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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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BORDER-LINE OF FREE SPEECH

... Free speech this side of the line of clear and present danger of illegal acts. —*P. M. Malin* of the American Civil Liberties Union.

ARTICLES

A Word to our Patrons

This little magazine has now completed four years of its life and with this issue is entering on the fifth. It was started just when our Constitution was being hammered out with the object of propounding, to the extent of our very limited ability, what we may call the law of political and civil rights as it should be in a society based upon human dignity and the development of the individual personality. Our Constitution has enshrined those guarantees of individual rights and those restrictions on the exercise of government power which constitute the vital mechanisms of the democratic process and form, so to say, the ground rules of the democratic practice. These mechanisms and rules would have been shorn of much of their value if judicial review had not been provided, making the courts the final arbitrator between the rights of individual and government. These legal institutions of the greatest consequence having been set up, the promoters of the BULLETIN thought that it would be good service to the nation to discuss therein, for the benefit of the common people, questions as they arise from month to month concerning individual freedom.

How far we have in fact contributed to an understanding and proper appraisal of the basic values and fundamental principles underlying such problems, it is not for us to say. But we have in our humble way sought in the last four years to collect and place before our readers as full materials as we could concerning the most important of human rights, viz., (1) Security of the Person, (2) Freedom of Expression, and (3) the Right of Assembly, always keeping in mind, when dealing with these rights, the limits which the acknowledged power of the State to protect itself against internal and external threat necessarily imposes upon the individual's civil liberties in conflicts that often arise between freedom and authority. We can honestly claim that we have taken a same view of such conflicts and have entered a protest only when it appeared to us that human rights were being unduly narrowed or abrogated. But what we lay the greatest store on is not our appraisal of the situation so much as the large amount of material culled from various sources that has been made available in the columns of this paper to enable the readers to arrive at an independent judgment on the problems treated. But for such material ready to hand it would hardly have been possible for the All-India Civil Liberties Council, of whose views the BULLETIN is the spokesman, to brief Members of Parliament on the Preventive Detention Bill or to submit a memorandum on Freedom of the Press to the Press Commission.

This is but an introduction to the appeal that we now wish to make. The BULLETIN involves those who have made themselves responsible for it in an unbearably heavy financial loss. Those who write in it do so as labour of love : not a pie is charged to the paper on this account. Few will have an adequate idea of the immense amount of time and energy that has to be devoted to the bringing out of the paper—and this has to be done by men who have other public work to attend to. But even so, the mere printing and distribution of the journal entails a loss, which has so far been cheerfully borne by a few individuals. But this cannot in the nature of things be a permanent arrangement. The BULLETIN must at least be able to pay its way when all editorial charges are excluded from the accounts as they have been so far. For this purpose WE HAVE DECIDED FROM THIS ISSUE TO INCREASE ITS ANNUAL SUBSCRIPTION FROM RS. 3 TO RS. 5, INCLUDING POSTAGE. Even this increased price can by no means be regarded as excessive. During the last two years we gave our readers 312 pages of reading matter for Rs. 6. If the price is now raised for a monthly twelve-page issue to Rs. 5 annually, it will still be looked upon, we hope, as but a moderate price, considering the matter even from a purely commercial point of view.

We trust that our present subscribers will continue to take in the paper even at this increased charge. But this is not sufficient. We make an earnest appeal to all these subscribers each to give us one more subscriber or, in the absence of this, themselves to subscribe to one more copy for the use of any of their friends. Our patrons them-

selves are, taking the bulk of them, very poor, and we know that this additional burden will be too much for them. But unless they make up their minds somehow to shoulder it, the BULLETIN cannot live long. We wish it to live if only because we may through it be enabled to serve the cause we and they have so much at heart, and if even our collective efforts do not succeed in bringing enough money to meet the bare printing and postage charges, they may find one day that the paper has gone out of existence–very much to their grief and our grief.

Almost every democratic country has a bulletin like this, and Mr. Roger Baldwin, the greatest man alive to organise defence of civil liberties, has said about our BULLETIN that it "is the most complete coverage of national issues of any publication in the world specializing in civil rights.... Liberty lives only by the courageous and persistent efforts of its champions and defenders. The BULLETIN has that spirit, as well as fidelity to fact and principle, uncompromised by partisanship of any sort." This bit of self-advertisement may be excused because we have to ask for financial support!

Will you, *you* individually, do your bit and help in making it possible for the paper to live, so that a great cause will not be deprived of its only organ?

The Right to Travel

Amendment of Art. 19 (d) Urged

Asked on what principles, if any, passports were refused to persons desiring to travel abroad, Prime Minister Nehru said in the Council of States on 16th September that refusal of passports was not "done in the air." It depended not only on the persons, but the purposes for which they wanted to go abroad. Defining the grounds on which passports were refused, he said that the Government of India considered the issue of a passport to a person undesirable if they knew definitely that the person concerned was going abroad to do anti-national propaganda and to run down their country in foreign lands. He further said that the Government also considered it undesirable to issue passports when persons went abroad en masse at the expense of people in other countries. "It is most undesirable," he added, "for a country to encourage that kind of thing."

Commenting on Mr. Nehru's reply, the "Statesman" of Calcutta wrote as follows in its leader on 19th September:

An exceptional conjunction of news items is rather illuminating about conditions of life in our distressful epoch. A British Labour M. P. has referred, in no flattering manner, to the U. S. State Department's refusal to allow Mr. Paul Robeson to attend a miners' Eisteddfod in Great Britain, on the ground that he might run down his own country as contrasted with the political system of another. Mr. Nehru has simultaneously defended in Parliament refusal of passports, on very similar grounds, to political dissidents in India.

When India's Constitution was drawn up, among the fundamental rights was included one for citizens to travel without let or hindrance, in any part of Indian territory. During discussion of the draft Constitution at least one member of the Constituent Assembly audibly wondered whether freedom of internal travel for citizens should not be paralleled by equal freedom to depart from and return to Indian territory; but the point was, unfortunately, not pressed, and the citizen is now in this matter at the mercy of a not particularly sympathetic and often dilatory bureaucracy.

It would be harsh to blame the Indian Government especially, since all modern States seem implicated in a particularly arbitrary restriction of individual rights. Whereas before 1914 the traveller had to be persuaded to carry a passport, not as a duty but as a convenient means of identification, between the wars this became compulsory and since World War II the document has been plastered with visas. A stranger in a strange land is nowadays regarded with not merely the traditional suspicion of the peasantry but the more sophisticated disapproval of the police. He who seeks to abuse national hospitality, whether by espionage or by destitution, must be egregiously unaware that dossiers are maintained, informers hired, suspicions evaluated with grotesque elaboration in the chancelleries.

