist Party are indulging. But this is a complete misapprehension of the role which the civil liberty movement is expected to play. Mr. Karnik, who moved the resolution in a remarkably able and closely reasoned speech, made this perfectly clear. He declared himself to be fundamentally opposed to Communism, and yet he considered it his imperative duty to resist governmental power being arbitrarily employed to ban the Communist Party or to penalise any individual members thereof on the sole ground of their connection with that party. Mr. Jamnadas Mehta, who is similarly opposed to Communism also took exception to the amendment and supported the

resolution on the principle that guilt is personal and is not to be inferred from one's association. We may take a lesson in this matter from the policy of the American Civil Liberties Union, which is the biggest and most respected union in the world of its kind. This Union frankly confesses itself to be utterly opposed to "Communism, Fascism, or any other system or philosophy which would deny civil liberties," and indeed goes so far as to lay down that "no Communist or Fascist can become a director or staff member" of the Union. And yet it is foremost in maintaining civil liberty for the Communists. "While opposing those who would deny civil rights to others, it nevertheless constantly contends for the application of civil rights to all." This is the only right position which any civil liberty orgnization can consistently take up.

The amendment that was passed no doubt gives the appearance that banning of an organization would be acquiesced in only if it was proved in a court of law that the particular organization was actively engaged in planning the overthrow of society by violence. But such judicial proof is hardly ever possible in the case of an organization and the very fact that the supporters of the amendment insisted on taking out of the resolution a reference to the Communist Party although no judicial proof about the evil activities of the Party as a whole is forthcoming shows that they do not lay much store by such proof. The nearest approach that was ever made in judicially fixing a brand of disloyalty on a political party was in the famous trial of the Politbureau of the American Communist Party on a charge of criminal conspiracy under the Smith Act. In this trial the topmost leaders of the Party were convicted, though the conviction by the trial court is yet to reach finality in the Supreme Court. But assuming that the highest court of the United States upholds the conviction, even then it is not to be supposed thht this will give authority to the United States Government to treat every professing communist as one who is individually convicted of an offence. No action could be taken against any communist except on the basis of what crimes he had himself committed. There would be no room, even after the Supreme Court's confirmation of the conviction, to condemn a person by association. The doctrine of guilt by association is foreign to the concept of justice. As the U. S. President's Committee on Civil Liberty says, "For the individual the ultimate test must always be his own untrustworthiness. Affiliation with a dubious organization is, by itself, not necessarily proof of untrustworthiness." But the more important question for the civil liberty movement is to determine what its attitude is to be if an entire party or group is declared or sought to be declared illegal. Here again we may take a leaf out of the book of the American Civil Liberties Union. This Union appears in the Red trial with a brief as *amicus curiae*. In its brief it says: "Day-to-day events on local, national and international levels emphasise the urgent need for safeguarding the vital interest of the individual and of society in maintaining the fullest freedom of discussion that is compatible with the security of the nation. It is more and more apparent that, while liberty can only exist within a framework of order, the question pressing above all others for solution is the accommodation, under the constitution, of freedom and authority in such a manner as to preserve the benefits of each." The supporters of the amendment passed at the Bombay Conference should note that A. C. L. U., noted for its sobriety and maturity of judgment, does not think that national security requires banning of the Communist Party but that it should be possible to counter the Party's subversive activities by means which are consistent with the maintenance of civil liberty. The supporters of the amendment need not have been more solicitous for law and order or the security or the interests of the nation and less solicitous for civil liberty than A. C. L. U. has shown itself to be. Although the Socialist Party leaders in Bombay have put themselves on record as being in favour of what amounts to maintaining a ban on the Communist Party, Mr. Jayaprakash Narayan who carries the greatest weight among the Socialists would, one feels, have taken a different line altogether. For we remember that when the Communist Party was outlawed in West Bengal, he strongly protested against this action, saying (quite rightly) that while he was totally opposed to the methods of the Communists, he would like to fight them in the open rather than have them driven underground, as would be the necessary consequence of that action.

If one looked at the question from the narrow standpoint of politics rather than from that of broad principles, one may even be tempted to think that the Communists were served right on this occasion. For when at the second session of the Conference the same question arose they took a leading part in voting down a similar resolution that was then brought forward. At that time the R. S. S. was under a ban, and because they regarded the R. S. S. as a Fascist party which in their opinion should be under a ban, they did not allow the resolution to pass, although the R. S. S. was not even specifically mentioned in the resolution *eo nomine*. The necessary consequence of the attitude which the Communist Party assumed then was to make several delegates in sympathy with the R. S. S. vote for the amendment on the present occasion! Too often do we forget that the objective of the civil liberty workers should be to strike a blow for civil liberty on behalf of all parties and not to strike blows against one another. Unless we fully understand the implications of civil liberty, there is a grave danger of all our work going to pieces by giving an opportunity to a repressive government to strike down all political parties one after another. We would earnestly request all those who are fighting under the banner of civil liberty to think this question out on the basis of right principle and readjust their mental attitude where such readjustment is required.

COMMENTS

"Freedom of Information" Convention

INDIA'S WRONG ATTITUDE

The U. N. Committee appointed to draw up an international convention on freedom of information completed its work on 5th February. The draft convention that has emerged from the committee is such as to be unacceptable to free-press loving countries like the United Kingdom and the United States on the ground that it contains too many restrictions on the free exchange of information. One satisfactory feature of the committee's draft is that it has omitted a clause, proposed by India, barring "false or distorted reports which undermine friendly relations between peoples or states." As the "New York Times" remarks on this provision: "If power to decide what news is 'false' and what news is 'distorted' were put in the hands of the Government of any nation, the free press of that nation would cease to exist." The United States opposed this provision. On the whole draft no vote was taken, but the United States delegation declared that they would have opposed the convention had it been voted upon. For they beleive that "instead of safeguarding freedom of information, the convention would check it."

