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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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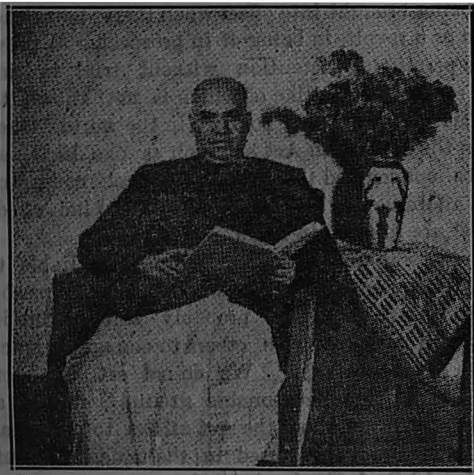
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The Late Dr. S. P. Mookerjee



President, All-India Civil Liberties Conference,
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The sudden death of Dr. Syama Prasad Mookerjee, while in detention in Srinagar, has removed from the political scene an outstanding personality and has cast profound gloom over the country. A forceful orator noted for a clear marshalling of facts and a logical presentation of them, he was latterly the virtual Leader of the Opposition in Parliament, and at a time when the country is being run practically under a one-party system, the loss of a man of his high standing in public life and of unimpeachable character who could offer outspoken criticism of the Government's policies is a crushing blow to the hopes of all who would like to see a proper democratic structure to rise in India. From his early years he impressed all by his independence of thought and readiness to espouse causes he believed to be right, however unpopular they might happen to be. It is this which made him secede from the Congress and cast in his lot with the Hindu Mahasabha. If there are many narrow-minded communalists in this latter organization, Dr. Mookerjee was not one of them. He was a nationalist and guided the Hindu Mahasabha movement while he was in it along nationalist lines, as his presidential address to the Amritsar session of the organization in 1943 will testify. As the "Leader," a prominent Congress organ, has said,

"There was nothing in that address to which a Congress leader could take exception" on the ground of communalism. He fought all his life, and fought valiantly, for the democratic rights of minorities.

It was this concern of his for minority rights which led the organizers of the third session of the All-India Civil Liberties Conference in Nagpur to invite Dr. Syama Prasad Mookerjee to preside over the session in September, 1951, and all those who were present at the session could bear testimony to the fact that he never betrayed in his conduct of the proceedings of the Conference the slightest desire either to make a partisan attack on the ruling party or to derive any profit for the Jana Sangh which he was himself organizing then. He showed by his own conduct (and impressed it on others) that civil liberties were apart from and above all party politics and must be looked at from a detached point of view. He was poles asunder from the Communist Party, but saw no harm in joining hands with and indeed in taking the initiative in enlisting the support of the members of that party in organizing a hammer and tongs opposition to the Preventive Detention Act when it was renewed last year. The speeches he made on that occasion are said to be the most eloquent ever heard on the floor of the house for many a long year. The cogency of his arguments and the firm hold he displayed on first principles, joined to his intrepidity in tearing down all pretences, whether they came from Mr. Nehru or Dr. Katju, won him the respect of all. While all non-Congress parties will learn from his stout-hearted resistance to the Detention Bill how the Opposition should be organized and strengthened, to those interested in civil liberties he gave a shining example of not discriminating between Communists and others in defending civil rights when attacked. While the Bill was on the anvil, it had appeared that it was directed among politicals against Communists alone (it was never expected then that the law would be used also against the Jana Sangh and its leader himself). But without the least hesitation he opposed the Bill, meant for use (as it appeared at the time) against a party to which on political principles he was antagonistic, as if the Bill was meant for use against himself. For he realized, as only too few unfortunately do, that the liberty of no one is safe if that of any single person is in danger. Those of us who are in the movement should take the lesson to heart.

SECURITY OF THE PERSON

DETENTION PROVISIONS OF THE MCCARRAN ACT DO NOT SUSPEND HABEAS CORPUS

There is a section of our people which rejoices most when, under the pressure of opinion of reactionary blocs, some legislation of a repressive character is adopted in the United States, by pointing to which, they think, our Government's coercive policy can be justified. One such statute to which repeated reference is made is the Internal Security Act of 1950, colloquially called the McCarran Act. This Act contains "emergency detention" provisions, which are often invoked by our publicists to show that if the United States in which democratic processes have been firmly established can resort to detention, then surely India which is yet groping towards democracy can well do so. (See our correspondence column in this issue.) It should be remembered in this connection that there are wrong-headed people in every country, and that the United States too has its share of them. And, moreover, two wrongs do not make a right. But what we have chiefly to keep in mind in regard to the McCarran Act, passed shortly after the outbreak of hostilities in Korea, is that this Act was bitterly denounced and vetoed by President Truman, and it became law only because Congress acted, under the stress of a strong anti-Communist emotion, to override his veto. All liberal opinion in the country was with the President in this matter. Besides, the "emergency detention" provisions of the Act have somewhat slipped from public memory because they have not yet gone into effect. The Act is on the statute book, but it lies there unused. It is hardly proper to compare the detention provisions of such a statute which have almost become a dead letter with our legislation which is being vigorously used for the last so many years. Even so, the American Act contains several safeguards which our Act wholly lacks, as we proceed to show in detail below.

The first thing to note about detention which the McCarran Act sanctions is that it is "emergency detention," to be resorted to only in three specified contingencies:

- (1) invasion of the territory of the United States or its possessions,
- (2) declaration of war by Congress, or

(3) insurrection within the United States in aid of a foreign enemy.

Detention in the event of a foreign invasion or internal rebellion is understandable, and if in India too the detention law was brought into effect upon the President declaring an emergency there would not be much quarrel with it. But the fact is that in the Indian Constitution detention does not form part of the Emergency Provisions at all. It is a normal feature of the administration, capable of being brought into effect when there is neither an invasion or a revolt, in being or in prospect. A provision like this permitting detention without trial in time of peace is something the like of which is not known to the constitution or law of any country in the world. One may condemn the McCarran Act as much as one likes, and it cannot be condemned too much, but such condemnation will not afford us any justification for the kind of detentions that are in force in India.

Besides, who under the McCarran Act is liable to be detained? A person "as to whom there is reasonable ground to believe that (he) probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage." We do not set any store at all by the expression "reasonable ground" in the above definition of persons whom the Act allows to be detained. For similar language was used in the amended Defence Regulation 18 B of England ("if the Secretary of State has reasonable cause to believe") and it was interpreted in *Liversidge v. Anderson* by the majority opinion in the House of Lords to mean, in the words of Mr. C. K. Allen: that "reasonable cause" was something which existed solely in the mind of the Minister, that he alone could decide it, and that it was not subject to challenge or judicial review, unless (which is impossible) it could be shown that he did not hold the opinion which he professed to hold.

It cannot be contended therefore that "reasonable ground to believe" does much or anything to diminish the almost unlimited charter which the McCarran Act gives to executive discretion. But one thing at any rate

BRITAIN'S "MESSAGE TO THE WORLD"

Parliamentary institutions, with their free speech and respect for the rights of minorities, and the inspiration of a broad tolerance in thought and its expression—all this we conceive to be a precious part of our way of life and outlook.—Queen Elizabeth II in her Coronation speech.

Our farms and our factories may give us our living. But the Bill of Rights gives us our life. Whoever lays rough hands upon it lays rough hands upon you and me. Whoever profanes its spirit diminishes our inheritance and beclouds our title to greatness as a people.

