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The Indian Civil Liberties Bulletin

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We have had, much to our regret, to hold back some very valuable material regarding habeas corpus applications and other matters. We hope to be able to use this material in the next number.

If an American wants to preserve his dignity and his equality as a human being, he must not bow his neck to any dictatorial government.—Gen. Dwight D. Eisenhower, President of Columbia University, on 8th December.

ARTICLES

THE PREMIER ON DETENTION

Elsewhere in this issue have been printed the letters that were exchanged between the editor of the BULLETIN and the Prime Minister of India, Pandit Jawaharlal Nehru. One of the queries addressed to Mr. Nehru was whether in all provinces every case of detention went automatically to an Advisory Council where the person detained could represent his case and try to obtain release. The query of course pertained to the existing Public Safety Acts, but, curiously enough, Mr. Nehru answers it by referring us to art. 22 of the new constitution. So far as the Public Safety Acts at present in force are concerned there cannot be the slightest doubt that an Advisory Council is not given an opportunity of examining every case of detention in every province. In Bombay Province, for instance, the Act does not provide for an Advisory Council at all. The Home Minister, however, has appointed a retired High Court judge to look into cases of detention and has himself stated that only some of these cases were referred to him. In several of the other provinces where now a statutory provision for the setting up of Advisory Councils has been made, like the Central Provinces, Orissa and Assam, the Advisory Councils are not concerned with all cases of detention, but only such of them as may be referred to these bodies. Thus it is clear that the claim put forward by Mr. Nehru at the London press conference that an independent body considers the merits of every case of detention is not borne out by facts.

Nor is it true, as Mr. Nehru maintains in his present reply, that under art. 22 of the new constitution when it will come into effect (or under the temporary or transitional provisions of art. 373 which will be operative till art. 22 comes into effect), the case of every detenu will as a matter of course go before an Advisory Board. All that the article provides is that the authority making the order for detention shall communicate to the detenu the grounds on which the order has been made and shall afford him an opportunity of making a representation against the order. But the Government is under no kind of obligation to appoint an Advisory Board for the purpose of considering cases of detention if the order for detention does not extend beyond three months. In this respect the new constitution constitutes a definite setback from the present position at least in some of the provinces. Under the Madras Public Safety Act, e. g., even before a person is detained an Advisory Council has to be consulted. But, so far as future Public Safety Acts that may come to be adopted under free India's new constitution go, there need be no Advisory Board at all and cases of detention need not be referred to it, providing only that detention is ordered for three months or less. To say therefore, as Mr. Nehru does, that under art. 22 "the reference of the case of every detenu to an Advisory Board is obligatory" is wide of the mark. This article, instead of being an improvement on the existing situation, is, if anything, a step backward, in so far as orders for detention of no more than three months' duration are concerned.

It is true that under art. 22 in cases of detention of a longer duration the Government is required to refer such cases to an Advisory Board, but even here all orders for detention, say, for six months will not necessarily be heard by the Advisory Board. Parliament will by law prescribe the kind of cases in respect of which alone the obligation will rest upon the Government to refer them to the Advisory Board if the detention is longer than three months. Which means that only some of the cases of detention, even if the detention period exceeds three months, will be considered by the Advisory Board while the others will not be so considered. This is the only interpretation of which the article is susceptible, and Dr. Ambedkar, Chairman of the Drafting Committee, so interpreted it in the Constituent Assembly. He said: "Every case of preventive detention for a period longer than three months must be placed before a judicial board unless it was one of those cases in which Parliament prescribed by law that it need not be placed before a judicial board for authority

to detain beyond three months." Thus the position that will result from the operation of art. 22 will be very different from what Mr. Nehru supposes it to be : there will be no question of an Advisory Board when detention is for three months; and when detention is for a longer period a reference to an Advisory Board will be compulsory only in some cases. Mr. Nehru's statement that such a reference is obligatory in every case of detention can only be attributed to an imperfect understanding on his part of the requirements of the article.

Mr. Nehru avoids answering the question as to whether a lawyer's aid is afforded to a detenu in representing his case before an Advisory Council by stating that "the procedure adopted by the Advisory Board is regulated locally." But he might have given the information, even if the practice in this respect differed from province to province, whether a detenu obtained anywhere such legal help as a matter of right if he asked for it. Under art. 22 the procedure of Advisory Boards will be regulated centrally, and the answer given by Mr. Nehru leads one to doubt whether even under the new dispensation this necessary facility will be provided. The same doubt arises in the matter of allowing the detenu to call witnesses. Mr. Nehru frankly states that in the proceedings of Advisory Councils witnesses are not heard at present. But the reason he gives for denying to the detenu the chief means upon which he must rely for proving his innocence makes one suspect that even under art. 22 when it will go into effect the detenu will continue to labour under this disadvantage. Mr. Nehru says: "They (the Advisory Boards) are not judicial bodies. . . . The procedure is not a trial but an assessment of security material by persons with a trained judicial approach." That the detained person does not receive the benefit of a judicial trial is obvious, though Dr. Ambedkar calls the Boards "judicial boards." But because a regular trial is not held, it does not follow that a person arrested on mere suspicion need be deprived of the most valuable means he can employ in proving that the suspicion entertained against him is unfounded. As a matter of fact in England when during years of war preventive detention was enforced under Regulation 18 B detenus were allowed both to engage solicitors and to call witnesses in their defence.