Security Act Repealed in U. P.

The legislature of the Uttar Pradesh repealed the Public Safety Act of that State last mouth. This Act was first passed in 1947 and was extensively used, particularly against the R. S. S. and the Communists in 1948 and 1949. Because of a considerable improvement in the law and order position, the local Government thought it could now do without this special legislation. It must be remembered that the most drastic of the powers conferred by the Act, viz., of detention without trial, would remain to the Government even after the repeal by virtue of the central Preventive Detention Act which extends to all the States. And, indeed, it was stated by the Police Minister, Mr. Lal Bahadur Shastri, when he introduced the repeal bill that the Government felt it possible to dispense with the security measure only because it could always fall back on the central Act for curbing the violent activities of the subversive elements in the State. We hope that the repeal of the Public Safety Act will not lead indirectly to a wider use of the power of detention, for if this happens it will mean that where milder restrictions would have sufficed, more sweeping restrictions would be the order of the day. But if such temptation is resisted, the repeal would undoubtedly be a welcome move, and we hope that other States will be encouraged to follow the U. P. lead.

Anti-Bigami Act Nullified

Setting aside on appeal the coviction of four persons by the Resident Magistrate of Miraj (South Satara district in the Bombay State) for infringement of the Bombay Prevention of Hindu Bigamous Marriages Act, the District and Sessions Judge held the Act to be void as contrary to the Fundamental Rights provisions of the constitution. This decision was based on art. 15 (1), which provides that "the State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them."

The same question of prohibiting bigamous marriages of Hindus while at the same time allowing persons of other religions to take more than one wife was considered by Mr. Justice Tendolkar in the address he delivered recently in Bombay to the Progressive Group. But he considered it in connection with art. 14 which lays down that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." And even so he refrained from expressing an opinion as to whether laws which apply to persons of one religion and do not apply to those of another become invalid on the ground of inequality. He said:

> There has been a great deal of talk and some writings recently even by lawyers that certain provisions of civil law applicable to a particular community are void on the ground that they do not apply equally to some other community; e.g., a Mahomedan can marry four wives, while a Hindu, a Parsee or a Christian can only have one. If this is held to offend against the principle of equality before the law (and I express no opinion as to whether it does), I do not know whether a Mahomedan is to be prevented from marrying more than one wife or a Hindu, a Parsee or a Christian is to be allowed to marry four.
>
> A uniform civil code for India is a desirable object.... But until such a code is enacted, it does not necessarily follow that the laws applicable to the different communities cease to be good merely because they are not uniform. Equality before the laws does not necessarily require uniformity.

FREEDOM OF SPEECH IN U. S. A.

License Requirements Not Admissible

The U. S. Supreme Court has in previous years struck down many a city ordinance or state statute which trenched upon freedom of speech in order to promote minor public convenience; e. g., preventing the streets from being littered by broadsides (Schneider v. State, 308 U. S 147); requiring a license to solicit contributions from societies (Cantwell v. Connecticut, 310 U. S. 296); requiring a union leader to register his name and union affiliation with the Secretary of State (Thomas v. Collins, 323 U. S. 516).

To such cases has now been added another. The Supreme Court on 15th January voided a New York City ordinance requiring police permits for preachers to conduct religious services in the streets. In 1948 a Baptist

minister, Mr. Kunz, was arrested for preaching without a permit and was fined on conviction. But the Court reversed the conviction, holding that the ordinance itself was in violation of the First Amendment and thus invalid. The minister had held a permit at one time, but in 1946 it was revoked after a hearing by the Police Commissioner, who found that he had "ridiculed" and "denounced" other religious beliefs in his meetings. Thereupon, he asserted his right to "go out on the highways and byways and preach the word of God" without a permit, as a result of which he was sentenced to a fine.

Chief Justice Vinson, who wrote the opinion of the Court, said that the lower courts which upheld this conviction had "mistakenly" supported their conclusion with evidence that Mr. Kunz' meetings "caused some disorder." A community had a right to punish disturbers of the peace, but, he declared, "We are here concerned with suppression—not punishment." New York could not vest restraining control over the right to speak on religious subjects in an administrative official where there were no "appropriate standards" to guide his action. This was an 8 to 1 decision of the Court, Justice Jackson dissenting.

A similar decision, this time unanimous, was handed down on the same day in another case. At Havre de Grace a group of Jehovah's Witnesses sought a permit to hold a Sunday meeting in a public park, and after having been denied it, went ahead with a scheduled meeting anyway. Two leaders were arrested and tried on charges of disorderly conduct. On conviction they were fined.

The Supreme Court ruled that the City Council of Havre de Grace had wrongfully denied use of the park. The Council had no power to exercise control over use of public places without definite rules covering all users of those places. Chief Justice Vinson said:

> A license requirement constituted a prior restraint on freedom of speech, press and religion, and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid.
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> Havre de Grace actually had no ordinance specifically regulating or prohibiting the uses of the city park. It had only an "amorphous practice" whereby all authority in this regard rested with the Park Commissioner or the City Council, which heard appeals.
>
> No standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; no substantial interest of the community to be served.