Only a government which fights for civil liberties and equal rights for its own people can stand for freedom in the rest of the world. —*Adlai E. Stevenson* in his Jefferson-Jackson Day speech.

is clear, viz., that under it detention can be enforced only against those who are suspected of committing or of conspiring with others to commit espionage or sabotage. No one can be apprehended and put in custody for any less grave offences. In India, however, anyone who is suspected of doing something which is prejudicial to the mere maintenance of order, or anyone who is thought to be engaged in blackmarketing, or even anyone (as now appears) who cannot be prosecuted because evidence against him cannot be produced in open court, is liable to be arrested and put behind iron bars. What a striking contrast is here to be seen, very much to the disadvantage of India!

The procedure to be followed under the McCarran Act in respect of detention is also entirely different. A person arrested for acts of espionage or sabotage "has a right to a preliminary hearing before a hearing officer appointed by the President." Only if it appears at this hearing that "there is probable cause for the detention" of the person apprehended that he can be held in detention. Nor is the preliminary hearing a formal affair. The law provides that the person who has been arrested with a view to his detention "may introduce evidence in his own behalf and may cross-examine witnesses against him." That is to say, even before detention is effected, the person concerned has an opportunity of disproving the Government's case, and in order that he may be enabled to do so, he has been accorded the right both of producing his own witnesses and of confuting those of the Government. In so far as detentions in India are concerned, a person is first placed under detention, and thereafter an inquiry starts, and at no stage in this process is the detainee either allowed to prove his case through his witnesses or disprove the case of the Government by cross-examining its. That these facilities should be allowed in cases of espionage and sabotage is not a small thing, though in such matters the Attorney General is given the right not to identify Government agents whose names "it would be dangerous to national safety and security to divulge." And the inquiry that proceeds at this stage is conducted by an officer of the Government itself and is in no sense an independent inquiry. But the important thing is that the official inquiry precedes detention and is held for the purpose of determining on the basis of evidence tendered whether there is necessity for effecting the contemplated detention.

If the hearing officer orders detention because, in his judgment formed after a preliminary hearing, "there is probable cause for the detention," then a kind of semi-judicial inquiry is held if the person detained so desirable may appeal to a Board of Detention Review consisting of nine members appointed by the President. Because in the U. S. A. not many detentions were contemplated, there was only one permanent Review Board to consider all detentions. In India a separate Advisory Board becomes necessary for every detention, because the detentions that are ordered are so many, every district magistrate and

commissioner of police being given the power to order detention. It is the function of the Board of Detention Review in the U. S. A. to determine "whether there is reasonable ground to believe that such detainee probably will engage in, or conspire with others to engage in, espionage or sabotage." The Board "shall require the Attorney General to inform such detainee of the grounds on which his detention was instituted, and to furnish to him as full particulars of the evidence as possible, including the identity of informants," with the proviso that the identity may not be disclosed if it would be "dangerous to national safety and security" to do so. The detainee has again the right to produce his own witnesses and to cross-examine Government's witnesses.

But the Review Board is as it were the court of first instance. From its decision an appeal lies to the appropriate Federal Court of Appeals. The American appellate courts never hear evidence themselves, going entirely on the basis compiled before the administrative agency, whose decisions it reviews. However, the Act provides in this case that, if the Appeals Court, while reviewing the Board's order, finds that, additional evidence that is material should be available, it makes an order for the receipt of such evidence. This evidence will not be heard by the Court but by the Board for the purpose of having new findings made by the Board if necessary. A further appeal is also provided by application to the Supreme Court for certiorari. Court review being thus preserved, the emergency detentions envisaged by the McCarran Act are not, strictly speaking, detentions without trial. The whole Act is extremely objectionable, but in vetoing it, President Truman was not disturbed overmuch by the emergency provisions therein. In his message to Congress, he contented himself with merely stating that they would prove "ineffective" for the purpose for which they were apparently intended, "since they would not suspend the writ of habeas corpus." As habeas corpus is not abolished, the result can only be, as the "New York Times" said at the time, "that a Communist or anyone else suspected of prospective overt acts (of spying or subversive acts in a national emergency) could be jailed in the morning and released that afternoon, and would cover no detention at all."

To say this is not to justify the law by any means; no sane person would seek to do so. The fundamental vice of the measure is that it allows citizens to be detained when they have committed no crimes, but merely because there is a danger that they may commit them. Still, while condemning it, it is well to remember that it does not put an end to habeas corpus, which is an essential ingredient of detention without trial. The writ will still run. The Act itself provides for it. The writ will be available to test detention under the Act. It can be used for the purpose of challenging the constitutionality of the Act as a whole. But though the Act expressly provides that "the findings of the Board as to the facts, if supported by reliable, substantial, and probative evidence, shall be

conclusive," the courts may pass in particular cases on the question as to whether the evidence meets the standard of "reliable, substantial and probative." Similarly, they may pass in particular cases on the actual fairness of the procedure, care having been taken in the Act to lay down procedures which theoretically at least satisfy the requirements of due process of law. That the courts would be able to give a ruling on the question whether in a particular case the procedure that was followed was fair or not is of great importance because under the Act the Attorney General is not required to disclose the identity of informants if he believes that would be "dangerous to national safety and security."

We are not in the least concerned to make out that the McCarran Act is anything but gravely objectionable. But we wish to point out to those who take a somewhat complacent view of detentions in India that our law on the subject is infinitely worse than the American statute. And, equally important, the liberals in the United States are greatly disturbed by it, although it has not yet been enforced in a single case. It will probably remain a dead letter, but the American Civil Liberties Union has decided to make a test case as soon as any detention takes place thereunder.

NOTES

THE SOUTH AFRICAN ACT

A Statutory Emergency

In our last issue (on p. ii:260) we pointed out the difference in the method of dealing with an emergency by adopting temporary exceptional measures under common law and the method of dealing with such an eventuality by proclaiming a statutory emergency and taking extraordinary powers to cope with it by special legislation designed for the purpose, and we showed that the former method which was usually followed in common law countries was superior to the latter followed in civil law countries in that it preserved judicial review of the action taken. The South African Government passed the Public Safety Act in February last year for two reasons: (1) that a challenge in a court of law might thus be avoided; and (2) that an emergency that might arise was possibly of a local instead of a national character. The Minister of Justice thus put his case:

As the law stands to-day in connection with emergency powers, a government may in terms of common law proclaim an emergency, but it must be proclaimed for the whole country. And there must be proof enough that not only does danger exist for a local area, but that the whole state is in danger of going under, that rebellion is already in progress, and that the military forces have been called out, or otherwise the courts would have the power to say, "No, there is no such circumstance which justifies such action."

I want to emphasize that point, for even after war had broken out in 1939 and the Government had proclaimed an emergency without legal authority, certain persons went to the courts and applied to the courts that the Government had unlawfully proclaimed an emergency, and the attitude of the courts was quite correct that it is for the courts to decide whether there is an emergency or not. In that case they said the country was at war, the Defence Force had been called up, and they had to accept that the Government had acted correctly and they justified it. But in other cases the courts often do not want to grant it.

Under common law the country or a part thereof may even be placed under martial law, but the matter may ultimately be placed before the courts for scrutiny, to determine whether in the circumstances martial law and the powers taken thereunder were justified. In *Krohn v. the Minister of Defence*, App. Div. 202 (1915), Sir James Rose-Innes, Chief Justice, said:

A retrospect of South African history during the last 15 years may well give rise to an inquiry as to whether the legislature would not have done well to regularize and at the same time control the operation of the system (of martial law). It ought to be possible to legislate for such localities in a way that would lessen the burden of martial law, both for the Government and the people: the circumstances under which it may be proclaimed, the things that may be done and, more important still, the things that may not be done.

Contrary to this judicial advice, however, the balance of advantage is held to be in favour of common law and not in favour of having a measure on the statute book granting emergency powers, for use in certain circumstances, for the reason that in the latter case the exercise of these exceptional powers is withheld from the review of law courts.