There is one more thing about Regulation 18 B which requires to be repeated though we have said it before. The Advisory Committee appointed in England, as Mr. Vaze says in his paper on Freedom of Person at p. 49, "saw to it that all the facts known against the detainee were put to him as explicitly as possible; that he was put in possession of all the detailed evidence upon which he was being held in detention." The British Government recognised that if any material fact concerning the detenu's activities was withheld from him, he would not be in a position to defend himself at all, and therefore the Regulation itself threw upon the Government the obligation to let the Advisory Committee have all information, which the Committee (and not the executive as in India) considered to be sufficient, regarding the nature of the suspicions against the detenu so that it could pass it on to the detenu himself and enable him to clear his conduct. The trend in India is just the other way. All provincial Governments have obtained amendments in their Public Safety Acts providing that even if the information conveyed to the detenu is vague or insufficient the High Courts would be precluded from holding his further detention illegal (as they used to do before) on the ground that the Advisory Council machinery was not being properly worked. And the "Hindu" pointed out that as High Courts had been rendered powerless under these amendments to give any relief, so would be the Advisory Councils themselves who obviously would be unable to make a real scrutiny of the circumstances in which the order for detention was passed. To sum up : the reactonary nature of art. 22 providing for preventive detention, which is to remain in operation not only in an emergency but for all time as a permanent feature of the organic law of the country (there are in addition other drastic provisions to be brought into operation in an emergency which the President may proclaim), will be all the more patent if even these facilities given as a matter of right in England are withheld from the detenus in India.

We tender our thanks to Mr. Nehru on behalf of all persons who feel a concern for civil liberty for his promise to inform us of the number of persons in detention once a quarter if a request to that effect went from us to the Home Ministry. That the information is to be supplied only at quarterly intervals and on a special application being made does not we believe indicate that the Government of India agrees to place this information at the disposal of the public in a grudging spirit. If it were so, we would bring it to the notice of Mr. Nehru that in England the Home Secretary was required to make a monthly report to Parliament showing both the numbers of detained persons and of instances in which he had not followed the Advisory Committee's advice. The freedom-loving British Government considered it such an odious business to have to confine any persons, even though of hostile origin or associations, in prison without trial that for its own sake and for the purpose of taking even the critics of this policy with it thought it desirable to make a monthly return to Parliament on this subject. We should like to believe that even our Government, however convinced it may be of the necessity or rightness of its policy, looks upon preventive detention with equal horror and would do its best to put itself right, not with Congress opinion merely, but also with the opinion of that section of the public which is apt to be critical in regard to any seeming infractions of personal liberty. Anyway, all the facts concerning preventive detention need a complete airing at very short intervals.

POWER OF DETENTION: DROPPED IN N. IRELAND, RETAINED PERMANENTLY IN INDIA

No Indian would like to have a comparison instituted between India and Northern Ireland which by reason of the abrogation of rule of law and the liberty of the subject ever since 1922 acquired an evil reputation in the Commonwealth and all the civilized countries, even assuming that the comparison be slightly to the advantage of India. But at the present moment the comparison is all in favour of Northern Ireland.

By the Special Powers Acts of 1922 and 1933 the Northern Ireland Government took power to itself "to take all such steps and issue all such orders as may be necessary for preserving peace and maintaining order," and passed as many as 46 regulations restricting in various ways the freedom of its citizens. But towards the end of August last it revoked most of them. The most obnoxious of those regulations which it has now withdrawn is of course that which empowered the Executive to detain or intern anyone without charge and without trial. No one can now be incarcerated without being brought to trial and convicted in a court of law. Similarly the Executive may not impose curfews or restrict the movements of citizens. Only five of the former regulations now remain in force, but they are of comparatively minor importance, though it is still an offence to belong to an "unlawful association." Thus have been restored to Northern Irishmen some of the civil liberties of which they were robbed during the past twenty-seven years.

If in Northern Ireland personal liberty was blacked out continuously for twenty-seven years, in India too it has been blacked out with a few breaks for almost as long a period, first under the British regime and then under the National Government. And if the Northern Ireland Government has abandoned the power of preventive detention, our National Government tenaciously retains it and makes it a permanent feature of our republican democratic constitution! The Parliament of Northern Ireland delegated to the Home Minister the power to make any regulations he thought fit for the preservation of peace, and the Home Minister was in his turn empowered to delegate any of his powers to any officer of police. Thus although Northern Irishmen happen at the moment to be rid of loss of personal liberty, there is no guarantee that the Home Minister will not again clamp police raj on them. Whatever may be their fate in future, at present personal liberty has been restored to them. And if there is danger that they will again be deprived of it in future, we in India are suffering from the deprivation at present and the threat of such deprivation in future will always be with us. The provincial legislatures will be supreme if detention is to be for three months; the central legislature may try to curb them in some respects if it is to be for a longer period. But whatever the curb may be, personal liberty will always be at the disposition of the legislatures, provincial and central, with no hope of the constitution checking them, the fundamental law itself being subordinated to ordinary law.

Some points in connection with the Special Powers Acts of Northern Ireland deserve particular notice. When the Act of 1922 was passed, it was claimed to be a temporary measure necessitated by the exceptional and emergency conditions of the time, these being the dangers arising from sectarian disorders and from R. I. A., and republican opposition on both sides of the border. It was said at the time that the ordinary law would in general be maintained, and that the special powers would be merely supplemental to that law, being brought into force when their use was rendered imperative. Assurances were given (such as we have become familiar with in this country) that law-abiding persons need have no reason to fear any kind of harassment or tyranny. Lord Craigavon, e. g., declared: "The only people who need to have any fear whatever of this measure being on the statute book are the evil-doers." The Act was to be a sort of reserve power in the hands of the Government to enable it to cope with special dangers confronting the country. The Act itself contained a proviso that "the ordinary course of law and avocation of life and the enjoyment of property shall be interfered with as little as may be permitted by the exigencies of the steps required to be taken under this Act." But the Executive got so used to the exercise of special powers that the ordinary law came in effect to be entirely superseded, and what was first an emergency law was turned in 1933 into permanent legislation of general applicability and to the original regulations several others were added greatly enlarging their scope. The stringency of the restrictions increased as the necessity for them diminished.