HABEAS CORPUS PETITIONS

Allegations "Vague"

Mr. Venkatappa Reddy, a Communist detenu, detained by the Hyderabad Government under the Preventive Detention Act, was on a habeas corpus petition ordered to be set at liberty on 12th January by Mr. Justice Sripati Rao and Mr. Justice M. A. Ansari of the Hyderabad High Court on the ground that the allegations made by the Government against him were not precise. He was alleged to have led a group of Communists in Nalgonda district and indulged in demolition of buildings, loot and arson. He was also alleged to have illegally distributed the land of the rich to the poor. Passing orders on the petition the Court observed:

> The one important thing to be noted about these allegations is that they are vague. This is established by omission to mention the name of the village and locality where the alleged demolition of buildings, and loot and arson were committed. The vagueness is continued by omission of names of places where the lands of the rich were illegally distributed to the poor, and no dates are given.
>
> The detaining authority should bear in mind that the furnishing of grounds of detention is for some purpose and it is not a mere formula. The constitution by bestowing the right of demanding grounds of detention contemplates affording facilities to the detenu for making a representation to the authorities concerned against the facts on which his detention has been ordered. This right cannot be exercised if sufficient details are not furnished, and a court can order release if it is of the opinion that lack of precision in the grounds disables the detenu to make an effective representation.

"Accuracy or Sufficiency of Grounds" Is Forbidden Ground for the Courts

Mr. Bolo Mathur, a peasant from Bihar, approached the Supreme Court on 8th January with a prayer that the order of detention passed against him by the Bihar Government be set aside. He complained that the grounds communicated to him were entirely false, the real reason being that "the party in power was afraid lest he would defeat the Congress candidate in the coming general election." Mr. Justice Mahajan who presided over the bench said that the Court was not competent to go into the accuracy or sufficiency of the grounds of detention and could give relief to the detenu only if the grounds of detention were vague.

"In that case," exclaimed the applicant, "I must say that the police and the C. I. D. can fabricate false grounds against anybody—even against Mr. Justice Mahajan." Their Lordships smiled and dismissed the petition, Mr. Justice Mahajan saying: "We are very sorry the Court's powers are limited."

In the case of another applicant, Mr. Basant Kumar Burman, the proceedings were very similar. After his petition was dismissed, he shook his head and said: "May I take it, my Lords, that in this Republic the police and the executive are supreme?"

A third habeas corpus petition was dismissed by the Court on the same day. It was from Mr. Jogendra Nath Gyan, a trade unionist from Bihar. He pleaded that he

was a member of the Revolutionary Communist Party and that since this party had not been declared illegal he should not have been detained because of his membership. Asked what the ideology of the party was, the petitioner replied that its object was to establish a Communist State in India by means of revolution. To the question whether revolution included violence the petitioner's reply was in the affirmative. The Court dismissed the petition !

High Court's Powers Limited

Mr. Ram Kishun, a merchant of Bijnor, was arrested on 24th December 1950 for being prosecuted under sec. 7 of the Essential Supplies Act, and was bailed out in that case. But almost immediately afterwards, i. e., on 28th December, he was re-arrested under clauses (ii) and (iii) of sec. 3 (1) (a) of the Preventive Detention Act. It was stated in the grounds communicated to him that he was indulging in blackmarketing in salt and grain.

When his habeas corpus petition came on for hearing in the Allahabad High Court before Mr. Justice Brij Mohan Lal it was pointed out on behalf of the defence that as the petitioner's licenses had been cancelled before his arrest and the entire stock of salt had been surrendered, there was no more fear of the petitioner acting in a manner prejudicial to the maintenance of essential supplies, and that therefore he should not be detained. His Lordship said this argument in respect of clause (iii) was quite right in so far as it went, but the applicant's detention was also based on the ground of maintenance of public order under clause (ii). As to this, the allegation against the detenu was :

> In connection with the contravention of salt and cloth control orders in Bijnor, you tried to get the bazar closed and observe a hartal on Dec. 23. As a mark of protest against the arrests made in connection with the contravention of the aforesaid control orders, you along with some others forced shopkeepers to close their shops and when they refused to do so, you threatened them with dire consequences and in the case of Haji Khalilur Rahman you went to the length of saying that if he did not close his shop you and your followers would carry away his daughter, which fact was very much resented by others and matters would have taken a serious turn and breach of peace would have occurred had not the police taken timely action.

On this point His Lordship said that (provided the grounds furnished to the applicant were sufficiently precise to enable him to make a representation to the appropriate authority) the functions of the High Court in examining cases of persons detained under the Preventive Detention Act were limited, and that in his opinion no case had been made out which would justify interference by the Court. The petition was dismissed (2nd January).

Grounds Too Vague

On 18th January the Calcutta High Court heard the habeas corpus applications of 43 detenus and directed all of them to be released. Mr. Justice K. C. Das Gupta, delivering the judgment of the Court, observed :

> There was no doubt that if there was a proper and legal order under the Preventive Detention Act, that was a sufficient answer to the charge that a person was being detained illegally. Obviously, if the order of detention had been made in the valid and proper exercise of the powers under the Preventive Detention Act, detention in pursuance of that order was a legal detention and not an illegal detention.
>
> It had not been disputed before them on behalf of the State that it was now a well-settled law, in view of the pronouncement of the Supreme Court judgments in a number of cases (cases of Meher Singh Mantri, Iswar Das, Sovan Singh Josh and Amiya Banerjee) that if the grounds of detention communicated to the persons detained were too vague and indefinite to enable them to make any effective representation to the Government, the detention must be held to be illegal and the detenus must be released.
>
> In all these cases their conclusion was that these grounds, whether taken separately or taken together, were so vague and indefinite that it was not possible for the detained persons to make any effective representation to the Government thereon. Services of these grounds really showed a non-compliance with the requirement of the constitution on the principle laid down by the Supreme Court. All these detenus were entitled to be released.