CURBING FREEDOM OF THE PRESS

Intent Ignored

The twin measure of the South African Government's Public Safety Act is the Criminal Law Amendment Act, designed specifically to combat the campaign of defiance of laws that had been going on for some time. This Act enormously increases the punishments that can be imposed on those engaged in the campaign. Although passive resisters only defied laws which differentiate as between persons on the ground of race or colour, the Act has been drawn in such wide terms as to bring in persons who defy all manner of laws. Then the Act also punishes those who incite others to defy laws and awards even severer punishments to them. And among these come newspapers. Sec. 2(b) says:

Any person who uses any language or does any act or thing calculated to cause any person or persons in

general to commit an offence... shall be guilty of an offence.

Such a person is liable to a fine of £500, or five years' imprisonment, or ten lashes, but it is provided that on a second conviction "it shall not be competent to impose a fine except in conjunction with a whipping or imprisonment." This is the method the Union Government has adopted for preventing its gaols from overflowing.

But one legal point that was raised in connection with the press may be noted here. It was said that because in the section as drafted there was no element of *mens rea* whatever in the offence, which should be an essential ingredient thereof, the Government would obtain vast powers to interfere with the freedom of the press, which is one of the main pillars of the whole system of democracy. The word "calculated" appearing in the section was judicially interpreted as meaning "likely." In the case of *Amwells v. the Johannesburg City Council* (1925) Schreiner J. of the Transvaal Provincial Division said that the meaning of "calculated" is "likely," without reference to the state of mind of the person using the language or gesture. In another case, that of the *Chewing Products Corporation* (1948), Greenberg J. of the Appellate Division said: "The word 'calculated' in the sense of 'likely' connotes some degree of probability." That is to say, any newspaper which there is some degree of probability to believe will produce a certain result is capable of coming within the mischief of the Act, which again defines an "offence" and "incitement" in overbroad terms. The Labour Party, therefore, wanted to make it a condition that the offending person should have the "intention" to bring about the result.

To this the Minister of Justice objected, saying that it is sometimes impossible to prove the intent, and if an obligation is thrown on the Crown to prove the intent of a writer in every case, the provision would for all practical purposes be nullified. In order to meet the Minister of Justice half way an amendment was moved which, while introducing the element of "intention," made it easier for the prosecution to obtain a conviction. The amendment was for the addition of the following new subsection to sec. 2:

If in any prosecution for an offence... it is proved that the language used or the act or thing done was likely to cause any person to commit an offence... it shall be presumed until the contrary is proved that the language was used or that the act or thing was done with that intent.

In the amendment it was provided that intent was a necessary element, but the usual procedure for proving it was reversed. While intention remained an ingredient of the offence, the onus of proving the intention was shifted to the accused person. In other words, upon proof of what was said or upon proof that the act or thing was done, the court would be entitled to infer intent until evidence led in rebuttal satisfied the court that in fact and in law that intent had not existed. The amendment would have given

some safeguard to the person prosecuted, but the Government was adamant and the amendment was rejected.

The position under the Act as passed, therefore, is that in innumerable circumstances an offence of incitement will be committed by the press, without much hope of the courts giving relief, and the extent of injustice that will result will depend only on the number of prosecutions the Minister will start. While the Minister gave the assurance that "bona fide and proper reporting may be freely proceeded with where it is in the public interest to publish it," the assurance may come to nothing. For he said: if some newspapers were to publish what may be proper in itself "under black headlines, very prominently, and they were to disseminate it amongst non-Europeans, one would be able to say that such action falls within the provisions of the Act." Moreover, even if the section is not much used, the intimidating effect of its existence on the statute book in suppressing legitimate news and comment cannot be ignored.

MONOPOLY OF ADVERTISING AND NEWS

Application of the Anti-Trust Act

In view of the question, which is being considered by the Press Commission in India, of any possible combinations of newspapers arising which might acquire a kind of monopoly over dissemination of news and comment and thus hindering free expression of information or opinion, a recent case that came before the United States Supreme Court (*Lorain Journal Co. v. United States*, 342 U. S. 143 [1952]) will be of great interest to our readers. In this case the Sherman Anti-Trust Act was applied to control advertising and news which had been monopolised by a newspaper.

The Lorain Journal Company, an Ohio corporation, published in the industrial city of Lorain a daily newspaper called the "Journal." There was only one other competing daily in that place, but in 1932 it was absorbed, by the "Journal," and since that year the "Journal" is the only daily published in Lorain. It reaches 90 per cent. of the homes in the area; there is no rival in the field. But to this practical monopoly that it had established no objection could be taken. However, in 1948, an independent broadcasting corporation established a radio station (WEOL) there, and it broadcast news and advertising in its programmes. Since this event, the monopoly of the "Journal" was broken. Its circulation did not fall, but it was no longer the sole disseminator of news and advertising. In order to regain the monopoly which it had enjoyed between 1932 and 1948, it began taking steps to "destroy" the new competitor. (It had previously sought a license to establish radio station itself, but without success.) It refused to accept local advertisements from any Lorain County advertiser who advertised or was believed to be about to advertise over WEOL, thus trying to eliminate the threat of competition from the radio station. The local advertisers who advertised in the

"Journal" wished to supplement this advertising by using the facilities of the radio station as well for advertising. But they could not do so, because the "Journal" terminated its contracts with them and would not renew them till they had ceased advertising through WEOL. Advertising in the "Journal" was so essential for the promotion of their sales in Lorain County that they had to deny themselves the additional facilities which they could have had but for the conditions laid down by the publishers of the "Journal."

The federal District Court in the area characterized all this as "bold, relentless, and predatory commercial behaviour" on the part of the corporation. It said that the corporation impeded the operations of WEOL by a plan to "cut off its blood-stream of existence—the advertising revenues which control its life or demise," for "substantially all of the station's income is derived from its broadcasts of advertisements of goods or services." By forcing numerous advertisers to refrain from using WEOL for local advertising, the "Journal" not only strengthened its monopoly in that field, but it injured WEOL with the possibility of ultimately destroying it, the consequence of which would be to deprive the people of Lorain of their only near-by radio station. The court ruled that this was an attempt to monopolise inter-state commerce in the form of mass dissemination of news and advertising, contrary to the provisions of the Sherman Act and issued an injunction for restraining the Lorain Journal Company from following its practices. An appeal from the ruling was preferred in the Supreme Court, which held that the injunction was justified. The Court said:

Assuming the inter-state character of the commerce involved [and it was decided in *Associated Press v. United States*, 326 U. S. 1 (1945) that it has that character], it seems clear that if all the newspapers in a city, in order to monopolize the dissemination of news and advertising by eliminating a competing radio station, conspired to accept no advertisements from anyone who advertised over that station, they would violate secs. 1 and 2 of the Sherman Act. It is consistent with that result to hold that a single newspaper already enjoying a substantial monopoly in its area, violates the "attempt to monopolize" clause of sec. 2 when it uses its monopoly to destroy threatened competition.

The publisher claims a right as a private business concern to select its customers and to refuse to accept advertisements from whomever it pleases. We do not dispute that general right. . . . The right claimed by the publisher is neither absolute nor exempt from regulation. Its exercise as a purposeful means of monopolizing inter-state commerce is prohibited by the Sherman Act. . . . "In the absence of any purpose to create or maintain a monopoly, the Act does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business freely to exercise his own independent discretion as

to parties with whom he will deal." *United States v. Colgate & Co.*, 250 U. S. 300.

In the *Associated Press* case *supra*, it was held that the *Associated Press*, composed of member newspapers, is in violation of the Anti-Trust Act, because, under its by-laws, the Association and its members were forbidden to sell their news to non-members, and that "the by-laws in and of themselves were contracts in restraint of commerce in that they contained provisions designed to stifle competition in the newspaper publishing field."