All this, however, applies primarily to foreigners whose movements, where necessary (or even casually deemed necessary), are watched by underpaid and not very reliable hirelings at the charge of non-votable and non-discussible budget heads. But what has it to do with citizens? Their motives for travelling, like their motives for remaining at home, may be reputable or disreputable; but why should they be submitted to arbitray restriction in the one case more than in the other? If the foreign country concerned refuses to admit them, that is its affair. But refusing exit on the ground that they might run the home country down was an argument put forward by Dr. Malan regarding Mr. Michael Scott, even when the U. N. was his destination. And, if it is a question of "running down," is not the arbitrary refusal of a passport often more damaging than anything its prospective bearer might otherwise have said?

There is at present some talk of amending the Constitution to provide for permanent controls of industry. Should an amendment Bill be introduced, there seems a distinct case for amending Article 19 (d) to provide, not merely for free movement within the territory of India, but for free exit and entrance for citizens. Foreigners are already amply controlled under several enactments. Among citizens, the financially irresponsible might conceivably require restraint by proof of means, lest they be a charge on friendly overseas States. Apart from this there seems no reasonable ground for denying a passport except reasonable suspicion of subversive intent in its use.

the registrants full opportunity to present their case. A hearing is held before a "hearing officer;" the conscientious objector is allowed to appear in person before the hearing officer, and, if he chooses, he may bring with him an advisor and witnesses to testify in his behalf. He is entitled to receive a summary of any "unfavourable" evidence developed by the Department of Justice in its pre-hearing investigation, so that he may be acquainted with the "general nature and character" of such evidence and be enabled to rebut it and establish the bona fide character of his claim for exemption. But the Department's report, if adverse, is meant only as advice, on the facts as it found them, to the appeal board. It takes no action which is decisive. The final decision is rendered independently by the appeal board, which is free to reject the Department's advice. The Department has been brought in by Congress into this matter only in order that a searching inquiry may be made of the claim for exemption and facts elicited which will enable the reviewing body which is the appeal board, to reach an informed judgment on the claim.

So far it will be admitted by all that the procedure laid down in the statute is fair. But it was contended by the respondents in the instant case that the procedure still violates due process of law inasmuch as it does not allow the registrants to see the FBI reports in extenso and to confront every informant who might have made adverse comment on them to the FBI. The trial court upheld the appeal board's decision that they were not entitled to exemption and convicted them of wilfully refusing to submit to the obligations imposed by the statute. The Court of Appeals, however, reversed their conviction, holding that the Department of Justice's failure to show them the FBI reports and to name all the informants on whose evidence the reports were based constituted denial of due process. The matter came before the Supreme Court on certiorari, and the question which the Court had to determine was whether the "hearing" provided for in the statute contemplated that the full FBI records should be made available to the claimants for exemption, that the names of informants should be supplied to them, and that they should be given an opportunity by cross-examination to refute, item by item, the objections urged in the investigative reports to their claims. The question indeed was whether Congress itended a full scale trial to be provided at then preliminary investigation.

The Supreme court, by a majority of 5 to 3, reversed the judgment of the Court of Appeals, holding that the requirements laid down in the Act in regard to the procedure in the pre-hearing inquiry are satisfied if the Department of Justice "accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer: when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a fair resumé of any adverse evidence in the investigator's report," and that the procedure is not violative of the Fifth Amendment. Justices Frankfurter, Douglas and Black dissented. They said:

> Considering the traditionally high respect that dissent, and particularly religious dissent, has enjoyed in our view of a free society, this Court ought not to reject a construction of congressional language which assures justice in cases where the sincerity of another's religious conviction is at stake and where prison may be the alternative to an abandonment of conscience. The enemy is not yet so near the gate that we should allow respect for traditions of fairness, which has heretofore prevailed in this country, to be overcome by military exigencies.

In a separate note Justices Douglas and Black launched an all-out attack against the whole practice of treating as secret the evidence collected by informers and basing executive orders or judicial decisions on such evidence. They said:

> The use of statements by informers who need not confront the person under investigation or accusation has such an infamous history that it should be rooted out from our procedure. A hearing at which these faceless people are allowed to present their whispered rumours and yet escape the test and torture of cross-examination is not a hearing in the Anglo-American sense. We should be done with the practice—whether the life of a man is at stake, or his reputation, or any matter touching upon his status or his rights. If FBI reports are disclosed in administrative or judicial proceedings, it may be that valuable underground sources will dry up. But that is not the choice. If the aim is to protect the underground of informers, the FBI report need not be used. If it is used, then fairness requires that the names of the accusers be disclosed. Without the identity of the informer the person investigated or accused stands helpless. The prejudices, the credibility, the passions, the perjury of the informer are never known. If they were exposed the whole charge might wither under the cross-examination.

The majority and minority judgments, howsoever they may differ from each other, still bring home one fact: the extreme care which is taken in the United States in enacting any law that its provisions do not conflict with due process. Even the majority of the Court decided in favour of the respondents in this case because they felt satisfied that the statute in question provided on the whole for due process inasmuch as it made provision for the production of witnesses and other ingredients of a fair hearing. The minority insisted, however, on all informants whose reports supplied the material for the preliminary investigation being identified and produced for cross-examination purposes. In our country, on the contrary scant regard is shown for due process of law, particularly while taking executive action against persons, the executive's discretion being unchallengeable.

OUSTING THE COURT'S JURISDICTION

Law Allowing Subjective Discretion Declared Invalid

The question of the right of the authorities to take action curtailing citizens' liberties without such action being called to account in a court of law arose in the Supreme Court recently.

Mr. Raghubir Sing, who owns an "istimrari estate" in the State of Ajmer, was declared, under sec. 112 of the Ajmer Tenancy and Land Records Act (No. 42 of 1950), to be "a landlord who is disqualified to manage his own property" because he "habitually infringes the rights of a tenant," and his property was taken under the superintendence of the Court of Wards, he being thereafter entitled only to receive such sums of money for his expenses as the Court of Wards decides in its discretion to allow, and the arrangement continuing indefinitely until the time that the Court of Wards chooses to withdraw its superintendence of his property.