In some of these cases the law officer of the West Bengal Government had produced for the information of the Court certain grounds claimed to be supplementary grounds for detention. Referring to them, Mr. Justice Das Gupta said :

> For ourselves we would have no hesitation in coming to the conclusion that what were communicated as supplementary grounds are not among the grounds on which the order of detention was made and consequently cannot be looked into in applying the principle laid down by the Supreme Court that if the grounds of detention communicated to the detenus are too vague and indefinite to enable them to make effective representation to the Government, the order of detention is bad and the detenus must be released.

Beyond the Scope of the Act

Mr. Justice Gurnam Singh of the Pepsu High Court allowed the habeas corpus petitions challenging the detention of Sardar Bhagwant Singh, General Secretary of the Pepsu Congress Committee and Mr. Babu Ram, Secretary of the Tehsil Congress Committee, Dera Bassi, and ordered the release of both the detenus on 29th

December. His Lordship held that the detention of Sardar Bhagwant Sing and Mr. Babu Ram had become illegal because grounds of detention issued in each case fell beyond the scope of the Preventive Detention Act or were vague and ordered that both the detenus who were on bail would be treated as released and their bail bonds discharged.

Four Reds' Petitions Dismissed

A division bench of the Supreme Court dismissed on 23rd January four petitions filed on behalf of four detenus, alleged to be prominent Communists of Bihar, for obtaining a writ of habeas corpus against the Bihar Government.

The grounds of detention "inter alia" state that, apparently in pursuance of an international plan of action, the Communist Party of India had adopted a highly secret programme of overthrowing the Government of India as constituted by law through violence. In strict accordance with the directions issued by the Provincial Headquarters, the Party members functioning in different regions of India had put this plan into operation. The Bihar Government were satisfied that the members of the Communist Party of Bihar had accepted the Party's immediate programme.

It was argued on behalf of one of the detenus that the grounds of detention were full of concoction and distortion, framed with a view to maligning the Communist Party in the eyes of the people and to find excuses to suppress the Party as a political opposition to the Congress, the Party in power. Besides, some of the grounds revealed utter disregard on the part of Government to the fundamental rights guaranteed by the constitution.

Chandrasekhar Prasad Singh's Case Again

Reference has been made twice before (at pp. 148 and 194) to the habeas corpus petitions of Mr. Chandrasekhar Prasad Singh, son of Mr. Ram Charitra Singh, Minister of Irrigation in Bihar. He was originally arrested in August 1949 and on the passage of the Preventive Detention Act was served with an order of detention under that Act. Against this order he filed an application for habeas corpus with the Patna High Court and that Court on 24th August, 1950, allowed the application, holding that his detention was illegal, and ordered his release. He was accordingly released two days afterwards. But while after coming out of gaol he was about to board a bus, he was re-arrested and a fresh order of detention was served on him. The habeas corpus petition that he filed against this order was dismissed by the High Court on 27th November. It will be recalled that the Court, in dismissing the petition, said: "It is not open to this Court to sit in judgment over the State Government.... After all it is for the State Government to decide whether it is necessary or not to pass an order of detention against the petitioner."

The circumstances in which he was arrested and detained for the second time made Mr. Chandrasekhar Prasad Singh prefer an appeal to the Supreme Court against the High Court's dismissal of his second habeas corpus petition. In this appeal he pleaded that the order of detention served on him a second time was mala fide and a "colourable device" to circumvent the orders which the High Court had issued on 24th August for releasing him. The Supreme Court, on 24th January, rejected this plea and dismissed the appeal. It was also contended on behalf of the petitioner that one of the grounds of detention supplied to him was irrelevant, viz., that at a secret meeting attended by him a plan was made for collection of funds for arranging the legal defence of Communists and kisan workers prosecuted in connection with agrarian trouble, and rulings of the Federal Court and the Madras and Bombay High Courts were cited in support of his contention that if some of the grounds of detention supplied to a detenu were found to be absolutely irrelevant for the object in view, then the order of detention would be rendered illegal. On this point Mr. Justice Mahajan said:

> Our satisfaction that a ground supplied was sufficient for detaining a person does not matter, for the satisfaction has to be of the detaining authority. Of course, if the ground is a "poem" or is absolutely irrelevant (for instance a man is detained because his nose is long or he wears a blue tie) it is another matter. In that case there could be no honest satisfaction of the detaining authority and the order detaining him would be invalid.

In the result the application failed.

Communists' Petitions Dismissed

On the previous day, i. e., on 23rd January, the Supreme Court had dismissed habeas corpus applications from three Communists. One of them was Mr. Adurti Venkata Satyanarayana. It was contended on his behalf that the grounds supplied to him were identical with those on which he had been prosecuted and acquitted earlier. The charges against him were that he had been distributing unauthorized news-sheets and keeping in his possession unauthorized news-sheets. In regard to the first charge the Court's finding was that there was not a shred of evidence against him and in regard to the second it held that it had not been conclusively proved that he had any knowledge of those papers which were recovered from his house where other family members were also living.

The counsel for the State Government pleaded that the grounds supplied were quite specific for the purpose of detaining him under the Preventive Detention Act. Recovery of the documents from his house could constitute a "reasonable belief" in the mind of the detaining authority that his activities were prejudicial to public safety. The petition was dismissed.

The other two petitioners were Mr. Dhani Singh and Mr. Punna Ram Kahar, son and an associate respectively of Karya Nand Sharma, a noted underground Communist worker of Bihar. The charge against the first was that he was a Communist worker, pledged to do or die for his party

and, according to his admission, would not rest contented till the present Government was overthrown and a kisan-mazdoor raj established. And the charge against the second was that he had organized secret meetings at which plans to attack a police party were evolved. The Court dismissed the petitions, holding that the grounds were "very specific" and fully enabled the petitioners to make an effective representation against their detention.