The National Council for Civil Liberties in England deputed in 1935 a Commission consisting of the late Mr. Aylmer Digby, K. C., Miss Margery Fry (Principal of Somerville College, Oxford), and two Liberal M. P.s, Mr. William McKeag and Mr. E. L. Mallalieu, and it reported that whatever the emergency was in 1922 it had since vanished. It said: "The Commission cannot conceive circumstances which would justify the embodiment of such drastic powers into the permanent law of the land. Nothing in the material before the Commission shows the existence in Northern Ireland to-day of conditions which the ordinary criminal law, properly enforced, would not suffice to control." Were the powers used only against law-breakers? The Commission's verdict was that they "have been frequently employed against innocent and law-abiding people, often in humble circumstances, whose injuries, inflicted without cause or justification, have gone unrecompensed and disregarded." "The driving of legitimate movements underground into illegality, the intimidating or branding as law-breakers of their adherents, however innocent of crime, has tended to encourage violence and bigotry on the part of the Government's supporters as well as to beget in its opponents an intolerance of the 'law and order' thus maintained. The

Government's policy is thus driving its opponents into the ways of extremists." "Through the operation of the Special Powers Acts contempt has been begotten for the representative institutions of government" and the establishment of a dictatorship. "It is clear to the Commission that the way to the re-establishment of constitutional government, the prerequisite of law and order in democratic communities, can be paved only by the repeal of the Special Powers Acts. Wherever the pillars of constitutional rule, Parliamentary sovereignty and the rule of law, are overthrown there exist the essential conditions of dictatorship. It is sad that in the guise of temporary and emergency legislation there should have been created under the shadow of the British Constitution a permanent machine of dictatorship—a standing temptation to whatever intolerant or bigoted section may attain power to abuse its authority at the expense of the people it rules."

This is the invariable course which repression follows: the taking of extraordinary powers to meet a supposed emergency; the retention of those powers after the emergency, whatever it was, has passed; the habituation of the Administration to rely on these powers and the consequent annihilation of the rule of law; the breeding of intolerance in the adherents of the Administration and the driving of discontent into underground channels; the bringing into contempt of democratic institutions and the establishment of a dictatorship. All these signs are now visible in India. It is tragic that our National Government should outrage in such an impudent manner the traditions of individual liberty which from our long association with the British (whatever its other evil consequences might have been) we were imbibing and which we had fondly hoped we could make our own.

COMMENTS

C. L. Union for Orissa

On 23rd December the Provincial Civil Liberties Conference for the province of Orissa (Utkal) was held under the presidentship of Mr. P. R. Das, the President of the All-India Civil Liberties Council. The Conference was a great success, for which credit is chiefly due to Mr. Shyam Sundar Misra who is a life-member of the Servants of India Society and one of the members representing Orissa on the A.-I. C. L. Council. Over 230 delegates attended the Conference, including representatives of most of the districts and the audience seemed to be very alert on questions affecting the civil liberties of the province. Moreover, the all-party character of the attendance emphasized once again the breadth of approach of the civil liberty movement in the country to issues of civil liberty. People of all political persuasions were among the delegates who, sinking all their differences on other matters, came together in the Conference to emphasise the need for the maintenance of civil liberties and to defend such liberties from attack.

One would have wished, however, for a larger representation of the Congress group than the Conference could command, but considering the peculiar circumstances attending the Conference, the contribution of the Congress party was not altogether disappointing. One of the circumstances which acted as a deterrent to Congress members was the ban imposed by the Congress President, Dr. Pattabhi Sitaramaya. The ban operates for the whole of India, but another local factor that contributed to a large extent to the abstention of Congress members from the Conference was a series of vicious attacks levelled against the Conference in two daily papers of the province, one in Uriya and another in English. These papers are owned by the Premier of the province, and it is widely believed that articles on important subjects are written by him personally, though they do not bear his name. When a person so high-up in the Congress hierarchy as the Premier shows such deep aversion to a cause it is of course a plain warning for all those who would keep their places in the Congress to lend no countenance to it. Even so, however, a number of highly respected and influential members of the Congress disregarded the open ban of the Congress President and the implied ban of the provincial chief and attended the Conference, contributing much to its success.

The Conference formed a Civil Liberties Union for the province. In a sense it is only a revival of the Union that was formed in that province as a branch of the All-India Civil Liberties Union organized by Pandit Jawaharlal Nehru in 1936. Swami B. N. Das, who now occupies the position of Advocate General in the province, was the President of that branch and Mr. Sauriprasad Mahapatra (now a member of the Railway Rates Tribunal) and Mr. S. S. Misra were its joint secretaries. The branch did some notable work while it functioned. For instance, it deputed Mr. L. N. Sahu (now a member of the Constituent Assembly) to the Nilgiri State to inquire into the infringements of civil liberties in that State, and the report he submitted had considerable effect in bringing about a solution of the problem. The branch also arranged for the defence of the accused in the Communist Conspiracy case launched by the Government which assumed power under sec. 93 of the Government of India Act after the resignation of the first Congress Ministry. It is noteworthy that the present Premier of the province contributed liberally to the defence fund that the branch started, which should be a guarantee to the Congress members that the new Union, which is really a continuation of the old organization, deserves their active support. One of the leading advocates of the province, Mr. Harihara Mahapatra is the President of the Union, and one can confidently hope that under his able and wise guidance the Union will be an effective body, maintaining a sharp look-out on any infringements of civil liberty and yet approaching all such questions with a proper sense of responsibility—giving no quarter to executive high-handedness and yet lending no countenance to forces of disorder and crimes of violence.