When the matter came before the Supreme Court on a petition for a writ of mandamus praying for a direction being issued to the Court of Wards for restoration of the estate to Mr. Raghubir Sing, Mr. Justice Mahajan allowed the petition (15th May 1953) and directed the Court of Wards to restore the possession of his property to the petitioner. He held that "the provisions of sec. 112 of Act 42 of 1950 clearly abridge the fundamental right of the petitioner under Art. 19 (1) (f) [the right "to acquire, hold and dispose of property"] and are to that extent void." Dealing with the Attorney-General's contention that the question as to whether a certain landholder was a person who habitually infringed the rights of his tenants could be canvassed in a civil court, His Lordship said:

> Act 42 of 1950 has prescribed no machinery for the determination of the question whether a landlord is guilty of habitually infringing the rights of his tenants, and rightly so because sec. 112 of the Act is merely of a declaratory character and declares such a landlord as being under a disability and suffering from an infirmity. This declaration becomes operative and effective only when the Court of Wards in its discretion decides to assume superintendence of the property of such a proprietor.

For the Wards Regulation (No. 1 of 1888), under which the Court of Wards takes over properties for management, says in sec. 27:

> The exercise of any discretion conferred on the Court of Wards or the Chief Commissioner by this Regulation shall not be called in question in any civil court.

His Lordship continued:

> The result then is that by the subjective determination of the Court of Wards, both the questions whether a particular person habitually infringes the rights of his tenants and whether his property should be taken over by the Court of Wards stand settled and the landlord cannot have recourse to a civil court on these questions.

As to the contention of the Attorney-General that the provisions of sec. 112 amount to reasonable restrictions, saved by Art. 19 (5), on the exercise of the right conferred by Art. 19 (1) (f) of the Constitution on a citizen as being in the interests of the general public, His Lordship concluded that the argument was not sound, saying:

> The provisions of sec. 112 of Act 42 of 1950 are penal in nature and are intended by way of punishment of a landlord who habitually infringes the rights of his tenants. He is punished by being placed at the mercy of the Court of Wards and by being made subject to the stringent provisions of Regulation 1 of 1888. An enactment which prescribes a punishment or penalty for bad behaviour or misconduct of a landlord cannot possibly be regarded as a restriction on a fundamental right. Indeed punishment is not a restriction. . . . It is still more difficult to regard such a provision as a reasonable restriction on the fundamental right. When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the subjective determination of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil court. Sec. 112 of Act 42 of 1950 cannot therefore be held valid as coming within the scope of Art. 19 (5) of the Constitution.

HABEAS CORPUS PETITION

Detention Act's Use Unjustified

NO RELEVANCY TO MAINTENANCE OF ORDER

Mr. Sukhdev Singh Sodhi, former sessions judge of Pepsu and his two relatives were detained on 1st September on orders issued by the Chief Secretary of Pepsu under the Preventive Detention Act, Mr. Sukhdev Singh for having anonymously published two pamphlets containing derogatory remarks about the Chief Justice of Pepsu and his relatives for having helped in the publication and distribution of the pamphlets.

The legality of the detention of these persons was challenged before a division bench of the Supreme Court mainly on the ground that the charges brought against them had absolutely no relation to the maintenance of public order. Mr. H. J. Umrigar, who appeared for them, argued that even if it was admitted that Mr. Sukhdev Singh was the author of the two pamphlets in qusstion, at the worst, he could be charged with contempt of court and libel, and the use of the powers conferred on the executive by the Preventive Detention Act was illegal.

Mr. M. C. Setalvad, Attorney-General of India, who appeared on behalf of the State Government, argued that, in the context of the disturbed conditions in the State the executive was justified in coming to the conclusion

least resistance and without applying his mind to the matter on which the statute required him to form a judgment, acquiesced in it. It will be noticed that the order in question was not issued in respect of or in relation to any intended assembly or procession. The duration of the order was for an *arbitrary period of one year*. The order applied not merely to any person or class of persons, as required by sub-sec. (2) but to the members of the public in general also. The order ignored the fact that in respect of assemblies it is only assemblies in public roads, streets or thoroughfares that can be dealt with under s. 30 (2).

II.—UNDER SEC. 144. CRIMINAL PROCEDURE CODE

An interesting case concerning the application of sec. 144 of the Criminal Procedure Code, which authorizes police officials to issue prohibitory orders, in cases of apprehended danger in the form of "a disturbance of the public tranquillity, or a riot, or an affray," was decided on 21st September in the court of the City Magistrate, Poona.

In this case one Mr. N. B. Kakade was prosecuted for contravention of an order passed under this section prohibiting him from installing Ganpati in a certain place. In this very place Ganpati and taboots were being installed for some years, the former by Mr. Kakade and the latter by Mr. Mohammed Ladji. But because this year these Hindu and Muslim celebrations came at about the same time, Mr. Kakade took the precaution to write to the district magistrate about it a month in advance. The latter then ordered that the police make inquiries about the situation in that place and make a report. The police, however, took a long time in making inquiries and they submitted a report only four days before the celebrations were to start. Mr. Ladji stated that he had no intention to instal tabobts this year, and Mr. Kakade said that he had no objection if they were installed by the side of the Ganpati, as was being done in several places in the city. But the police wanted to have an assurance from both Hindus and Muslims of the locality that the celebrations might take place in this manner. However, such an assurance was not forthcoming in writing from the Muslims and the police therefore reported that sec. 144 should be applied forbidding both Hindu and Muslim celebrations in that place. Relying on this report, the additional district magistrate issued an order under the section prohibiting installations within a radius of 60 feet from the place in dispute. Mr. Kakade, however, defied the order and installed Ganpati within the forbidden area, his plea for contravention of the order being that the order was in the circumstances illegal.

The City Magistrate held that the order was made bona fide. He said: "It is apparent from the record that the authorities wanted both sides to live in peace and amity and tried their best (to persuade the two communities to reach an amicable settlement), but they did not succeed. Hence as a last resort this order was promulgated." In regard to the validity of the order, the prosecution argued: "It is not open to the Court trying an accused person for disobedience of an order under sec. 144 to decide whether he would have passed such an order in the circumstances of the case. He has to take the order as a good and valid order unless it is shown that the order was a nullity by reason of the fact that the magistrate had no jurisdiction or by reason of some other similar circumstance. He is not to superimpose his view of the propriety of the order." In urging this point of view, the prosecution cited Mr. V. G. Deshpande's case referred to at p. ii:308 of the BULLETIN, in which the Allahabad High Court flatly stated that "The question whether there was apprehension of the breach of the peace must be left to the magistrate. Unless the order passed by a magistrate is on the face of it absurd or is mala fide, there is no reason for the Court to interfere."