PRESUMPTION OF INNOCENCE

Principle Discarded in a New Zealand Law

The traditional principle of British law, that an accused person must be assumed to be innocent until he is proved guilty, has been discarded in several sections of the New Zealand Police Offences Amendment Act of 1951, and this feature of the statute has been severely criticised by the liberal elements in the country. The Act creates a number of new offences aimed at publication and distribution of printed or written matter. It is an offence, for instance, if any person has in his possession for sale, etc., any document "that incites . . . violence, lawlessness or disorder, or that expresses any seditious intention." The Act provides in respect of this offence that proof that the defendant had such a document in his possession shall be deemed to be proof that he had it in his possession for sale, etc, unless he establishes that he had it for a different purpose. This, it will be seen, changes the whole basis of criminal procedure which normally requires the Crown to prove that the accused was acting with, as it is said, a guilty mind and transfers the onus of proof from the prosecution to the defence. Such an innovation constituting as it does a serious breach of traditional procedures is an attack on freedom of printing and publishing, which is deeply resented in New Zealand.

This whole branch of newly created seditious offences is, it should be remembered, on top of those specified in the ordinary Crimes Act. The penalty for these offences is lighter, three months' imprisonment instead of two years'. But the significance of this leniency lies in the fact that for offences with penalties up to three months' imprisonment there is no right of trial by jury: they may be dealt with summarily before a magistrate. "This expedites the process of dealing with persons who have offended the Government, but it deprives the citizen of rights which until 1951 were considered of sufficient importance to warrant a trial by jury."

Similarly, the part of the law which relates to strikes and prohibits direct industrial action contains sections under which the onus of proof is thrown on the accused. Formerly, even under the regulations of the time of the Waterfront strike the ordinary criminal law applied in prosecution, and a person was deemed innocent until proved guilty. But this new legislation has changed all that.

TOPICS FROM FOREIGN LANDS

Execution of The Rosenbergs

Julius and Ethel Rosenberg, convicted in April 1951 of transmitting atomic secrets to the Soviet Union and sentenced to death, were executed on 20th June last. We may notice this case as it has attracted world-wide attention and particularly as it is thought to involve a breach of civil liberties.

For our own part we do not think that there is a question here of civil liberties at all. The Rosenbergs were tried by the ordinary law of the land, on an indictment by a grand jury listing twelve overt acts; there followed some three appeals or petitions to the U. S. District Court, southern New York, about eight references to the U. S. Circuit Court of Appeals, and four to the Supreme Court, not to speak of an appeal for clemency to the President. In face of this elongated procedure, which is peculiar to the United States (in Britain there would have been a trial one appeal, and a petition for mercy, occupying about three months in all) and it cannot be doubted that during the two years following the conviction every legal resource has been exhausted on their behalf. To represent this case as another Sacco-Vanzetti affair, as has been done, seems thus to be utterly ridiculous.

In other quarters not intent upon making political capital of the case, misgivings are felt, not about the guilt of the accused, but about the severity of the sentence imposed on them. For the Rosenbergs were the first civilians ever to be executed as spies in peace-time in the U. S. A. But the evidence before the court was that some of the offences were committed in war-time and that they spied not only for Russia, which was an ally of the U. S. A. at the time, but continued their espionage even after the war. It may well be held that the President should have tempered justice with mercy, but he thought of the possible death of millions involved in the Rosenbergs' crimes. He said in a statement: "The execution of two human beings is a grave matter. But even graver is the thought of the millions of dead whose deaths may be directly attributable to what these spies have done." Anyway, it was a question of mercy, not of justice.

The "Statesman", while commenting on the execution of the Rosenbergs, brings into relief the method pursued in dealing with subversives in the Russian occupied part of Germany. It says:

On June 17 or 18 (two or three days before Julius and Ethel Rosenberg were executed) died Will Goettling, West German citizen, in Russian occupied territory by firing squad, on a charge of acting as a provocateur in the Berlin disturbances under orders of the Intelligence service of a foreign power. His trial was by court-martial; execution followed promptly, without opportunity for diplomatic intervention,

appeal to any civil court or clemency. . . . Regarding Will Goettling, the three Western commandants in Berlin have formally told the Soviet authorities that the charge is a travesty and the execution an act of brutality. How many other people the East German firing squads have hurried into their graves is not known, nor likely to be publicized. But the world does know that this kind of thing is no novelty in Communist territory, that the number of purges there now exceeds human memory, that there seems little to choose between the sort of trials reported and being "dealt with administratively" (shot without trial) in the cellars of the MVD. And this sort of thing, unfortunately, may even have worked to the detriment of the Rosenbergs themselves.

School Segregation in U. S. A.

SUPREME COURT POSTPONES DECISION

It will be recalled that five cases from Delaware, Virginia, South Carolina, Kansas and the District of Columbia are pending before the Supreme Court (vide p. ii: 208) involving a decision on the question whether the Fourteenth Amendment, which guarantees all citizens "the equal protection of the laws," makes segregation in public schools unlawful. The cases came before the Supreme Court on 8th June, but the tribunal, instead of arriving at a decision, scheduled new hearings for 21st October—an unusual proceeding—and proposes to ask the opposing attorneys five questions.

The Justices' first question was whether there is any "evidence" that the 1865 Congress and state legislatures that voted for the Amendment believed that it would abolish segregation in schools.

The next question was: Did the framers of the Amendment believe Congress could use the Amendment to outlaw segregation or did they want the courts to have this power?

The Court further asked whether it had power to interpret the Amendment to outlaw school segregation. If so it asked: Could this be done with a "gradual adjustment"?

The Court's fifth question was how "detailed" its decrees should be in the cases if it should rule that segregation in public schools is unconstitutional.

Legislative Investigations

DR. EINSTEIN'S ADVICE

The several investigating committees set up by Congress to inquire into the political association of public employees have made it hard for those employees who may be subpoenaed into a legislative investigation to retain their offices consistently with a maintenance of their self-respect. Of these committees the most significant are the House Committee on Un-American Activities and the Internal Security Sub-Committee of the Senate's McCarran Committee. "Because their proceedings are not criminal trials, they are not bound," as Professor Chafee says, "by several of the procedural safeguards of

prosecutions in the Sixth Amendment." Nor has the constitutional authority of such committees been denied by the federal courts, cf. the decision of the Court of Appeals in *Barsky v. United States*, 167 F. 2d. 141 (1948), in regard to the Committee on Un-American Activities.

In this predicament a Brooklyn teacher asked Dr. Albert Einstein as to what those who are called before a legislative committee for a loyalty probe should do, and the eminent physicist advised him in a letter to refuse to testify. He wrote:

Every intellectual who is called before one of the committees ought to refuse to testify, i. e., he must be prepared for jail and economic ruin, in short, for the sacrifice of his personal welfare in the interest of the cultural welfare of his country.

This refusal to testify must be based on the assertion that it is shameful for a blameless citizen to submit to such an inquisition and that this kind of inquisition violates the spirit of the Constitution.

If enough people are ready to take this grave step, they will be successful. If not, then the intellectuals of this country deserve nothing better than the slavery which is intended for them.

Bertrand Russel has endorsed this advice.

Compulsory Registration of Communists

After the passing of the McCarran Act, some state legislatures in the U. S. A. adopted a law requiring the public registration of Communists. Among them was the state of Michigan, which passed a law called the Trucks Act having similar effect. Under it the Secretary of Michigan's Communist Party is being prosecuted for refusing to register. In this case the American Civil Liberties Union has filed an *amicus curiae* brief, attacking the Act as "so indefinite, broad and general" as to violate the free speech and free association guarantees of the First and Fourteenth Amendments. The brief says that not only does the law threaten close affiliation with groups which could be thought favourable to Russia, but it "would deter any type of contact with them." For "there is no telling what type of contact would be taken as an indication of membership in the indefinite and undefined sense it is used here." The Union makes it clear that it is participating in the case only in defence of civil liberties and not out of sympathy for the Communist Party.