Preparations for the formation of a Civil Liberties Union for East Punjab are not proceeding as briskly as one would have liked. It would appear that the committee charged with this task will take some little time in bringing the Union into existence. In the meantime public workers in Ambala have taken the matter in hand. When Mr. Vaze, Secretary of the All-India Civil Liberties Council, paid a visit to Ambala in the first week of this month, some prominent citizens met in an informal gathering and decided to form themselves into a provisional committee to organize a district Union for their area, which would later be affiliated to the Provincial Union when it took shape. They also intend to do what they can to expedite the formation of the Provincial Union. Mr. Vaze addressed a meeting of about 150 people in Ambala, at which he spoke on art. 22 in the new constitution on personal liberty and pointed out the serious deficiencies which the article contains. After his talk there was a lively discussion on the analysis he presented of the provisions of the article, and the discussion did much to clear away some prevailing misconceptions.

Citizen Rights of Public Employees

In the resolution on the Madras Government's Rule 22 of the Government Servants' Conduct Rules passed by the All-India Civil Liberties Council and reproduced at the end in this number of the BULLETIN, reference is made to the Report of the Masterman Committee on the Political Activities of Civil Servants published in April of last year. The Civil Service of England consists of about 1,135,000 members, to all of whom this inquiry extended, and it recommended that the industrial section of the service comprising 408,000 members and the minor and manipulative grades of the non-industrial section comprising 276,000 members should, with a few exceptions, be given full freedom to participate in political activities. They should be permitted to stand for Parliament without resignation unless they are elected, and one month's special leave should be granted for the period of candidature. Those of them who become members of Parliament should be entitled to reinstatement if they cease to be M. P.s after an absence not exceeding five years and if they have had not less than ten years of service prior to their election. They should also be completely free to engage in all other forms of political activity, both national and local, subject only to the observance of the provisions of the Official Secrets Acts and the ban on political activities while on duty or in official premises.

This would free 60% of the Civil Servants from all restrictions on their participation in public affairs of a political nature. With regard to the rest of the Civil Service (administrative, professional, scientific, technical and other grades) comprising 451,000 members, the Committee's recommendation was that the existing rules forbidding Civil Servants to stand for Parliament until after resignation from the Civil Service should be retained in their case. As for other political activities, they should abstain from any public manifestation of their views on national politics which might associate them prominently with a political party. They should not (*a*) hold office in any party political organization; (*b*) speak in public on matters of party political controversy; (*c*) write letters to the Press, publish books or articles, or circulate leaflets setting forth their views on party political matters; or (*d*) canvass in support of political candidatures.

It may be stated that there is a large body of progressive opinion in England which would go farther than the Masterman Committee (whose recommendations the Government has accepted) in giving full citizen rights to members of the Civil Service. Professor Harold Laski, e. g., considers it a serious mistake to impose limitations recommended by the Committee, which he thinks are wholly unnecessary. He says: "I can see a case for prohibiting members of the Administrative Class from participating in politics, but where any officials below that class are involved I see no difficulty of any kind in the growth of a body of conventions which would entirely settle the matter." The National Council for Civil Liberties in England held in October last a conference of civil servants and non-civil servants to consider the Masterman Report and condemned its recommendations as retrograde.

Pacifists and Communists

At the World Pacifists' Conference which met in Wardha in the last week of December the question of how Governments should deal with Communist agitation was discussed. Mr. A. G. Muste (U. S. A.) presented a report from Commission "A," in which he stressed the importance of regarding the Communists as human beings and deplored the cruel persecution which many had suffered. Pacifists, he said, should defend freedom of speech and assembly as much for Communists as for others. The sole test for a Communist's right to hold teaching or other posts should be his competence in fulfilling his job. Communists were liable to be strengthened rather than weakened by persecution.

The implication of this thesis obviously is that the policy of either banning Communists' organizations or incarcerating Communists without trial is wrong. The Conference's attention to this policy now being followed in India was called by Dr. Rajendra Prasad himself, the President of the Conference. He posed the question: The Communists use such methods as arson, loot and sabotage to attain their ends, and because of this the Governments in India imprison them without trial what should the Governments do in such circumstances? He asked for the guidance of the Conference on the practical policy which should be followed in India.

What guidance the Conference as a whole gave is not clear from the published reports, but the general consensus of opinion at the meeting seems to have been against the

policy which was being pursued in this country. Dr. Sayre (U. S. A.) emphasised the need to distinguish between individual Communists whose moral behaviour must be judged on the same basis as that of other citizens. The meaning of this precept can only be that if the Communists commit a crime they should be punished like any other individual. But the principle of guilt by association should not be applied to them, and that therefore they should not be outlawed or detained on mere suspicion that, being Communists, they might any time commit violence.