Supplementary Grounds Inadmissible

Mr. Justice K. C. Das Gupta and Mr. Justice P. N. Mookerjee of the Calcutta High Court ordered the release of 12 more detenus on 25th January. Their Lordships held that the grounds originally communicated to the detenus were too vague and indefinite to enable them to make effective representation to the Government against their detentions. There is nothing unusual in this ruling, but Their Lordships further ruled that "the supplementary grounds could not be considered." This ruling is worthy of particular note because in the case of a hundred detenus who appealed to the Supreme Court the Calcutta High Court had decided, (contrary to the ruling of the Bombay High Court in the case of Atmaram Shridhar Vaidya) that supplementary grounds could be taken into consideration.

It is reported that since the commencement of the hearing of the rules obtained by about 123 detenus Their Lordships have so far ordered the release of 90 on similar grounds, and that a hearing of the remaining rules is proceeding.

Stereotyped Grounds

"TOO VAGUE AND INDEFINITE"

Applying the test enunciated in the Vaidya case, the Supreme Court on 9th February ordered the release of 29 Assam detenus (among whom three were women) on habeas corpus petitions. In several cases, according to Mr. Justice Mukherjee, the detenus had been supplied with "stereotyped grounds," the main allegation against them being that they were inciting cultivators to indulge in lawless activities. The place, date and such other facts were not mentioned. The Advocate-General pleaded that there were facts in the possession of the State Government which satisfied it about the necessity of detention, but these facts could not be disclosed to the detenus in public interest. But even this fact, that particulars were withheld because public interest would be damaged by their disclosure, was not mentioned in an affidavit by the State Government, although three weeks had elapsed after the Government had received notices of the habeas corpus petitions.

The order of the Court, delivered through Mr. Justice Patanjali Sastri, was:

> According to the latest ruling of this Court in the case, Bombay State vs. Mr. Atmaram Shridhar Vaidya, it is incumbent on the detaining authority to give such particulars of the grounds of detention as would enable the person detained to make a representation, as contemplated by article 22 (5) of the constitution. Here the grounds communicated to the petitioners are in our opinion too vague and indefinite to enable them to make such a representation. It is nowhere stated that it is not in the public interest to give such particulars. It follows, therefore, that the petitioners must be released. We order accordingly.

POWER OF EXTERNMENT

Supreme Court's Judgment

QUESTION OF CONSTITUTIONALITY BY-PASSED

Against the Bombay High Court's majority decision of 14th April, 1950, nullifying sec. 2 (1) (b) of the Bombay Public Safety Act (which empowers the executive to pass orders of externment) in the case of Emperor v. Jesingbhai Iswarlal Modi (vide p. 101 of the BULLETIN) the Bombay Government filed an appeal in the Supreme Court, which it decided on 12th January.

The main question before the High Court was whether the above-mentioned section was in violation of the rights of free movement and residence guaranteed by art. 19 (1) (d) and (e) of the constitution or whether it fell within the savings of art. 19 (6), which gives power to the legislatures to pass laws imposing "reasonable" restrictions on the exercise of those rights. On this question the decision of the Chief Justice and Mr. Justice Bavdekar was, to quote the language used by the former: "The restriction placed upon the petitioner is an unreasonable restriction, and therefore the law, to the extent that it imposes an unreasonable restriction, is void, being contrary to the fundamental rights conferred upon the citizen by the constitution."

The grounds upon which the majority decision as to the unreasonableness of the restrictions which the Public Safety Act allows the executive to impose was based were three: namely, the Act makes no provision for (i) limiting the duration of the externment order; nor for (ii) communicating to the externee the grounds for the order; nor for (iii) giving him an opportunity of being heard in his defence. Although the High Court based its decision on these three grounds, the Supreme Court, in hearing the appeal, confined its attention to the first of these three grounds, leaving the second and the third severely alone. And yet, in the opinion of the High Court, the last two were the more important ones. The Chief Justice had said in regard to the first ground:

> It has been pointed out to us (on behalf of the externee) that no period for the duration of the externment order is laid down in the statute. The Advocate-General has pointed out that the Act is for a temporary period and therefore the duration of the externment order is limited by the duration of the statute. In a sense he is right, but it must also be

pointed out that even a temporary statute can be renewed from time to time by the legislature and even a permanent statute may be repealed by the legislature. This very statute, which originally was for two years, was amended by the legislature to be for a duration of three years, and then subsequently for a period of six years. Therefore, there is no limit to the power of the legislature to continue the duration of the statute.

Though the Chief Justice regarded absence from the Act of a maximum period to which a person could be subjected to restrictions of movement as a defect, more serious defects according to him were the other two which made the restrictions unreasonable and thus rendered the statute void. The very next words used by him made this clear. For he proceeded to say: "But what is much more important, and to my mind what is fatal to the validity of the restrictions," etc., etc. That he placed reliance on the other two defects in declaring sec. 2 (1) (b) void, becomes clear from the decision (17th April, 1950) in the case of Abdul Rahiman Shamsooddin Maniyar, in which the externment order was passed under sec. 46 (3) of the District Police Act. Because sec. 46-A of the Act gives an externee the right to be heard, the same bench of the High Court did not regard sec. 46 (3) as contrary to art. 19 of the constitution. In this case also the question was raised that sec. 42 (1) does not contemplate an order of any particular duration, but the Court said on this point: "In our opinion there is not much substance in the contention that the order places an unreasonable restriction inasmuch as it does not limit the period of externment." In the result the Court dismissed Abdul Rahiman's petition.