Anti-Discriminatory Law Upheld

RESTAURANTS MUST NOT REFUSE TO SERVE NEGROES

We reported on p. ii: 226 of the BULLETIN the decision of the Court of Appeals on 22nd January last in the Thompsons Restaurants case that restaurants in the District of Columbia, i. e., in Washington, could refuse to serve Negroes, in spite of the anti-discriminatory laws of 1872 and 1873 passed by the Legislative Assembly which had been set up by Congress to govern the District at the time.

The Court had held that the Legislative Assembly lacked authority to pass laws making it obligatory on keepers of restaurants to admit both whites and coloured persons to the facilities they offered. From this decision an appeal was filed in the Supreme Court by the District Government and on 9th June the Court upheld the validity of at least one of the laws and gave a ruling that restaurants in the District are required to serve Negroes.

Segregation on Railways

Stanley Saile was on 15th June 1952 fined £5 by a magistrate's court for sitting on a bench which was marked "Europeans only" at Worcester railway station in the Cape Province of South Africa. Saile appealed against his conviction and sentence, and on 29th May Mr. Justice Hall in the Supreme Court allowed the appeal, holding that "there was partial and unequal treatment between the two classes," viz., Europeans and non-Europeans. (Compare a similar South African case reported on p. ii:274.)

HABEAS CORPUS PETITIONS

Vague Grounds

The Supreme Court on 18th May ordered the release of Sakharan Ganpat Patil, Mahadu Ganpat Patil and Atmaram Narayan Patil, of the village of Katal in Thana district of Bombay. They had been detained under the orders of the district magistrate of Thana on the allegation that they were terrorising the villagers of Katal. They were accused of committing offences against the life and property of the public by beating, threatening and terrorising the villagers.

Allowing the habeas corpus petitions filed on behalf of these detenus, who were arrested in December 1952, the Court ordered their release, holding that the grounds of detention given to them were vague and indefinite, whereby a denial of the petitioners' fundamental right of making an effective representation before the Advisory Board resulted.

On the return of the rule on their habeas corpus petitions, Kul Dev Sawhney, Satya Brata Vaidya, Baldev Parkash, Lajpat Rai, Dev Raj and Durga Das Khauna, preventively detained by the State of Punjab, were ordered by the Supreme Court on 21st May to be released forthwith as it was found that each one of the grounds on which their detentions were made was not specific and definite enough to form the basis of an effective representation before the Advisory Board.

Jammu Agitation Detenus Released

NO INFORMATION SUPPLIED

Mr. Justice Dulat of the Punjab High Court on 14th May passed orders allowing the habeas corpus petitions of and setting at liberty six RSS and Jana Sangh detenus —Mr. Dharamvir, General Secretary of the RSS, Acharya

Ramdev, Dr. Inderpal, Mr. Lalchand Sabharwal of Jullundur, Mr. Babiamjidas Tandon of Amritsar and Mr. Mangaldas of Rohtak.

These detenus were arrested under the orders of district magistrates on the charge of aiding and abetting the Praja Parishad agitation in Jammu.

Counsel for the detenus submitted that the first ground alleging that the Praja Parishad movement in Jammu was communal and violent was very vague and it was not shown in what manner it was so and in what manner it would disturb public order in the Punjab. It had been alleged that some detenus criticized the Nehru and Abdullah Governments. Legitimate criticism of the Government, he said, was permitted by the Constitution and it had nothing to do with disorder.

Counsel submitted that district magistrates had no jurisdiction to pass detention orders against the detenus as it was alleged that the Praja Parishad agitation affected public order not only in the State of Jammu and Kashmir, but in the whole of India. There was no allegation against any one of the detenus that they wanted to resort to violence. All that the ground showed was not that they were going to create disorder, but that they proposed to launch a satyagraha and wanted "one India and one flag."

Mr. S. M. Sikri, Advocate-General replying submitted that the detenus were arrested on the charge of aiding and abetting the Praja Parishad agitation. The district magistrates had general information that acts of violence were being committed in the course of the agitation in Jammu and, therefore, the grounds of detention in the orders passed by them were also general, and effective representations could be made to the Advisory Board against these grounds.

Mr. Justice Dulat observed that it was not clear in the grounds as to what acts of violence were committed by the Praja Parishad in Jammu or what acts were likely to be committed in the Punjab. The district magistrates had not given clear material to enable the detenus to make proper and effective representations.

The Advocate-General explained that the district magistrates, instead of giving material separately, had given the nature of the Praja Parishad activities and its effect on public order and security of the State in one ground.

Mr. Justice Dulat said that the detenus were not alleged to have done anything in any of the grounds. Something might happen, but if the detenus had no information how were they to act and make representations? His Lordship observed that either the district magistrates had no information of definite acts or if they had any, perhaps they had thought it fit not to disclose it.

Prosecution Dropped and Detention Resorted to

Sahadat Ali Mandal was arrested on 15th July 1952 and a prosecution was started against him under sec. 8B

of the Public Safety Act of Assam, but subsequently the prosecution was abandoned and he was released on 1st September on the basis of the police report under sec. 173, Cr. P. C. But when he had gone some paces from the jail after his release, he was again arrested and placed in detention under an order passed by the Governor of Assam on 29th August. It was urged in a habeas corpus application filed in the High Court that the order for detention was illegal and mala fide. In the affidavit of the Chief Secretary to the Government of Assam it was stated that the prosecution was dropped as the evidence was of a nature that its disclosure in court was not in the interest of the State, but action was taken under the Preventive Detention Act because, as stated in the grounds of detention, the Government had information that the petitioner was indulging in activity prejudicial to the security of the State.

Ram Labhaya J. said :

It was held in *Baboo Ram v. State*, A. I. R. 1951 All. 338, that the mere fact that the arrest was originally ordered for a specific offence but it was not followed by prosecution for that offence cannot affect the power of that detaining authority to take preventive action after the interim or final release of the person detained. It cannot be held that where an arrest unaccompanied by prosecution is followed by an order of detention, the Court must hold that the petition was mala fide. The burden of proving that the order was mala fide lies upon the detenu. I entirely agree with this proposition. His Lordship referred to *Ramanlal Rathi v. Commissioner of Police, Calcutta*, A. I. R. 1952 Cal. 26, in which "even the failure of prosecution under the ordinary criminal law was held by itself not sufficient to make the subsequent application of the Preventive Detention Act mala fide.

It was also contended on behalf of the petitioner that the statement of fact contained in the grounds of detention was false. On this point His Lordship said :

It is settled law that the Court cannot go into the question of truth or falsity of the statements of facts contained in the grounds of detention. If the facts stated in the grounds of detention are disputed, the remedy that the law allows to the petitioner is by a representation to the Government.

The application was thus dismissed (18th November 1952).

(This case is referred to in an editorial on the McCarran Act.)

Grounds of Detention Outside the Act's Scope

On 14th November 1952 Mehta J. of the Madhya Bharat High Court (Indore Branch) allowed the habeas corpus petition of Prakash Sarkar who had been detained under sec. 3(1)(a)(ii) of the Preventive Detention Act, 1950, and ordered that he be released forthwith, holding that some of the grounds supplied to the detenu for his detention in this case were outside the scope and ambit of the Act.