The City Magistrate accepted the contention that the Court should not superimpose its view as to the propriety of the order, but refused to accept the prosecution's contention that if the order is not mala fide and is intended to ensure law and order, the Court is precluded from considering its validity. He said:

> I think this view is not correct. It is no doubt true that the order is bona fide made and is not absurd on the face of it. Still it does not preclude the opposite party from proving that the order suffers from so many infirmities that it cannot stand in law. ... Therefore the test to be laid down is whether the order satisfies the requirements of the section. It must be borne in mind that "the power conferred by this section is a descretionary one and, being large and extraordinary, it should be used sparingly and only where all the conditions prescribed are strictly fulfilled."

And, proceeding to consider the requirements, he found that they were not complied with in the present case.

Among the reasons given two are most prominent. The first is that police reports did not indicate that a disturbance of peace was apprehanded by the authorities, though "sec. 144, Cr. P. C., contemplates immediate prevention of a riot, breach of the public peace or possibility or likelihood thereof." Sub-inspector of police Koklekar made a report on 20th September, and the City Magistrate, referring to it, says: "It is significant that the ... report does not state anything about the breach of peace or any apprehension thereof." And again: "This report is silent on the possibility of riot or violence. It suggests nothing." Later the matter was handled by police inspector Kulkarni. He merely said in his final report, in which he recommended action under sec. 144, that because the two communities did not agree among themselves, "perhaps an indecent act may take place" if

one or both communities were allowed to instal. About this report the City Magistrate said :

> Even the police inspector's report does not suggest that there was likelihood of immediate breach of peace and hence action be taken. The possibility suggested by him appears to be remote.

Mr. Kakade broke the order and installed Ganpati. The installation was watched by 300 Hindu spectators. The police admitted that Muslims stayed in their houses on this occasion and " there was nothing to suggest, " said the City Magistrate, " that this worship on the part of the accused tended to cause breach of the peace."

Another reason given was that the order was to remain in operation for four days after the day of immersion of taboots. It was contended on behalf of the defence that even if there was any justification for preventing both Hindu and Muslim festivals during the period when they synchronised, there would be no justification for prevention of the Hindu festival after the Muslim festival was over, for there could be no communal altercation then. Thus " the entire basis for passing the order was not an emergency but something else." Referring to this, the City Magistrate said : " This contention of the defence gathers some force because of the reply given by the additional district magistrate for keeping the order alive after the necessity was over." For the additional district magistrate had frankly put it that " if the order was vacated on the 19th (September, the day on which taboots were immersed), the other community would have felt that partiality was shown to the other side." This showed that not breach of the peace, but " something else " motivated the additional district magistrate in enforcing the order after the 19th, if not in issuing it at all.

Again, notice was not given to the parties as contemplated by sub-sec. (2) of sec. 144, and the prosecution contended that notice was not necessary since the order, though served on two individuals, one a Hindu and the other a Muslim, was intended to apply to the general public. On this the City Magistrate observed :

> I think that notice was absolutely essential, and the additional district magistrate ought to have called on the two persons to show cause. The excuse that there was no time is not strong as the police had ample time to make their report and their delay is not easily uuderstandable.

Thus the City Magistrate came to the conclusion that " the order suffers from many defects, " and that it cannot be sustained in law. He held the accused not guilty and acquitted him.

VOTING RIGHTS IN SOUTH AFRICA

DR. MALAN'S NEW MOVE

When the Nationalist Government of South Africa found that the courts would not uphold the validity of a measure for removing the coloured voters from the common roll passed by a simple majority in Parliament, it hit upon the plan of achieving the same object by deleting the entrenched clause in the Constitution in respect of voting rights by a two-thirds majority. For this purpose the Prime Minister, Dr. Malan, brought forward the South Africa Amendment Bill before a joint session of Parliament on 14th July last.

The bill sought to amend sec. 152 of the South Africa Act, which is the section which gives special protection to certain rights by " entrenching " them, as the phrase goes in South Africa, and to remove from its scope sec. 35 dealing with the entrenchment of the franchise of non-Europeans. Sec. 35 provides that no law disqualifying any person in the Cape Province from the vote by reason of his race or colour only shall be valid " unless the bill be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses." Sec. 137, which provides that language equality shall be the law of the Union, that is to say, that English and Afrikaans shall be both recognised as official languages, still remained within the scope of the guarantee of sec. 152, viz., that no change could be made in that position unless it was sanctioned at a joint session of Parliament by a two-thirds majority of the total membership. The bill also sought to repeal sec. 35 and to validate—that was the pith of the bill—the Separate Representation of Voters Act (removing the coloured population of Cape Province from the common electoral roll), which was passed by Parliament by a simple majority in 1951 and which was declared invalid on that account by the Appeal Court, vide p. ii:95 of the BULLETIN.

It was a shrewd tactical manoeuvre on the part of Dr. Malan to limit the constitutional amendment of sec. 152 of the Constitution to one of the two entrenched clauses, viz., that respecting the franchise rights of non-Europeans, and to retain the other entrenched clause which practically ensured that the South African whites would for ever remain a bilingual people. When the 1951 Act was passed in disregard of the requirements of sec. 152, the English-speaking people of Natal in particular, who belong mostly to the United Party, naturally feared that their language right would similarly be taken away by the party in power. Dr. Malan felt, not altogether without reason, that the opposition offered by the United Party to put the coloured population into a separate racial group in respect of voting was due, not so

much to its concern for the coloured people as to its concern for what would happen next to the English-speaking whites in regard to their language right. This fear Dr. Malan sought to dispel by desisting from laying hands upon the entrenching section as a whole, but only on a part of it, so that the English-speaking people would be indirectly assured of their cherished language right, and he hoped that this would secure the co-operation of the Opposition in depriving the coloured population of their vested right of voting jointly with Europeans. And he was nearly right in his calculation. For quite a large number of the members of the United Party, being satisfied, in the first place, about the sanctity of the Constitution inasmuch as the Government was now applying the proper procedure to the repeal of sec. 35, and, in the second place, about the right to language equality being preserved, were willing to cross the floor and vote for the constitutional amendment bill, because they too are at bottom almost as keen defenders of the principle of white supremacy as the Nationalists themselves. The consideration of the bill was adjourned for long periods in order to strike a bargain with the United Party, but ultimately it was found that no agreement could be reached, and when the bill came for a third reading before a joint sitting of Parliament on 16th September the United Party, bound by a mandate to vote against the bill, helped in defeating it. The required two-thirds majority fell short by 16 votes.