This proves that what decided the Court to hold sec. 2 (1) (b) of the Public Safety Act void was *not* the absence of a limit of externment in the section, but the other defects. The Chief Justice set them out as below in the Jesingbhai Ishwarlal Modi case:

> But what is much more important, and to my mind what is fatal to the validity of the restriction placed by the legislature, is the fact that the person against whom an order of externment is to be made has no right whatever to be heard in his defence before he is asked to leave his home and hearth and go and reside in some other place. There is no obligation upon the authority to tell him what he is charged with or what are the grounds against him which make it incumbent upon the Government to ask him to leave his home town. Nor is there any obligation upon the authority to hear the person against whom the order is intended to be made in his defence before the order is made.

Mr. Justice Bavdekar said:

> In case the existing laws which restrict the freedoms referred to in cl. 1 of art. 19 must be reasonable it is obvious that they must provide that any person whose right, for example of freedom of movement, is restricted must be given an opportunity, maybe after an interim order restricting his rights is passed exparte, of showing cause why an order under a Security Act restricting his movements should not be passed. The right of hearing before condemnation is admittedly a component of the rights which, taken together, constitute rights of natural justice, and in my view in case legislation which restricts the fundamental rights has got to be pronounced to be reasonable, it must give the person whose freedom is restricted an opportunity to be heard.

Oddly enough, however, the Supreme Court put aside altogether these considerations bearing on the validity of the relevant section in the Bombay Act. It somehow concerned itself with the much narrower question of whether Mr. Modi "is still to remain outside the district of Ahmedabad" under the externment order passed against him. The Court referred to what the Advocate-General had said in the High Court regarding the absence of a period of externment from the section and observed:

> That will mean that when the Act of 1947 as originally passed was in operation, the order should be considered as if it was to be operative up to March 1949 and if such order was passed between March 1949 and March 1950 [it was in fact passed on 12th December, 1949] it should be read as if it ceased to be operative after March 1950. The effect of this statement does not appear to have been fully appreciated. ... The statement of the Advocate-General before the Bombay High Court concedes that although the order did not expressly state how long it was to remain in operation, according ordinary rules of interpretation it was impliedly limited to the period of the duration of the Act when the order was made. The order ... thus impliedly ceased to be operative at the end of March 1950. In our opinion, therefore, there was nothing to prevent him (Mr. Modi) after that date from returning to Ahmedabad to live and move about in the district as if no externment order was subsisting against him. ... In view of this conclusion it is unnecessary to examine the reason given by the High Court for its decision or to decide the question of the validity of sec. 2 (1) (b) of the Bombay Act.

In the High Court Mr. Justic Shah dissented from the conclusion of the Chief Justice and Mr. Justice Bavdekar that sec. 2 (1) (b) was inconsistent with art. 19 and therefore void. As for the absence of an obligation on the Government to give grounds, he said: "One can very well conceive of cases in which it may be *impolitic* for the State to inform the externee of the grounds on which an order of externment is passed under the provisions of sec. 2 (1) (b)." And as for the absence of a provision compelling the authority to hear the externee, he said: "The sole ground of absence of a provision for being heard either before or after the passing of the order

of externment, which is less drastic than an order of detention, cannot in my opinion render the provisions of sec. 2 (1) (b) void or inoperative as from 26th January, 1950." And about the absence of a provision in the Act requiring the period of externment to be limited, he said: "The effectiveness of the order would remain so long as the statute under which the orders are passed would remain operative."

All the three judges of the High Court apparently thought that the externment order passed against Mr. Modi would continue to be in operation, not only till the end of March 1950, when the Act at the time of passing the order was supposed to expire, but also for any further period to which the life of the Act subsequently may be extended (as it has been extended by another three years). They did not think that "according to ordinary rules of interpretation" the order would of itself cease to be effective after 31st March, 1950. If that were their view, they could have said to Mr. Modi (on 14th April 1950, when the decision was handed down): "You are now free to go back to Ahmedabad; the order of externment does not apply to you; the order against you has ceased to be in operation." But the Supreme Court has taken the view that, because at the time the order was passed the Act was to last till the end of March 1950, the order itself remained effective only till then though in fact the Act has been extended further. Apparently, the Court thinks that although the Act has since been renewed, the orders passed under it also require to be individually renewed if they are to remain valid, and since the order passed against Mr. Modi was not so renewed, it ceased to have effect after 31st March 1950.

Whether this is the ordinary rule of interpretation or not, we do not know. But the result of deciding the question on this basis alone is that the more important question of the validity of sec. 2 (1) (b) of the Bombay Act (and the externment provisions in the Public Safety Acts of other States are almost in identical terms) remains undecided in the Supreme Court. The mode of procedure adopted by the Court in this case appears to us to be peculiarly strange because the Bombay Government in filing the appeal had invited the Court to give a finding specifically on the issue of the reasonableness or otherwise of the restrictions which the Act allowed to be placed on the movements of persons. The questions at issue between the High Court and the Government were set out as below:

1. Whether the restrictions contained in section 2 (1) (b) of the Act on the exercise of the rights conferred by article 19 (1) (d) and (e) of the constitution are not reasonable.
2. Whether section 2(1)(b) of the Act is void under Article 13(1) of the constitution on the ground that it is not in conformity with the provisions contained in article 19(5) of the constitution.
3. Whether the externment order dated December 12, 1949, made under section 2(1)(b) of the Act is void and illegal.

The case of the appellants, the Bombay Government, was that the provision contained in section 2(1)(b) of the Act imposes reasonable restrictions on the exercise of the rights conferred by article 19(1)(d) and (e) of the constitution and is valid and that the said order made by the district magistrate is a valid and effective order as the restrictions imposed are reasonable, having regard to the object to be achieved by the imposition of the restrictions on Mr. Modi.

According to the Bombay Government, sec. 2 (1) (b) of the Act provided for the imposition of restrictions which were reasonable in view of the contingency which was to be met and for which such restrictions were to be imposed.