If this was the advice that the World Pacifists offered to the Indian Governments, it is in no way different from what all right-minded persons would give them or have been giving them. For it embodies plain common sense; all the world's noted statesmen who deal not with abstractions but realities have adopted this solution. To the Pacifists probably the immorality of a policy of putting people outside the pale of law or throwing them into prison without bringing them to trial appeals with greater force than to others. They regard all force as evil. They do not distinguish even between aggressive wars and defensive wars but treat all war as immoral, and this Conference resolved to establish a "peace army" to be thrown between opposite armies locked in battle wherever a war broke out, ready to offer itself for the ultimate sacrifice. One delegate, Mr. Richard Keithahn (Denmark), proposed in fact that they should at once start for Kashmir, with a view to stopping the undeclared war raging there. A people who forces a war on others without provocation and a people who is compelled to take up arms in sheer self-defence against an unprovoked attack are to them equally guilty of immoral conduct. Conversion is the sole means open to the Pacifists; they abjure coercion in all circumstances. This being the Pacifist doctrine, it is no wonder that outlawing Communists or detaining them without trial is a proceeding which they reprobate on moral grounds. But even those in whose reasoning the employment of force where it is necessitated for the purpose of repelling aggression is justifiable recognise that the policy such as is followed in India is unwise, as defeating itself in the long run.

It is surprising that our rulers, who too are wedded to non-violence in thought, word and deed, do not see the contradiction between their profession and practice. They may not agree with the Pacifists in their ethical teaching, but they should go on the principle, followed everywhere, that guilt is personal, and that none but the guilty should have their freedom curtailed. A delegate from the U. S. A. (Mr. Steele), in the Pacifist Week celebrated in New Delhi after returning from Wardha, gave voice to the dilemma in which World Pacifists were placed so far as their future programme was concerned. He said: "How am I to set about educating the opinion of the world when I see that numerous injustices are being perpetrated in my own country? I shall first try to eradicate these injustices from the U. S. A before I go out on a crusade to other countries." And among the injustices being done in the U.S.A. he cited the recent imprisonment of eleven Communist leaders. But these Communists were imprisoned after a conviction obtained on the basis of evidence in a regular trial in a court of law, and the sufficiency of the evidence is yet to be scrutinized in two higher courts on appeal. But if such imprisonment effected in pursuance of the due process of law is to be regarded as a grave injustice, how much graver must be the injustice done to those Communists (or others) in this country who are suffering imprisonment without as much as a charge being framed against them? The best course for Indian Pacifists at any rate would be to concentrate all their energy in converting those who are governing our country instead of sacrificing themselves in Western wars, as Mrs. Vera Brittain (U. K.) suggested, or engaging in a propaganda for the world's moral regeneration. Such propaganda will have little influence if they are inactive in their homeland where the need for it is the most urgent.

"Too Busy with Criticisms of Governments"

Mr. Shyam Sundar Misra, who organized the Orissa Civil Liberties Conference, wrote a letter to the "Statesman" of 16th January in answer to an editorial comment in that paper:

> You seem to think that the Conference simply condemned encroachments on citizens' rights by different provincial Governments without warning those indulging in violent and subversive activities. I want to make it clear that the Conference never advocated that the guilty should not be punished. All that I suggested was that, before anybody is punished, his guilt should be proved in a court of law. I fail to understand how you can quarrel with this. Advocating the Rule of Law does not mean encouraging subversive elements to bring about chaos.

The criticism against Civil Liberties Unions is general, not that they encourage violence or subversive activities (which no one dare allege), but that they busy themselves more with condemnation of executive excesses than with condemnation of disorders which call forth executive action. One should have thought that their condemnation of violence would be taken for granted, because the Unions think that reprobation of violence alone gives them the title to look into the acts of the executive and forms the basis on which their whole work is founded. They are aware, probably more keenly than others, that civil liberty will be possible only when peaceful conditions are maintained, and they recognise fully that when these conditions are disturbed the executive is entitled and in fact obligated to take all such legitimate measures as are needed to restore peace. Occasion to complain against these measures arises when they are either not legitimate or when they exceed the needs of the situation. On such occasions the Unions raise their voice of protest, but this

does not mean that they have any overt or covert sympathy with the disturbers of peace, for they have none.

Indeed it is true to say that their abhorrence of violence is greater than that of the present rulers themselves. Several Congress leaders went underground in the Quit India movement of 1942 avowedly for the purpose of carrying on their activities of sabotage. Men of non-violence as they professed to be, they indulged in the cutting of telegraph wires, destruction of school and postal buildings, derailment of railway trains (no, only uprooting of the railway track. and if this resulted in derailment of trains, they were not responsible for it), and such other things. Everything that fell short of the direct taking of human life was to them non-violent, and they are very proud that this movement of non-violent coercion which they carried on won independence for the country. Some of these leaders have been rewarded by being included in the various Governments formed after the cessation of British rule. We have no desire to rake up the past and comment on what has gone by. But it would be pertinent to say that Civil Liberties Unions would class such activities as definitely violent and would condemn them on that ground. It would be possible to criticise the Unions' protests against the use of force by Governments on any particular occasion as being based on an imperfect appreciation of the difficulties surrounding the executive, but let no one criticise them for being indifferent or partial to those who create such difficulties. They set their face against violence in every shape or form and would in no circumstances lend countenance to it.

"Three Freedoms in Chains"

Under this caption the "Australian Democrat" in its October, 1949, number reviews Mr. Vaze's booklet on "Civil Liberty under the new Constitution" analysing provisions concerning Freedom of Association, Freedom of Speech and Press, and Freedom of Person in papers offered by him to the Indian Civil Liberties Conference in July last. The review gives long extracts from the booklet, with a running commentary on them by the editor. Referring to the Public Safety Acts which deny personal liberty to the citizens, the editor says: "In British India, before self-government was conceded, one of the gravest and most bitterly resented proceedings of the white man's Government of India had been just this sort of arbitrary arrest and imprisonment of persons considered to be disaffected. 'Disaffected' persons of two or three years ago constitute the Governments of India and its provinces to-day, and they in turn are using the concentration camp to hold persons whom they dub disaffected!"