One of the grounds was that the detenu had eloped with a girl named Kamala whom he later married. This, His Lordship said, "is absolutely outside the scope of the Act." Another ground was that the detenu had staged a demonstration against a 25 per cent. cut in ration with a view to create disaffection amongst the labourers. This ground, His Lordship said, "is not at all a ground under sec. 7 which could induce the (detaining) authority to detain a person." "There is no objection to criticise or even to demonstrate against the food policy of the Government and no man can be detained merely because he carries on a propaganda against a 25 per cent. cut in the ration." He added :

In *Rajdhar Kalu Patil in re*, A. I. R. 1948 Bom. 334, it was held (on the basis of Sir Maurice Gwyer's ruling in *Keshav Talpade v. Emperor*, 1943) that if a reason given for the detention of a person, which is not within the scope and ambit of the Act conferring power upon the Government to detain, then the whole order is vitiated notwithstanding the fact that the other reasons given are good, because something may have operated on the mind of the detaining authority which is foreign and extraneous for the purposes of the Act.

A further ground of detention was that the detenu was a member of the Communist Party which is an illegal body. His Lordship said in regard to this ground :

There is no specification as to what activities have been undertaken by the detenu in pursuance of his being a member of the Communist Party. No particulars have been given of the nature of the activities above indicated. A mere vague and general statement to the effect that the activities are prejudicial and illegal is not enough. The nature of the activities must be indicated in the ground furnished and some particulars should be given. There is nothing to show that the detenu is engaged in activities which were subversive of the public safety and the maintenance of public order after the Communist Party was declared illegal.

W. BENGAL SPECIAL COURTS ACT

Sec. 4 of the Act Held valid

The Constitution Bench of the Supreme Court on 22nd May dismissed an appeal preferred by Kedar Nath Bajoria and Hari Ram Vaid questioning the constitutionality of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

The appeal was made against an order of the Calcutta High Court confirming the conviction of the appellants and the sentences passed by the special court at Alipore. The appellants were charged with having committed offences under secs. 120 (b) and 420 of the Indian Penal

Code and sec. 5 (2) of the Prevention of Corruption Act.

The contention of the appellants was that the Special Court had no jurisdiction to try and convict appellants inasmuch as sec. 4 of the Act, under which the case was allotted by the State Government to the Special Court, offended against Art. 14 of the Constitution (guaranteeing equality before law to all persons) in that it enabled the Government to single out a particular case for reference to a Special Court for trial by a special procedure which denied to persons tried under it certain material advantages enjoyed by those under the ordinary procedure.

Chief Justice Mr. Patanjali Sastri, delivering the majority judgment of the Court, held that there was a reasonable classification of the offences to be referred to a Special Court for trial and therefore there was no violation of Art. 14. Sec. 4 of the Act being constitutionally valid, and the Special Court had jurisdiction to try and convict the appellants. Their Lordships held, however, that the fine of Rs. 47,000 imposed on Kedar Nath Bajoria could not stand as it was in contravention of Art. 20 of the Constitution, which provided that no person should be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of an offence. The offence was committed in 1947 and the fine that was imposed was authorized by the Act which came into force in June 1949. Their Lordships said that the appeals would be heard in due course on merits, and it would be open to the court, in case the conviction was upheld, to impose such appropriate fine as it should think fit in addition to the sentence of imprisonment.

Mr. Justice Bose, in his dissenting judgment, referred to the arbitrary power given under the Act to the Executive to pick out cases from among the specified classes for reference to a Special Court for trial, thus discriminating between man and man in the same class, and said :

I feel all this is fraught with the gravest danger. We cannot have any Star Chambers or their prototypes in this land. Not that these tribunals have any resemblance to Star Chambers as yet. But we are opening a dangerous door and paving a doubtful road. If we wish to retain the fundamental liberties which have been so eloquently proclaimed in our Constitution and remain a free and independent people walking in the democratic way of life, we must be swift to scotch at the outset tendencies which may easily widen, as precedent is added to precedent, into that which, in the end, will be the negation of freedom and equality.

DEPORTATION ORDER

Set Aside by the Allahabad High Court

Under a temporary order Mahboob Husain was allowed to enter India from Pakistan and to stay there for two months in order to see his relatives. However, Mahboob overstayed the time mentioned in the permit and was con-

victed and sentenced to seven days' imprisonment under sec. 5 of the Influx from Pakistan (Control) Act, 1949, and directed to be removed from India under sec. 7 of the Act immediately after the expiry of the sentence from imprisonment. He filed a revision application in the Allahabad High Court, and on 29th May Mr. Justice Desai allowed the application.

His Lordship said that the law that existed at the time the applicant was given a permit did not make it obligatory on the applicant to leave India by the last date which the permit might have mentioned (there was no provision in the law for temporary permits) and did not make it an offence for him to stay in India beyond this date. This law was later superseded by the Act of 1949, under sec. 5 of which a man could be punished for staying on in India beyond the time mentioned in the permit. But this section, His Lordship said, was "prospective and not retrospective in effect."

Art. 20 of the Constitution was to the effect that no person should be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. So, no act that was not an offence at the time when it was done could be made an offence by subsequent legislation. Even if (sec. 5 of the Act) had retrospective effect and rendered the applicant liable to be punished for his act of (staying in India beyond the date mentioned in the permit), which act was not an offence (on that date), it would have been held to be unconstitutional under Art. 20 of the Constitution.

His Lordship, therefore, set aside the applicant's conviction and sentence and the order for his removal from India, holding that the order was without jurisdiction and that under sec. 7 of the Act the Central Government alone could make such an order.

BANNING OF ORGANIZATIONS

Sec. 23 of Trav.-Cochin Public Safety Act HELD ULTRA VIRES THE CONSTITUTION

In *Krishna Warriar v. State*, decided by Koshi C. J. and Govinda Pillay J. of the High Court of Travancore-Cochin on 18th September 1952, a revision petition was filed against the concurrent decisions of lower courts convicting and sentencing four persons accused for their membership and management of an association declared unlawful under sec. 23 of the Travancore-Cochin Public Safety Measures Act, 1950. The petitioners were active members of the Cochin Communist Party.

Sec. 23 is a reproduction of sec. 16 of the Indian Criminal Law Amendment Act, 1908, which was held invalid by the Madras High Court in *V. G. Row v. State of Madras* (A. I. R. 1951 Mad. 147) and by the Supreme Court in *State of Madras v. V. G. Row* (A. I. R. 1952 S. C. 196). Sec. 23 of the State Act only "widens the scope

and amplitude" of sec. 16 of the Indian Act, and is equally lacking in the provision for a judicial review of the declaration to the effect that an organization is unlawful and for a reference to an Advisory Board. Following these decisions, Their Lordships held that sec. 23 of the impugned Act and the notification declaring the Cochin Communist Party unlawful were ultra vires and quashed the conviction and sentence of the petitioners by the courts below. They said: "It will be mere supererogation to repeat what we said in the former case (*George Chadayammuri v. State of Travancore-Cochin*, A. I. R. 1952 Trav-C. 217) which dealt with "a more benevolent piece of legislation," the more benevolent piece of legislation being sec. 16 of the Indian Criminal Law Amendment Act, of which Rajamannar C. J. of the Madras High Court said: "One could not find a better illustration of the exercise of naked arbitrary power."

QUO WARRANTO

Petition for Writ Dismissed

COMMUNAL ELECTORATES AND ART. 15

The petition, Nain Sukh Das and others versus the State of U. P. and others, under Article 32 of the Constitution for a writ of quo warranto, was dismissed in the Supreme Court on 22nd May.