It is unfortunate that the Supreme Court by-passed the questions raised by the Bombay Government on appeal.

PRESS ACT

Proceedings taken before Commencement of Constitution

Mr. Kesava Madhava Menon, as Secretary of the People's Publishing House Ltd., published in September 1949 a pamphlet entitled "Railway Mazdooron ke khilaf nai Sazish" (a new conspiracy against railway workers). A prosecution under sec. 18 (1) of the Press Emergency Powers Act, 1931, which prescribes a penalty for disseminating "news-sheets" not authorized under sec. 15 (1), was started against him in the court of the Chief Presidency Magistrate, Bombay. During the pendency of the proceedings the new constitution came into force and on 3rd March, 1950, Mr. Menon filed a written statement submitting that the pamphlet was published as a book within the meaning of sec. 1 of the Press and Registration of Books Act and was not a "news-sheet," as contended by the Bombay Government, within the meaning of sec. 2 (6) or an "unauthorized news-sheet" within the meaning of sec. 2 (10) of the 1931 Act. On 7th February, 1950, he applied to the High Court for a declaration that secs. 2 (6) and 2 (10) in so far as they created a liability for a restrictive measure for a citizen and secs. 15 (1) and 18 (1) were ultra vires and void in view of art. 19 (1)(a) of the constitution guaranteeing freedom of the press, and he further prayed that the prosecution be quashed.

The High Court did not have to consider whether sec. 18 of the Press Act, under which Mr. Menon was being prosecuted, was valid or not. The question before it was whether, assuming that the section was void, "a proceeding which was pending under that section of the Act prior to the commencement of the constitution is affected by the section being void as a result of the coming into force of the constitution." And the Court ruled (12th April 1950) that sec. 6 of the General Clauses Act, 1897, which expressly saves the previous operation of a repealed enactment or anything duly done or suffered under it and any legal proceeding which was pending under it, "applied to those laws which have become void as a result of their being inconsistent with the provisions of Part III of the constitution" (inasmuch as "in substance the meaning and the connotation" of the expressions 'repealed' and 'void' is the same"), and that the proceeding already taken before the Chief Presidency Magistrate "cannot be affected by the result of sec. 18 (1) being declared to be void under art. 13 (1) of the constitution."

Against this ruling of the High Court about the construction of art. 13 (1) Mr Menon filed an appeal in the Supreme Court, which by a 5 to 2 decision dismissed the appeal on 22nd January. The Court held that proceedings against Mr. Menon could continue even after the commencement of the constitution.

> If an act was done before the commencement of constitution in contravention of the provisions of any law which after the advent of the constitution became void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for to say that will be to give the law a retrospective effect.

The majority judgment, which was delivered by Mr. Justice Das, said :

> An argument founded on what is claimed to be the spirit of the constitution is always attractive, for it has a powerful appeal to the sentiment and emotion, but a court of law has to gather the spirit of the constitution from the language of the constitution. It is clear that the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the constitution of India.
>
> We are therefore unable to accept the contention about the spirit of the constitution as invoked by the learned counsel in aid of his plea that pending proceedings under a law which has become void cannot be proceeded with. If it is against the spirit of the constitution to continue pending prosecutions under such a void law, surely it should be equally repugnant to that spirit that men who have already been convicted under such repressive laws before the constitution of India came into force should continue to rot in jail. It is therefore equally clear that the Court should construe the language of article 13 (1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by any assumed spirit of the constitution.
>
> All that article 13 (1) declares is that all existing laws in so far as they are inconsistent with the provisions of Part III shall to the extent of such inconsistency be void. Every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. There is no reason why this rule of interpretation should not be applied for the purpose of interpreting our constitution. We find nothing in the language of article 13 (1) which may be read as indicating an intention to give it a retrospective operation.
>
> On the contrary, the language clearly points the other way. Provisions of Part III guarantee what are called fundamental rights. These rights are given for the first time by and under our constitution. Before the constitution came into force there was no such thing as fundamental rights. All that article 13 (1) provides is that all existing laws which clash with the exercise of fundamental rights (which are for the first time created by the constitution) shall to that extent be void. As fundamental rights became operative on and from the date of the constitution, the question of the inconsistency of the existing laws with these rights must necessarily arise on and from the date these rights came into being.
>
> It should be seen that article 13 (1) does not in terms make existing laws which are inconsistent with fundamental rights void *ab initio* or for all purposes. On the contrary, it provides that all existing laws in so far as they are inconsistent with fundamental rights shall be void to the extent of their inconsistency. In other words, on and after the commencement of the constitution, no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental right.
>
> Article 13 (1) should not be read as obliterating the entire operation of the inconsistent laws or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect they do not possess. Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the constitution.

The minority judgment was delivered by Mr. Justice Fazl Ali, Mr. Justice Mukherjee concurring. These judges held that the provisions of art. 13 (1) were retrospective compared to those of art. 254 (which deals with any inconsistency that there may be between laws made by Parliament and those made by a State legislature and declares that to the extent that there is such inconsistency the laws made by a State legislature shall be void), and that further prosecution of the appellant under the now void Press Act could not be proceeded with. Mr. Justice Fazl Ali said :

> It would not be giving full effect to the intention of the framers of the constitution to hold that even after the constitution has come into force the laws which are inconsistent with fundamental rights will continue to be treated as good and effectual laws in regard to certain matters as if the constitution had never been passed. How such a meaning can be read into the words used in article 13 (1) it is difficult for me to understand. There can be no doubt that article 13 (1) will have no retrospective operation and prosecutions which are past and closed and rights which have already vested will remain untouched.
>
> But with regard to inchoate matters which are still not determined when the constitution came into force and as regards proceedings whether not yet begun or pending at the time of the enforcement of the constitution and not yet finally decided, a very serious question arises whether a law which has been declared by the constitution to be completely ineffectual can yet be applied. On principle and on good authority the answer to this question would appear to be that the law having ceased to be effectual could no longer be applied.
>
> We have to look at the state of the law at the time when the question arises whether a person has committed any offence. If we find that the law which made the act an offence has become completely ineffectual and nugatory, then neither can a charge be framed nor can the accused be convicted.