"Congress Government Must Go"

DISTRIBUTION OF SUCH LEAFLETS NOT A "SUBVERSIVE ACT"

The wide range of oppression which Public Safety Acts are capable of inflicting on the public is not fully borne in upon the mind by a mere perusal of these Acts. Cases of petty tyranny have to come before the courts in order to understand the full implications of some of the provisions under which Governments often act.

Four Calcutta men were prosecuted under West Bengal's Public Safety Act on a charge of doing a subversive act, and the subversive act consisted of possessing and pasting on the wall of a house leaflets entitled "Congress Government must go. Countrymen are tired of misrule by Congress Government." The Public Safety Act provides in Sec. 7 (1): "No person shall, without lawful authority or excuse, (a) do any subversive act, or (b) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report." And "a prejudicial report" is defined as any report, statement or visible representation which, or the publishing of which, is, or is an incitement to the commission of, a subversive act as defined in clause 7." The doing of such a subversive act may be visited with imprisonment for five years.

The accused were placed before the Additional Presidency Magistrate, Calcutta. The Magistrate merely heard the prosecution story. Both the investigating officer and the police prosecutor said that they had nothing more in the nature of subversive acts to allege against the accused than that they distributed a "prejudicial report" in the form of those pamphlets. And the Magistrate, without entering into any evidence, and even when the accused were not in court, ruled (22nd November) that the charge was "groundless" in terms of sec. 253 (2) of the Cr. P. C. and found that the accused men were not guilty, refusing to believe that the pamphlets were prejudicial or that their distribution was a subversive act.

The Magistrate, in passing orders, observed:

> After all, we do not live in a totalitarian State where criticism of the existing administration is tabooed. And therein lies our strength. These leaflets are no more than a criticism of the present government set-up and express a desire that it should go. It is an elementary right of a citizen or a body of citizens to express himself or themselves so, rightly or wrongly. And for that none can come on the edge of sec. 11 of the aforesaid (West Bengal Security) Ordinance.

CORRESPONDENCE WITH THE PREMIER

PREVENTIVE DETENTION

As Assistant Secretary of the All-India Civil Liberties Council, the Editor of the BULLETIN addressed a letter on 19th November, 1949, to Pandit Jawaharlal Nehru, Prime Minister of India, on the subject of detention of Communists and others under the Public Safety Acts. To this

letter Mr. Nehru sent on 5th January, 1950, a reply signed by his Principal Private Secretary, Mr. A. V. Pai. As the matter is of general public interest, we reproduce this correspondence here, believing that the Prime Minister will have no objection to its publication.

Mr. Kakade's Letter

At p. 21 of the INDIAN CIVIL LIBERTIES BULLETIN (a copy of which I am forwarding to your address under separate cover) we have made a suggestion, in order to meet the complaint you made at a press conference in London to the effect that the numbers of detenus in Indian gaols are grossly exaggerated, that the Government of India should issue every month authentic figures of detenus in every province. I write this letter with a view to bringing this suggestion to your attention and wish to make a special request to you that you will be good enough to carry it out. Men in public life who desire to make comments on this subject are greatly handicapped for want of accurate information on this subject, and with all their anxiety not to be betrayed into an overstatement, they are likely to fall unconsciously into an error. They would very much like to be saved from such a pitfall, and the pitfall can easily be avoided by Government itself regularly furnishing the necessary information province-wise.

2. At the press conference referred to above, you also made certain statements about the way in which cases of detenus are examined by Advisory Councils or other bodies corresponding to the Councils. These statements, as published, appear to us to be inaccurate in certain particulars.* The inaccuracies must be due to too much compression of what you had to say, which is quite natural at a conference ranging over a wide variety of subjects. In any case it is desirable that people should possess detailed knowledge about the working of Advisory Councils so that they may judge as to how far these Councils give or are capable of giving some kind of assurance that the innocent will not suffer from unnecessary deprivation of personal liberty. For this reason I wish to ask for elucidation on certain points and hope that you will not grudge it, seeing how little information the public has on this subject.

3. One crucial point is whether every detenu can as a matter of right appear before an Advisory Council in order to make his objections against the order of detention and state his case, or whether, in certain provinces at least, it is left to the provincial Government to decide what cases of detenus will be referred to the Council.

4. It would be desirable for the public to know for each province how many of the total number of detenus (1) were allowed to appear, or (2) availed themselves of the opportunity to appear, before the Advisory Council; (3) how many of such cases were considered by the Council so far; (4) on how many of these cases the Government passed final orders; and in how many of the orders the Government (5) followed and in how many it (6) declined to follow the Council's recommendation.

5. It might also be stated whether detenus are given the help of lawyers in making out a case against the detention order and whether they are allowed to call witnesses. If these facilities are provided, it might further be stated whether detenus are informed either by Government or by the Advisory Council that they could take advantage of these facilities if they so chose.

6. In order to assess the present position in regard to Advisory Councils correctly, it is necessary that the public should be in possession of information on these points, and I would make an earnest request to you that you will kindly supply it to me at your early convenience.

* The inaccuracies in Pandit Nehru's statement that were pointed out in the BULLETIN were: "(1) All the detenus cannot go before them (the Advisory Councils); (2) all the members of these bodies are not High Court judges; (3) all the material is not placed before the Councils; and (4) their advice is not invariably followed."