It was well for the good name of South Africa that the proposed constitutional amendment was not made. For even if the Nationalist Party could be relied upon not to interfere with the right to language equality, it would have been a most serious thing to deprive the coloured population of its voting right. This right dates back to 1853, for in that year a non-racial franchise was introduced in the Cape. A civilization test was then applied without any discrimination of colour. At Union, in 1909, the non-Europeans were deprived of the right to sit in Parliament, a right which they had never exercised. But in Cape Province they retained the franchise along with the Europeans. To deprive them of this century-old right in the supposed interest of preservation of white domination is really to take away from a section of people a fundamental guarantee in a multi-national State. All that they were offered in the bill as a quid pro quo for the deprivation was a representation of them by four European in a House of 159. Under the bill the coloured people on doubt retained their franchise, though they were required to exercise it in an electorate of their own, but it offered no guarantee that they would not in future be deprived of their vote altogether by a bare majority at the whim of the Government, for even the right of the coloured to vote separately, which was all that they would now retain, was not entrenched in the present bill requiring a two-thirds majority to take it away.

For the moment therefore the coloured population has been saved from the ignominy of an inferior citizenship. But it is doubtful how long this will last. For Dr. Malan made it clear at the outset that if the move to repeal sec. 35 by a two-thirds majority failed, "other steps will follow because we have to act in accordance with the mandate received from the electorate at the general election," and he repeated this at the third reading. It must be said that he is true to his words. For, almost immediately after the rejection of the bill, the Minister of Justice introduced a bill in Parliament. The first reading was passed the same day against the opposition of the United Party. The bill provides that the South African Appeal Court (which ruled invalid his measure to remove the coloured population of Cape Province from the common electoral roll) be divided into two sections, constitutional on the one hand and civil and criminal on the other, each of the sections hearing appeals only under its sectional jurisdiction. The bill provides that the Court of Civil and Criminal Appeal shall consist of the Chief Justice and as many judges of appeal as the Governor-General may from time to time determine. The Court of Constitutional Appeal is to consist of a President and four judges of constitutional appeal, nominated by the Governor-General either in addition to or in the place of judges already in office. There is to be no appeal from any judgment or order given by this court, which will be a court of final instance in regard to questions affecting the validity of existing legislation. The implication is that members of the constitutional section of the Appeal Court would be "carefully selected." This measure, it is believed by the Government, will not be invalidated, as the Parliament of South Africa Act (which substituted Parliament for the Appeal Court on constitutional questions) was, because under the new measure the Appeal Court would retain its judicial functions and therefore this measure would be perfectly constitutional. If it is the intention of the Nationalist Government to obtain from a packed Court of Constitutional Appeal a ruling that the right of Cape coloured voters to a joint electorate with Europeans could be overridden, despite the entrenched clause in the Constitution concerning it, by legislation passed by a simple majority, he is doing the greatest disservice to South Africa. For that country, whatever be the spirit of racism that is rampant there, is noted for its independent judiciary, and if this independence is now to be tampered with for party purposes, it would indeed be a bad day for the Union.

Luckily, however, the Malan Government has had second thoughts on the subject. It has decided to withdraw this bill (though it has not yet done so) for the division of the Appeal Court, involving as it did the packing of the constitutional wing thereof. It introduced instead in a joint session of Parliament, on 2nd October, a bill similar to that passed in 1951

to separate coloured voters from whites and give them limited group representation in Parliament. It is the hope of the Government that some of the United Party members who were coerced by the threat of party discipline into voting against the constitutional amendment bill would definitively secede from the party and vote for this new measure, thus giving thereto the requisite two-thirds majority. The bill will be further considered in Parliament in January next year

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It may be asked what can be Dr. Malan's motive in persisting so doggedly in doing a wrong to the coloured people who number about a million. Even his idea of white supremacy should not lead him to deal harshly with such a small population as it leads him to deal harshly with the natives who number 2½ times as many in the Cape. Moreover, the coloured people are the off-spring of the whites themselves, bone of their bone and flesh of their flesh. They are mostly urbanized; they live like Europeans, eat and dress like them; they speak the language of the whites, worship their God, and know only their culture. They are in fact but part of European society. Why should Dr. Malan insist on treating them like "God's step-children," as Mrs. Gertrude Millin has aptly called them? The reason is that this one-million population produces an electorate of nearly 50,000, almost every male child satisfying the required education test (in the Cape the coloured children at school outnumber the European children by 23,000), and it is feared that as years pass the proportion of coloured voters will rise and that of white voters will fall. As the Minister of Transport said, while at present European and coloured voters are 10 to 1, twenty years hence they will perhaps be 5½ to 4½. Already in certain constituencies the coloured voters hold the balance of power, and they vote for the British United Party far oftener than for the Africaner Nationalist Party. The United Party in their belief truly represents the British tradition of the abolition of slavery. Thus in the end it amounts to this, that for narrow party purposes Dr. Malan is doing a grave wrong to a well-deserving people and outraging the Constitution into the bargain, if he be unable to attain his object by constitutional means.

IMPORTANCE OF DUE PROCESS OF LAW
BEING PROVIDED AT EVERY STAGE IN LEGAL PROCEEDINGS

A case came recently before the Supreme Court of the United States, illustrating the great importance that is attached in that country to providing due process of law in its fulness at every stage in any proceeding which lays a legal obligation on a person and penalises him for not discharging it. This is *United States* v. *Nugent*, which was decided on 8th June 1953. It affects two conscientious objectors who, though physically fit and of the required age, refused to undergo military training and be inducted into the armed forces for military service under the Selective Service Act, on the ground that they were conscientiously opposed to participation in war in any form.

Congress, realizing the urgent need for mobilising all the available man-power of the nation for emergency purposes, enacted this law in 1940 under the war power granted it by the Constitution and has since re-enacted the law several times. The Act, while imposing a common obligation of defending the country on all young men, has taken care to absolve from compulsory military training and service all those who have have religious scruples against war. Such exemption necessarily involves careful screening, limiting it to those who cannot honestly reconcile participation in the defence effort with their religious beliefs, for without this kind of screening the exemptions would be availed of even by men whose beliefs as regards participation in war were not a matter of sincere conviction, thus imperilling the security of the nation. Profiting from the experience of the First World War, Congress has now developed a special procedure by means of which it can marshal all the nation's man-power and yet secure the rights of conscience.