BOMBAY CIVIL LIBERTIES CONFERENCE

A Successful Session

The third session of the Bombay Civil Liberties Conference was held on 3rd and 4th February in Bombay under the presidentship of Mr. S. G. Vaze, Secretary of the All-India Civil Liberties Council. About 250 delegates were enrolled for the session.

Mr. N. M. Joshi as President of the Bombay Civil Liberties Union opened the proceedings in a speech welcoming the delegates. He also briefly dealt with the main questions affecting civil liberty, saying about the proposed amendment to the Preventive Detention Act of 1950, under which nearly 3,000 persons are languishing in gaol without charge or trial, that the Government ought not to resort to preventive detention at all except when a state of emergency contemplated by art. 352 of the constitution had arisen. Referring to the all too frequent and all too reckless firing on unarmed people to which the police and even the Home Guards resort, he deplored that there should be no safeguard against unjustifiable and excessive use of force and strongly urged that wherever firing which involved loss of life occurred a judicial inquiry should be held to ascertain whether there was need for such action and whether minimum force was used if there was need. Such a safeguard at any rate should be provided in order to keep the police in proper check. He made a strong appeal to the Government of India to appoint a committee of judges to examine which of the existing laws or any particular provisions in them were inconsistent with fundamental rights and should on that account be regarded as void. The Government should thereafter take steps to repeal those laws or the offending provisions in them.

Copies of Mr. Vaze's presidential speech have already been distributed among the subscribers of the BULLETIN.

DETENTION WITHOUT TRIAL

Among the resolutions adopted by the Conference first place was given to a resolution protesting against preventive detention. Taking its stand on the principle that such detention must not be resorted to in peace time when there is no threat of an invasion or a rebellion, the resolution said that the existing Preventive Detention Act should be allowed to lapse after 31st March, 1951, even if it was not to be repealed. It expressed the opinion that there was no justification for renewing the Act even in an amended form.

If, however, such legislation was contemplated (as appeared to be the case), the Conference suggested that the proposed bill should be remitted to a select committee, "allowing the public and leaders of various schools of thought, and particularly civil liberty organizations in the country, to appear before it for the purpose of giving expression to their views on the provisions of the bill."

The Conference also said that while the proposed extension of an Advisory Board's review to all cases of detention of the duration of more than three months "would be an improvement on the present position in which an infinitesimally small number of detenus have access to such a Board," "the least that is necessary to make the law even barely tolerable is that :

"(1) Persons detained even for three months should have access to an Advisory Board ;

(2) The Advisory Board should be constituted from among High Court judges ;

(3) It should be placed in possession of all the facts bearing on detention and should have authority to pass it on to the detenu at its discretion ;

(4) The detenu should be permitted to appear before the Advisory Board in person and through a legal representative and should have an opportunity of calling evidence and cross-examining witnesses if the Advisory Board thinks it desirable ;

(5) It should be permissible for the executive to resort to preventive detention only for reasons connected with the security of the State, and not for reasons connected with the maintenance of public order or with the maintenance of essential supplies and services ; and

(6) The Act should be capable of being applied only in areas in which the President has proclaimed a state of emergency under Part XVIII of the constitution."

The resolution was moved by Mr. Jamnadas M. Mehta (Hindu Mahasabha) and supported by Mr. A. S. R. Chari (Communist), Mr. G. G. Mehta (Socialist) and Mr. N. V. Bhonde (Independent). All the speakers made an impassioned and closely reasoned appeal to the Government to retrace its steps from the disastrous policy which it had been pursuing.

Another resolution called for the repeal of Bombay's Public Safety Act. The next resolution that was passed by the Conference was about the proposed Bombay Police Act bill which sought to consolidate the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902. It said that, instead of liberalising these Acts, the bill not only embodied all the arbitrary and oppressive provisions of the existing Act, but extended their scope. A resolution was adopted on firing upon public assemblies. The banning of public meetings and processions was condemned in another resolution.

OUTLAWING OF ASSOCIATIONS

On one resolution, viz., that concerning the imposition of a ban on organizations, a keen controversy developed. The resolution as moved in the Conference said in part :

> This Conference, which as a body has no political party affiliation, feels that the outlawing of organizations is based on the vicious principle of guilt by association and, therefore, protests against the continuance of the ban against organizations like the Communist organisations in West Bengal, Travancore-Cochin, Hyderabad and Bhopal. The Conference hopes that the Governments concerned will take immediate steps to withdraw the ban which they have imposed.

The resolution was moved by Mr. V. B. Karnik (Radical Humanist) and seconded by Mr. Dinkar Desai (Servants of India Society). To it an amendment was moved by Mr. Ashok Mehta (Socialist) and seconded by Mr. M. Harris (Socialist). The amendment agreed to the opposition expressed in the resolution to the principle of fixing guilt by association and to the banning of associations on that principle, but added a proviso to the following effect :

> Provided, however, that no such organization is itself guilty, like an individual, of violence or subversive activities proved in a court of law or of being contrary to the broad principles of law and order in a democratic society or against national interests and security of the country.

A heated debate arose, in which Mr. Jamnadas Mehta, Mr. Chari, Mr. G. G. Mehta and Mr. Naushir Bharucha took part. Eventually the amendment was passed by a majority of votes as a substantive proposition, displacing the resolution originally moved.

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