The Premier's Reply

Please refer to your letter dated 19th November, 1949, on the subject of detenus in Indian jails and Advisory Councils to whom their cases would be referred.

The Ministry of Home Affairs would, on request, be prepared to inform you, once a quarter, of the number of persons in detention in India. The total number of detenus in the various Provinces (excluding the States and Unions) was 2,779 on the 15th November last.

As regards paragraphs 3 and 5 of your letter, I would invite attention to article 22 of the new constitution under which the reference of the case of every detenu to an Advisory Board is obligatory; this constitutional requirement will have to be fulfilled by all the Safety Acts in force in various Provinces which do not already contain such a provision. The procedure adopted by the Advisory Boards is regulated locally, but they are not judicial bodies and witnesses are not heard. The procedure is not a trial but an assessment of security material by persons with a trained judicial approach.

In para. 4 of your letter, you have asked for detailed statistics about the references to Advisory Councils. The Government of India are not in possession of the statistics but they can, no doubt, be obtained by you direct from the provincial administrations.

It would be appropriate for you to address the Secretary, Ministry of Home Affairs, for any further information you might require on the subject of detenus.

A.-I. C. L. COUNCIL'S RESOLUTIONS

The All-India Civil Liberties Council met at Cuttack on 24th December, 1949, under the presidentship of Mr. P. R. Das, its President, and considered questions concerning

both internal organization and infractions of civil liberty. The resolutions it passed on the latter subject are given below.

One of these resolutions gave the Council's appraisal of the provisions in the new constitution about Personal Freedom. This matter was considered at the Indian Civil Liberties Conference in Madras in mid-July, but as the provisions have since undergone a change the Council adopted a fresh resolution on the subject. The provisions concerning Freedom of Speech and Press and Freedom of Association remain substantially the same, and the Council therefore did not consider it necessary to pass any resolutions on those subjects. But in order that the reader may have a comprehensive view of Civil Liberty in the new constitution the resolutions passed by the Conference on these two freedoms are reproduced here along with the resolution now passed by the Council on the third freedom—Freedom of the Person.

Personal Freedom

(ARTICLES 21 AND 22 IN THE NEW CONSTITUTION)

Personal Liberty, although it is basic to every other kind of freedom like freedom of speech and press and freedom of assembly, is the least provided for in the new constitution. Of the two articles relating to it in the new constitution, art. 21 only provides that personal liberty shall not be interfered with except according to the existing law, but it does not provide that laws unduly curtailing personal liberty will be capable of being declared invalid by the judiciary. The other article, viz. art. 22, which bears on this subject, also fails to cure this defect.

This article specifically provides for preventive detention at the discretion of the legislatures. Provincial legislatures are by that article left entirely free to pass legislation sanctioning preventive detention for a period limited to three months. They can also pass legislation sanctioning longer detention, subject in some respects to such conditions as may be laid down in legislation that the central legislature may adopt. There is no guarantee that the central legislature will adopt legislation which will at the least keep the evils inseparable from preventive detention within very narrow limits. And there is certainly no guarantee that if the first central legislature passes such legislation it will not be changed for the worse by the succeeding central legislature. Whatever that may turn out to be, it is clear that personal liberty will under the provisions of these articles be completely at the mercy of the legislatures, provincial or central. This is equivalent to saying that personal liberty, to whatever extent it may in fact be allowed, will be a statutory right and not a constitutional right. Thus although both these articles, arts. 21 and 22, purport to confer the right to personal liberty as a fundamental right, they do not confer such a right at all.

The worst feature of these articles is that the deprivation of personal liberty which will be possible under their operation will take place in normal times when there is no emergency within the terms of art. 352 under which the President issues a proclamation of emergency. In such an emergency proclaimed by the President individuals are liable to be further deprived of personal liberty on account of the suspension of habeas corpus which the President is empowered to order under art. 359. Just as in normal times preventive detention will not be subject to judicial control, so the conditions in which an emergency is proclaimed by the President will not be subject to judicial control either. Thus in times which are critical in the belief of the President detention without trial will be without any kind of remedy, but no remedy will be available even in times which are not so critical according to the belief of the President and which therefore must be regarded as normal. Considered in this light, personal liberty is not at all guaranteed in the new constitution, either when a state of emergency exists or otherwise.

Freedom of Speech and Press

Freedom of Speech and Press, the most important element of civil liberty after freedom of the person, is also not effectively protected in the constitution. Expressions which can be represented as having only a tendency to lead to subversive results are liable to be penalised under clause (2) of art. 13 [now art. 10], while it is recognised all over, and that is the settled practice in the United States, that such expressions should be protected by a constitutional guarantee if they will not imminently produce any dire results. Freedom of expression is generally abridged in just those situations in which the guarantee of free expression given in subclause (a) of clause (1) of art. 13 [now art. 19] will not avail, and therefore the conclusion becomes irresistible that the constitution does not provide an adequate guarantee of free expression.

Freedom of Association

In the constitution Freedom of Association is subject to "reasonable" restrictions imposed in the interest of public order or morality, the reasonableness of the restrictions being judged in the last instance by law courts. Inasmuch as the right to free association will hereafter be confided to the protection of the judiciary, this must be recognised as a great improvement on the present state of law, under which courts have no jurisdiction to judge of any executive orders or legislative enactments restricting the right. But freedom of association consists merely of the right to enjoy in combination whatever civil liberty one can enjoy individually. From this it is clear that if other rights are either partially protected or wholly unprotected, the guarantee of the right to freedom of association, even if the guarantee be complete in itself, will still leave the other rights insecure, and as these rights are very precarious in the Indian constitution, the right of free association, even on the most favourable interpretation, will not be of significant help in the enjoyment of civil liberty in India.