The statute, re-enacted in 1948, thus provides for exemption, from both combatant and non-combatant training and service, of all who have conscientious objections to any military training or service. Any one claiming such exemption is placed before a local draft board composed of independent civilians in that area (the military personnel is excluded because of a possible bias on their part for military service). The board examines the claim of persons who have to register under the statute from the point of view of the depth and sincerity of their convictions. If the local board consisting of representatives of the registrant's own community sustains the claim, there is an end of the affair. But if the board denies the claim and the registrant feels aggrieved, he can go to an appeal board similarly composed of civilians. This appellate board is required to refer the appeal to the Department of Justice, whose function it is, after proper inquiry, to make a recommendation to the appeal board, which may or may not follow the Department's recommendation in reviewing the local board's decision. The Department usually uses the FBI, corresponding to our CID, to investigate each registrant's background and reputation for sincerity. Conscientious objectors are called upon to demonstrate the genuineness of their claim by pointing to past examples, referring to character witnesses and recounting the background of their training and beliefs. The Department conducts its investigation after giving

THE RIGHT OF ASSEMBLY

I.—UNDER SEC. 30 OF THE INDIAN POLICE ACT

An important point of law as to the scope of the power conferred by sec. 30 of the Indian Police Act, 1861, to control public meetings was decided by the Madras High Court on 9th April last.

Mr. K. G. Sivaswamy, Organizing Secretary of the All-India Civil Liberties Council, and Mr. V. Pooniah convened on 19th March 1951 a public meeting under the auspices of the Socialist party on the Gandhi Maidan in Koilpatti Town. They had taken out no license to hold the meeting as required by an order issued by the assistant superintendent of police under sec. 30 of the Police Act. As they were about to address the meeting, the inspector of police served them with a copy of the order and asked them not to proceed with the meeting as a license had not been obtained. In disregard of this they attempted to carry on the meeting, whereupon they were arrested and prosecuted for violation of the order. The sub-magistrate of Koilpatti, before whom they were placed for trial, acquitted both of them on 13th May 1951. The Government of Madras filed an appeal against the order of aquittal. The case came up for hearing in the first instance before Somasundaram J., but he referred it to a bench as in his opinion "it involved an important question of law." And the case was finally decided by Balakrishna Ayyar and Chandra Reddy JJ.

It may first be stated how the assistant superintendent of police came to issue the order. He reported to the executive sub-divisioual magistrate of the area that serious disputes existed between two groups of workers in a local mill and that on account of the "explosive possibilities" of the situation it was in his opinion necessary to apply sec. 30 of the Police Act within the limits of Koilpatti Town and Panchayat Board for one year prohibiting meetings and processions in that area during this interval. The executive first class magistrate accepted the suggestion. Thereupon the assistant superintendent of police passed on order upon 21 office-bearers of the two factions of workers and upon "*the members of the public in general* who intend to convene and collect assemblies, organize and conduct processions and the like, to apply for a license" for such meeting, etc., under sec. 30 of the Police Act *for a period of one year*. The order stated that disobedience of the order would render persons liable for punishment (as provided in sec. 32).

Messrs. Sivaswamy and Pooniah challenged the validity of this order on the ground that it did not come within the purview of sec. 30 of the Act, as none of the ingredients necessary to constitute an offence under sec. 32 was present in the case. Sub-sec. (1) of sec. 30 gives power to regulate of assemblies and processions "on the public roads or in the public streets or throughfares" and "to prescribe the routes by which and the times at which such processions may pass." Sub-sec. (2) gives power to require a person convening an assembly or promoting a procession "in such a road, street or thoroughfare" to apply for a license, provided that such assembly or procession, "in the judgment of the magistrate of the district or of a sub-division of a district, if uncontrolled, be likely to cause a breach of the peace." Sub-sec. (3) gives power, in issuing a license, to lay down conditions which have to be conformed to by the licensee.

Accepting the argument of Mr. Sivaswamy, the sub-magistrate ruled that "sec. 30 of the Indian Police Act neither in letter nor in spirit confers a right on the assistant superintendent of police to control or regulate assemblies and processions in public places other than roads, streets or thoroughfares, and the order, being applicable to public places in general, is ultra vires of his powers and hence illegal." The sub-magistrate referred for corroboration to the speech of Sir Antony Macdonnell on the Police Amendment Act, which substituted the present sub-sec. (2) of sec. 30 for the original section. He said:

> That it was not the intention of the legislature to make it so wide as to include all public places in general, is amply clear from a speech of the Hon'ble Sir Antony Macdonnell in the Imperial Legislative Council during the debate on the Select Committee's report on the Police (Amendment) Act (8 of 1895). Mr. Sivaswamy has drawn my attention to the aforesaid speech which is found at pages 216 and 217 of the Indian Police Act edited and published by Mr. P. Hari Rao in 1927. The present sec. 30 of the I. P. Act was substituted for the original section by the Police (Amendment) Act (8 of 1895). Sub-section 1 of the original section was word for word the same as the present sub-section 1 of s. 30. The amending bill of 1895 contained the word "place not being a private house or place of worship." Sir Antony Macdonnell, the member in charge of the bill, was apprehensive that the section in that form might be interpreted to restrict the right of public meeting, and he hastened to move an amendment, namely, that the words "place not being a private house or place of worship" should be omitted and that the words "such road, street or thoroughfare" be substituted for them The amendment was passed. Sir Antony has emphasised in the speech that the assemblies and processions with which Ss. 30, 31 and 32 deals can only be assemblies and processions in public roads and thoroughfares. The aims and spirit of the legislation cannot be conveyed in better language than this.

The High Court upheld this judgment of the trying magistrate and ruled that the Gandhi Maidan was not a public road or a public street or a thoroughfare, the

essential idea of which is " the right of the public to pass and re-pass over it. "

Nor can the order of the assistant superintendent of police be addressed (the sub-magistrate held) to " members of the public in general, " which means in effect to every citizen of Koilpatti. The magistrate said :

> To my mind it seems that it was not the intention of the legislature to confer on the A. S. P. a power to impose a ban or restriction on the public as a whole. The language of s. 30 (2) does not warrant a construction to that effect. S. 144 Cr. P. C. may be looked into as a matter of contrast. That section expressly provides (in clause 3) that an order thereunder may be directed to a particular individual or to the public in general. The powers under that section, it is worth remembering, are exercisable only by a magistrate, and except in cases of emergency, the order is required to be passed only after due notice to the parties concerned. An opportunity is also afforded to the affected parties to question the reasonableness of that order It seems to me that the legislature which has placed so many safeguards even in respect of an order of a magistrate, who is a judicial officer and whose order, has to stand the test of legal canons, would not have intended to give the A. S. P., who is purely an executive officer, a wider power. At any rate, as already stated, the language of s. 30 (2) is not wide enough to empower him to issue an order to the public generally as he has done in this case.