The petitioners are residents of Etah and their grievance was that the by-elections to the Etah Municipal Board held on November 2, 1951, December 8, 1951 and March 17, 1952, on the basis of communal electorates were contrary to the provisions of the Constitution which provide in Article 15(1) that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. It was the petitioners' contention that the by-elections were, in view of this constitutional provision, bad, and, therefore, the present Municipal Board of Etah was illegally constituted. The prerogative of quo warranto was sought to declare acts of the illegally constituted Municipal Board illegal. Their Lordships held that on petitions to the Court under Article 32 of the Constitution, citizens must establish that the fundamental rights guaranteed to them under Part III of the Constitution had been violated and in this respect the power of the Supreme Court to grant remedies was clearly narrower than that of the High Courts under Article 226 of the Constitution.

Delivering the judgment of the Court, His Lordship the Chief Justice held that in the present case the petitioners were unable to establish that they wanted the enforcement of any of their fundamental rights, for it was not the petitioners' case that any discrimination was now being practised or threatened against them. Their grievance was that the mode of election by separate electorates resulted in discrimination against them, but there was no suggestion that the petitioners actually sought to assert those rights by appropriate proceedings. In fact, they

acquiesced in the election at the point of time when the fundamental right claimed now was being infringed upon.

This is the first petition since the inception of the Supreme Court where the writ of quo warranto was prayed for in that Court.

PUNJAB PRE-EMPTION ACT

Held Valid by a full Bench

A full bench of the Punjab High Court consisting of the Chief Justice and Mr. Justice Harnam Singh and Mr. Justice Kapur held on 2nd June that the Punjab Pre-emption Act was valid and intra vires of the Constitution.

The validity of the Act had been challenged on the ground that it infringed Article 19 of the Constitution inasmuch as it placed unreasonable restrictions on the right of citizens to acquire or dispose of property including agricultural land.

A division bench of the High Court comprising Mr. Justice Khosla and Mr. Justice Harnam Singh had earlier held the Act intra vires but another division bench comprising Mr. Justice Kapur and Mr. Justice Soni differed from the previous judgment and, holding the Act ultra vires of the Constitution, referred the question for final decision to a full bench.

The argument against the Act was that the nature of the right to pre-empt was such that it amounted to a restriction on the right to acquire property as guaranteed by the Constitution. Several authorities were cited and reference was made to the change that had taken place in society after partition. It was contended that in view of the modern notion and the object of the Constitution the restriction was unreasonable.

The Advocate-General, replying, argued that there were various objects of the Act such as homogeneity of the village community and avoidance of disintegration of their lands. The restriction placed on the right to acquire and to dispose of agricultural land, he said, was reasonable.

C. L. U. NEWS

An "Onslaught on Freedom of the Press"

Referring to the deprivation of the press facilities of the "Times of India" because of its so-called breach of the privileges of the Bombay Legislative Assembly (vide p. ii:272), the Madhya Pradesh Civil Liberties Union, in a resolution passed by it on 6th May, characterised this action as "an unjust and unwarranted onslaught on the Freedom of the Press." The resolution went on to say :

This Union is of the opinion that the Bombay Legislative Assembly ab initio violated Article 211 of the Constitution of India which prohibits a discussion on the conduct of a High Court Judge in the discharge of his duties except as provided for under Article 121 of the Constitution and the "Times of India" was within its rights in criticising the legislature, which exceeded

its rights and thereby invited criticism of its own conduct. -

COMMENTS

Separation of Revenue and Judicial Powers IN BOMBAY STATE

The reform of depriving revenue officers of the judicial powers which they possess under the existing system was inaugurated in the whole of the Bombay State on 1st July. This reform which is basic to the Rule of Law which democracy implies has been carried out in certain tracts in States like Madras, Uttar Pradesh and Bihar, but Bombay is the first State in which it will now be carried out in all the areas under its jurisdiction. What will now happen is that there will be two types of magistrates, executive and judicial, and the former will discharge only executive functions, while the latter will be entrusted with the power of discharging judicial functions. This separation of the two functions is required in order to ensure that criminal justice shall not suffer in independence and impartiality by reason of the administrative subordination of revenue officers to the executive government. Because the judicial magistrates who alone will dispose of criminal cases hereafter will be under the control of the high courts, there cannot be any longer any suspicion of judgments in criminal matters being influenced by extraneous considerations.

This was a reform long over-due, and we congratulate the Bombay Government in initiating it throughout the State. It is a matter of particular satisfaction that the lead in this direction is taken by a State where it was believed, as the Chief Minister himself said, that the Government "is not well inclined towards the judiciary," and was indeed trying to keep the high court under subordination. One hardly ever gets an opportunity for saying a good thing of the Chief Minister, otherwise very competent and upright, in respect of civil liberty, and for that reason we have the greatest pleasure in giving him the high praise which is due to him for carrying out a reform which is at the foundation of all civil liberties.

The reform was being delayed so long because of the fear entertained that it would entail heavy expenditure, but the fear is groundless. For in the Bombay State the additional expenditure that the reform will involve is calculated at Rs. 15 lakhs annually. The Chief Minister rightly says that "the cost is negligible in securing for ever the confidence of the people that justice is not only done but also appears to be done." And the corresponding gain to the people even in terms of money must also be taken into account. The Chief Minister thus explained the point. "Practically every taluka where there is appreciable criminal work will now get a court presided over by a trained lawyer; and that by itself will considerably lessen the burden and cost to the people and eliminate law's delays."

Only in one respect will the combination of executive and judicial functions in revenue officers persist after the reform comes into operation. The so-called chapter proceedings taken under Chapter VIII of Cr. P. Code against persons in order to ensure good behaviour and proceedings relating to public nuisance will continue to be taken by revenue officers or executive magistrates. This is contrary to the recommendation of the committee presided over by Mr. Lokur, a retired high court judge, on the basis of whose recommendations the separation is now being effected. The

committee recognized that the taking of security from persons suspected of behaviour which was not according to law, being essentially a matter concerning law and order, should be entrusted in its initial stages to executive magistrates. They should initiate the steps preliminary to the holding of proceedings, but after having taken these initial steps, the executive magistrates should transfer the proceedings to judicial magistrates, who will then go into the question thoroughly, record such evidence as may be produced by both the parties and come to a final decision as to whether the taking of security was warranted or not. While chapter proceedings and similar other proceedings may be initiated by executive magistrates, they should be heard and finally decided by judicial magistrates. The Government has, however, invested executive magistrates with the power not only to initiate, but to hear and decide such proceedings. It seems to us that this is a blemish from which it would have been well if the Bombay Government's scheme had not suffered.

Legislative Privileges

AS AFFECTING FREEDOM OF THE PRESS

At its second annual conference held at Trivandrum, the Indian Federation of Working Journalists on 31st May passed a resolution concerning the privileges of legislatures in relation to the liberty of the press.

The resolution expressed concern over the "continued tendency on the part of legislatures in India to usurp to themselves, under the guise of protecting their privileges, powers they do not possess under the Constitution." The Federation reiterated the views expressed by it at the last session on this subject and stated that "the Parliament and the various State legislatures of India are not sovereign bodies and have no powers not expressly granted to them by the Constitution."

Though the privileges of "legislative bodies in India had been equated to the privileges of the House of Commons in the United Kingdom," the Federation pointed out that these privileges should be held to be subject to the other provisions of the Constitution and hence to the Fundamental Rights. While accepting the principle that legislatures should have certain privileges and means to safeguard them so that they might discharge their functions properly, the Federation emphasised that "the Press as the Fourth Estate and the watchdog of the public had also its own privileges and, more than that, its own duty to perform."

The Federation called upon Parliament and the legislatures of India to discharge the obligation cast on them under the Constitution and decide on their privileges instead of carrying on with provisions which were meant to be transitional.

On the subject of Government advertisements to be published in newspapers, the Federation insisted that while mere circulation figures could not be the sole criterion, there should be no element of patronage in placing advertisements. (Dr. Radhakrishnan Vice-President of India, expressed the same view recently in answer to a question put to him.) Among the criteria which should, in the Federation's opinion, guide the Government in this matter are: "bona fide, genuine and effective circulation and the area and class of people (which the advertisements are) intended to reach."