Restraints on Professor K. P. Chattopadhyaya

This meeting of the Working Committee of the All-India Civil Liberties Council enters an emphatic protest against the restraint order served on Mr. K. P. Chattopadhyaya, M. Sc. (Cantab), Professor of Anthropology in Calcutta University, on 22nd November, 1949, by

the Commissioner of Police, Calcutta, under the West Bengal Security Ordinance, 1949, which prohibits him from carrying on any public activity for an indefinite period. The only reason that is assigned for imposing such blanket restrictions on him is that it is necessary so to do in order to prevent him from doing any subversive act. The Ordinance, it is true, does not require any more concrete reason to be given, much less does it provide any remedy for testing the sufficiency of the reason in a court of law. The action taken against Mr. Chattopadhyaya may thus be perfectly legal, but such action, however legal, cannot be tolerated without adequate evidence being produced to prove that he was either actually engaged in any subversive activity or was contemplating it. Restraint orders like this are by no means uncommon either in West Bengal or in other provinces, but when a person of the position of Mr. Chattopadhyaya happens to be deprived of his elementary rights, the Working Committee considers it to be its duty to raise its voice of protest. It can never believe that Mr. Chattopadhyaya was guilty of either doing or inciting to any subversive act unless it is so proved against him in an ordinary court of law. The Working Committee warns the Governments of West Bengal and other provinces that such irresponsible action on their part will cause and is in fact causing deep resentment in the country, which will do serious harm to the interests of the Governments themselves no less than to the interests of the public at large.

Scuffles in Jails

This meeting notes the alarming reports appearing in the press alleging assaults by detenus and prisoners on jail officials on the one hand and lathi charges, firings etc., by the jail officials resulting in avoidable loss of life and serious injuries to prisoners on the other hand all over India as in Cuddalore and Vellore jails. The Council urges on all Governments the imperative need for holding an open judicial inquiry into all such happenings with a view to getting at the truth in each case and finding out what action on the part of the Government would be appropriate to any particular case.

Government Servants and Political Activities

(a) Rule No. 20 of the Government Servants' Conduct Rules, 1949, of the Madras Government rigidly excludes all public employees, irrespective of their standing in the service or the duties which they have to perform, not only from candidature and service in the legislature but also from all other political activities of any kind. This wholesale restriction deprives a large section of the community, which is particularly intelligent, of all opportunities to influence the policy of the State, which cannot be justified in a democratic society in the absence of overriding considerations to the contrary. The All-India Civil Liberties Council fully recognizes the need for the preservation of the political neutrality of the Civil Service and for the preservation of the public confidence in its impartiality. While this will necessitate some limitations on the public employees' freedom to exercise ordinary citizen rights in the case of the topmost section of the Civil Service the total denial of freedom to the whole of the Civil Service to engage in any activity savouring of politics, which the Madras Government's above-mentioned rule implies, has in the Council's opinion no justification whatever. The Council therefore suggests that the Government of India examine this and similar other rules of the Madras Government and of the Governments of other provinces with a view to making a demarcation, as has been recommended by the Masterman Committee in England, between those grades of the Civil Service which must maintain a reserve in political matters and those other grades to which freedom to engage in political activities can well be granted without danger to the public interest.

(b) Another part of Rule 20 of the Madras Government referred to above is far more objectionable and the Council enters its most emphatic protest against it. It* virtually makes a Government servant responsible for any act on the part of his dependant "which is, or tends directly or indirectly to be, subversive of government as by law established in India." This is thoroughly destructive of the fundamental principle of personal guilt which every Government has to observe and the rule cannot be allowed to stand. The Council calls upon the Government of India to make a thorough examination of the Government Servants' Conduct Rules in all the provinces and take steps to eliminate from them all such rules as cast on Government employees a wholly unjust and unbearable burden.

India and the Human Rights Commission

The All-India Civil Liberties Council notes with profound grief that Article 9 on Personal Freedom in the draft International Covenant of Human Rights, as it stands at present, affords no guarantee against abuse of legislative power when acceding States resort to arbitrary arrest and detention. The form of words used in this Article, viz., that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law." was the result of accepting an amendment moved by India's delegate to the U. N. Commission on Human Rights. If this form of words be finally adopted, the Covenant will place personal freedom as much at the mercy of the legislatures of the acceding States as in the Indian constitution which employs the same phraseology it has been placed entirely at the mercy of the legislatures in India. India's delegate, in putting forward this amendment, thoroughly misrepresented the sentiments of the Indian people and had no moral right to weaken and in fact to nullify this most basic of all human rights in the proposed Covenant. The All-India Civil Liberties Council regards it as a matter of the deepest humiliation that India should have been responsible for this tragic error internationally as well as domestically.

Rule 20

(1) (ii) No Government servant shall pormit any person dependant on him for maintenance or under his care or control to take part in, or in any way assist, any movement or activity which is, or tends directly or indirectly to be, subversive of government as by law established in India.

Explanation.—A Government servant shall be deemed to have permitted a person to take part in or assist a movement or activity within the meaning of clause (ii) if he has not taken every possible precaution and done everything in his power to prevent such person so acting, or if, when he knows or has reason to suspect that such person is so acting, he does not at once inform the Provincial Government or the officer to whom he is subordinate.

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