The sub-magistrate also held the order illegal for the reason that it " puts a ban on all assemblies and processions for a period of one year from 15th March 1951. It is thus very much in the nature of a standing order and not an order with reference to an 'occasion," as required by the provisions of sec. 30. He said:

> This sub-section [sub-sec. (2)] requires *firstly* that the magistrate should be satisfied that the meeting or procession of the kind in question requires to be controlled, and *secondly* that the A. S. P. should be satisfied that any person or class of persons intend to convene an assembly or to form a procession. Both these ingredients must exist together before an order under this section can be issued. In this case it is difficult to hold that these ingredients and particularly the second one are fulfilled. The satisfaction that is contemplated by the section on the part of the Dt. Magistrate and the Superintendent of Police is a satisfaction with reference to an assembly or procession that is intended to be convened. That is to say, the satisfaction must be in respect of a meeting or procession that is in the offing, and not all meetings or processions that might arise at a distant future. The language of the section makes it perfectly clear that the police have to deal with each case as it arises and that the Dt. Magistrate has to exercise his judgment on each occasion. This was the view which was taken of s. 30 in the Patna High Court in the case of Emperor *v.* Shama Kandu (20 Cri. L. J. p. 213). It was held by Jwala Prasad J. in that case that there must be notice, special or general, on each occasion on which an intended assembly or assemblies are sought to be controlled. Thus the satisfaction and the notice concomitant to such satisfaction have to be with reference to a specific occasion in present. A satisfaction that does not fulfil this requirement cannot be deemed to be a proper satisfaction within the meaning of s. 30, and an order, like the present one, which is based on such insufficient satisfaction cannot be legal and enforceable.

The sub-magistrate also referred to the fact, by way of contrast, that even the order of a magistrate under sec. 114, Cr. P. C., can have force only for two months, and, he concluded, " it is inconceivable that an executive order under sec. 30, I. P. Act, can be issued for a year.

Again, the magistrate made the point that even if the order were valid and enforceable the assistant inspector of police had no power under sec. 30 to stop the meeting as he did. In support of this conclusion he cited Emperor *v.* Abdul Hamid, 23 Cri. L. J. 625, in which Mr. Justice Das of the Patna High Court observed in a case relating to a procession that " the order under sec. 30 could be executed only by proceeding against the persons opposing or not obeying such orders," and that while sec. 30 A gives power to the police to stop a procession and order it to disperse, sec. 30 does not do so. He also cited Sitaram *v.* Emperor, 27 Cri. L. J. 522, in which Their Lordships of the Patna High Court observed that " the power to control (a meeting) does not include the power to forbid. "

The Madras High Court endorsed all these conclusions of the sub-magistrate. Mr. Justice Balakrishna Ayyar held that the order in question was " bad in every way. " He said :

> The superintendent did not inform the sub-divisional magistrate that any person or class of persons intended to collect any assembly or assemblies or take out any procession or processions ; and he could not have done so because he himself does not appear to have had such information. In his letter he merely stated that he considered the situation " full of explosive possibilities, " that it was necessary to regulate the conduct of meetings and processions and that he proposed to apply s. 30 for one year and invited the concurrence of the magistrate. The order of the magistrate does not show, nor does it otherwise appear, that he applied his mind to the possibility of any assembly or procession being likely to cause a breach of the peace : in the context he could not have possibly done that. In effect the assistant superintendent told the magistrate that he intended doing a certain thing and the magistrate, adopting the line of

that if the detenus were allowed to be free to publish pamphlets of this nature public order would be disturbed.

The Supreme Court on 29th September held the detention order illegal and ordered the immediate release of the detenus. Mr. Justice Mookherjea, who delivered the judgment of the Court, said :

> It has been held by this court that the propriety or reasonableness of the satisfaction of the Central or the State Government, upon which an order for detention under section 3 of the Preventive Detention Act is based, cannot be raised in this court and we cannot be invited to undertake an investigation into the sufficiency of the matters upon which such satisfaction purports to be grounded. We can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of objects prejudicial to the defence of India or to the security of the State and maintenance of law and order in it.
>
> The publication or distribution of these pamphlets could not have any rational connexion with the maintenance of law and order in the State or prevention of acts leading to disorder or disturbance of public tranquillity.
>
> It is true that the pamphlets are couched in the most filthy and abusive language and amount to a vitriolic attack upon the character and integrity of the present Chief Justice of Pepsu. He is accused, inter alia of gross partiality and communal bias in recruiting officers for judicial posts and also in deciding cases between litigants. Whatever other remedies are that might be open to the aggrieved party or to the Government to prevent such scurrilous attacks upon the head of the Judiciary in the State, we do not think that the provisions of the Preventive Detention Act could be made use of for that purpose.
>
> The utmost that can be said is that the allegations in the pamphlets are calculated to undermine the confidence of the people in the proper administration of justice in the State. But it is too remote a thing to say, therefore, that the security of the State or the maintenance of law and order in it would be endangered thereby. After all, we must judge facts by the ordinary standards of common sense and probability and it is no answer to say that strange and unexpected things do happen in this world.

COMMENTS

The Government of India's Responsibility

FOR DETENTIONS IN KASHMIR

The policies of the new Government of Kashmir formed by Bakshi Ghulam Mohammed received a resounding endorsement at the hands of a numerously attended convention of the Kashmir National Conference in mid-September. The convention passed a vote of confidence in the Bakshi Government (and so did the State's Legislative Assembly on 5th October) and said that the dismissal of Sheikh Abdullah was "inevitable in the interests of the country and of the national movement." It rejected the idea of " independent Kashmir and said that some leaders of the National Conference (Sheikh Abdullah and others) who supported it failed to pursue a correct policy inasmuch as they ignored the " explosive possibilities " of such a plan. It emphatically rejected Kashmir's association with Pakistan and desired to secure " the powerful support of the Indian democratic forces " by means of accession. But it also with equal emphasis favoured the limitation of Kashmir's accession to India to the three subjects of defence, foreign affairs, and communications, so that the people of the State would maintain full internal autonomy, and went so far as to declare that a merger with India would be resisted with all the forces at its command. In all these respects the convention echoed the sentiments which Bakshi Ghulam Mohammed had voiced on assuming the office of Premier.

Similarly the convention unanimously approved Bakshi Ghulam Mohammed's action in detaining Sheikh Abdullah, and in addressing the convention the Premier himself vigorously justified the detention. He said that Abdullah was a great friend of his, and as a friend he would sacrifice everything for him, but the country's interests demanded that they be separated as his political programme was dangerous for the country (he appears to be fond of calling Kashmir " a country," although it is at present but a Part B State of India). Sheikh Abdullah was therefore arrested and detained. The arrest was made for the sake of a principle, and Sheikh Abdullah would remain in prison as long as conditions in the country did not change. His release would be detrimental to the interests of the country, and except on medical grounds the question of his release did not arise. (His period of detention has been extended by two months more for the present.)