In its reply to the questionnaire issued by the Press Commission, the Federation has said: "As a rule, all

advertisements should be given to all newspapers and periodicals which satisfy conditions as regards size, quality and area of circulation." It also expressed the view in a resolution at the current session of the conference that "the system of press consultation" through advisory committees which has been in vogue since the outbreak of World War II was no longer necessary.

Press Act on Top of Ordinary Criminal Law

In the All-India Civil Liberties Council's statement on Rajaji's Press (Objectionable Matter) Act, 1951, the point was emphasized in para. 9 (vide p. ii:4 of the BULLETIN) that "the provisions of the special Press law now enacted are to come into operation on top of the provisions, both preventive and punitive, that already exist in the ordinary criminal law of the country."

This point is amply borne out in the judgment of Somasundaram J. of the Madras High Court in the appeal filed by the writer of an obscene book against his conviction under sec. 292 I. P. C. [A. I. R. 1953 Mad. 418]. It was urged on behalf of the appellant that he should have been proceeded against under the Press Act, 1951, rather than under the Penal Code. This plea was made apparently because under the Press Act he would have had the benefit of a jury. His Lordship, however, ruled that the Press Act does not in any way repeal any of the provisions of the Penal Code, which implies that proceedings could be taken as well under the Code as under the Act.

The judgment also gives support to another point made in the A. I. C. L. C.'s statement, viz., that Rajaji's Press Act is preventive in character like the Press (Emergency Powers) Act, 1931, which under colour of repealing it was re-enacted by the Act that followed twenty years afterwards. His Lordship says about Rajaji's Act: "Its object is to prevent and not to punish."

Detentions in Eastern Pakistan

The Congress organizations in Eastern and Western Pakistan have frequently to protest against the detentions without trial which the Pakistan Governments enforce against persons belonging to these organizations. This time Mr. Manoranjan Dhar, M. L. A., Secretary of the Pakistan National Congress, issued a statement appealing to the East Bengal Ministry to release immediately all security prisoners who have been detained in connection with the language movement of February of last year. He said that their release would be "a graceful response to the unmistakable and widespread public opinion." He was himself till recently a security prisoner, and speaking of himself and two of his colleagues, he said that there was no warrant for suspecting them "of complicity in subversive and secret prejudicial activities from the day of partition till the day of arrest" and no justification for their detention under an extra-judicial measure like the Public Safety Ordinance. He sought to strengthen his case by saying that he and his colleagues "had offered while in jail to face the verdict of any impartial tribunal or judicial body, but the Government had denied them this right."

We very much wish that the East Bengal Government would respond to this appeal. However, we cannot but say that such appeals on the part of the Pakistani Congress would have a better chance of success if the Indian Congress Governments were to follow the policy recommended in the appeal. How many detenus in Indian jails have not offered to establish their innocence in courts of law, but

they are always told that detention is intended not for the purpose of punishing a crime that has been accomplished but for that of preventing a crime that is in danger of being committed, and that for fulfilling this object an extra-judicial measure has to be enacted and employed. That persons should suffer deprivation of personal liberty because of their participation in a language movement seems fantastic, but is detention of persons supposed to be connected with blackmarketing any less fantastic? It is very unfortunate, but this policy of the Indian Congress gives an easy handle to the Pakistani Governments to say to the Pakistani Congress: "Hoist with your own petard!"

Guarantee of Sex Equality

A. I. W. C. TO TEST LAWS

Art. 15(1) of the Constitution which lays down that "the State shall not discriminate against any citizen on grounds only of . . . sex . . ." guarantees equal rights to women. But this equality of status is yet far from being realised in practice, particularly in matters of inheritance, rights of guardianship and adoption.

The All-India Women's Conference, which held a successful silver jubilee session in Poona in April last, has decided, writes a "Statesman" correspondent, "to discover exactly which particular laws conflict with the fundamental right of equality granted to women under the Constitution and then to make test cases of them in courts of law." He says:

For example, if a father dies and the property is divided amongst the brothers, leaving the sisters out, as is the practice at present under the Hindu Law, the A. I. W. C. would arrange for legal advice and if necessary even for expenses to go to court and claim an equal share. The outcome would of course be of national interest and would lead subsequently to agitation for the necessary reforms to give women equal rights in everything.

CORRESPONDENCE

"Detention of Goondas"

Sir,

Your editorials on preventive detention in general and your editorial on the detention of persons believed to be desperate criminals in particular (vide p. ii:257) perhaps do credit to your heart, but I cannot believe that they do credit to your intelligence, a modicum of which you may be supposed to possess. You know very well, or ought to know, that detention was resorted to in India in desperately critical conditions by a government known to be zealous for the protection of democratic rights. You will recognize, and you have the good sense to recognize, that, after having recourse to this exceptional method of government for some six or seven years, the Nehru Government is rapidly dropping its use. One hardly ever hears of Communists being detained latterly; those that were detained are being let out. The only fresh detentions that are now taking place are those of Jana Sangh and Hindu Mahasabha workers, and no one can deny that such extreme communalists are a great potential danger to the security of the country in its present delicate situation. I have no doubt that these detentions too

will stop soon and it may well be expected that the detention law itself will be repealed when the time comes a few months hence for a review of the necessity of maintaining it. I cannot find it in my heart to object to detentions, which have not been too many on the whole, if the deprivation of the liberty of a few suspects serves to preserve the security of the infant democracy in this land. Devotion to principles of civil liberties in the abstract may be good, but expediency too has a legitimate place in the governance of a country. You may take a lesson from the fact that even in the United States, which always swears by the fundamental rights of citizens, the McCarran Act had to be enacted for the purpose of controlling the underground activities of Communists. But your condemnation of even the alleged associates of Bhupat who is reputedly responsible for an orgy of blood-baths and lootings is the very limit in doctrinaire devotion to liberty. Will not sense ever dawn on you?—Yours, etc.,

A REALIST.

[Our correspondent's letter reflects the general sense of the politically-minded people in our country at present, but we must confess that it has not in the least shaken our convictions, whether with reference to the detention of goondas or that of Communists and communalists. We stand by the writings of Justices Brandeis and Murphy (concerning the detention of goondas) which we have cited, and we take the liberty of adding to those judicial pronouncements one more—of Judge Cuthbert Pound in the Gitlow case in the Supreme Court of New York. It was:

Although the defendant may be the worst of men, . . . the rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected. —People v. Gitlow, 234 N. Y. 132 (1922).

Nor have we any use for the detention, whether of Communists or communalists, in peace-time and we shall go on condemning it. No practical reason can justify it. It may well be that the Government will give up this weapon one day, when there is left no one to detain. But why does our correspondent think that the Detention Act will soon be repealed? When resort is made to detention because a person cannot be prosecuted for fear of disclosing evidence which cannot be revealed in the public interest, as will be seen from a paragraph headed "Prosecution Dropped and Detention Resorted to" in the "Habeas Corpus Petitions" section *supra*, the Detention Act will have to be on the statute book for all time. What was the Executive doing, one wonders, under the hated British regime when detention as now practised under a Republican Constitution was not thought of? Were criminals being let loose on the country in response to the rigid commands of the system of British jurisprudence? Our correspondent brings in the American McCarran Act, thinking apparently that reference to this would clinch the issue. We have dealt with this Act before (see p. 159 and 176), but we would like to deal with it at some greater length—and have done so in an earlier column in this issue—only because it gives us an opportunity of showing that, extremely reprehensible as the Act is, it is very much better than our Detention Act.—Ed.]