Bakshi Ghulam Mohammed defined in more precise terms what Sheikh Abdullah's political programme was at a meeting of the National Conference convention at Badgam on 2nd October. He said : " Sheikh Abdullah's independence move aimed at handing over the western part of Kashmir to Pakistan, Jammu and Ladakh to India, and carve out an independent Kashmir Valley ; and added that the Government " rose to the occasion and saved the country from ruination by rejecting the idea and foiling the conspiracy. " [He had been making before frequent references to " Anglo-American machinations " to which Sheikh Abdullah fell a victim (though, it must be said, Mr. Nehru, not only did not support this charge, but in express words discountenanced it). But on this occasion Bakshi Ghulam Mohammed went farther and attributed the original aggression on Kashmir by tribal hordes supported by Pakistan to such machinations. He said : Pakistan attacked Kashmir " at the instance of interested foreign powers to turn Kashmir into a war base not only against India but against Pakistan, the Middle East and the Far East, ", and he took credit to himself for countering this " game of the imperialists " by putting Sheikh Abdullah behind prison bars.]

Thus, if the deprivation of the personal liberty of anyone depended for its justification on the amount of popular support such deprivation commands, Sheikh Abdullah's detention would appear to be fully justified, though it is doubtful whether in the National Conference convention such a majority would have been obtained if Sheikh Abdullah was free to put forward his case. But the main thing is that civil liberties do not depend for their preservation upon the vote of a majority, in the legislature or elsewhere. They have to be preserved just because they affect fundamental human rights, which cannot be, or must

not be, taken away only because a certain body votes to take them away. Civil liberties are universal. As Dr. Malin of the American Civil Liberties Union put it recently, they are not civil liberties only "when we feel like it, but all the time," they are not civil liberties only "for our favourite persons or organizations or crusades, but for everybody." Bakshi Ghulam Mohammed said that Sheikh Abdullah was placed under detention for the sake of "a principle," but it is difficult to understand what this principle is, unless the principle be that any person could be deprived of his personal liberty if he is engaged in carrying on a propaganda which you consider to be detrimental to the preservation of order in the land. The principle that governs such matters on the contrary is that every government must maintain a proper balance between order and freedom, both of which are important, by putting up with risks and forbearing to interfere with freedom unless there is an imminent danger of such forbearance leading to disastrous results.

In respect of the policy followed by the Kashmir Government in this matter, the Government of India keep on saying that they bear no responsibility, either direct or indirect, for what happened in Kashmir. But in reality they cannot so easily absolve themselves of their share of it. That the major responsibility is the Government of India's became clear from what Mr. N. C. Chatterjee said in Parliament in connexion with the detention of the late Dr. Syama Prasad Mookerjee in Kashmir. Mr. Chatterjee pointed out that the then Premier of Kashmir had said, in referring to Dr. Mookerjee's death in detention, that he was going to release and send Dr. Mookerjee back to Delhi immediately after Mr. Nehru's return to India from abroad. This shows, as Mr. Chatterjee put it, "the Kashmir Government was acting as the jailor and custodian for the Government of India;" "that made the Government of India equally responsible and they could not shirk or shed that responsibility;" and that the Government of India could be charged with "conspiracy, complicity and co-ordination in manoeuvring the detention of Dr. Mookerjee." Either in respect of the detention of Dr. Mookerjee by Sheikh Abdullah or in respect of the detention of Sheikh Abdullah by Bakshi Ghulam Mohammed, the Government of India's acquiescence is, it appears to us, morally if not legally culpable.

Let us take a glance over the events that happened in Kashmir, before the recent shake-up. There were people in Kashmir who were advocating Kashmir's full accession to India as in the case of all other States, Hyderabad for instance, or as an alternative, for full accession of Jammu to India, and there were people in India who supported this agitation. Because the Government of India felt that this agitation would make Sheikh Abdullah (then Premier of Kashmir), who was already thinking in terms of independence of Kashmir, go over completely to that side, they began arresting supporters of the Jammu agitation in Delhi and the Punjab Government did so in the Punjab, and hundreds of persons found themselves in gaol. But this action did not restrain Sheikh Abdullah's plans, and therefore Bakshi Ghulam Mohammed in his turn put Sheikh Abdullah himself in prison. A Government which resorted to detentions before, in order to keep Sheikh Abdullah on the right track, cannot now shove off all responsibility for the latest detention. That they did not exert any influence on the Kashmir Government's policy —and no one can deny that the scope for exercising such influence was immense—is something which they have to answer for. Mere technicalities will not suffice.

Public Safety Act of Bihar

It is a pity that the Bihar Government has not seen fit, like the Governments of Uttar Pradesh and Orissa, to put an end to its Public Safety Act regime, under which it enjoys special discretionary power to restrict the movements of its citizens, etc. The present Act is due to expire about the end of this year, and the Legislative Assembly voted for its extension by two more years. The Revenue Member, Mr. Krishna Ballabh Sahay pleaded, as the main justification of its extension, the need that had arisen to protect mills, factories, plants and power houses from the hands of saboteurs and also the need to preserve amity in the agrarian field. He stated that there were many disruptors about preaching direct action, and there were people who fomented communal discord and whose mischievous activities could not be checked without invoking special powers, e. g., imposition of collective fines. He agreed that sec. 2 of the Act empowering the executive to extern and intern suspected persons was harsh, but said in extenuation that such action was taken only against four persons last year. Ordinary legal proceedings were not sufficient, in his opinion, against persons who had designs on industrial plants, because they might be released on bail and do the mischief again. In order to deal with such persons extraordinary measures were needed. In any case, he said, no law-abiding and peace-loving person need fear application of any of the special powers of the Act to him. The proposed extension of the Act was opposed by all non-Congress members, and the Socialist Party's opposition was most thorough-going. They contended that the situation in the State was normal; that is to say, it was such that it could be handled by recourse to normal law and that therefore there was no need for continuing to put the State under a state of siege law as it were. One member went in fact so far as to characterize the so-called Maintenance of Public Order Bill as the Maintenance of Congress Misrule Bill. But the Government, having a standing majority in the legislature, could carry the bill by 144 to 64 votes.

Legislative Privileges and the Press

Members of the standing committee of the All-India Newspaper Editors Conference met the Minister of Information and Broadcasting at New Delhi on 25th September and placed before him the general feeling of the profession that a conference should be called consisting of the Speaker of the House of the People, the Chairman of the Council of States and Speakers of State Assemblies at which representives of the press would place their point of view regarding the privileges claimed by the legislatures vis a vis publication of legislative proceedings in the press. The Minister promised to consider the suggestion.

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