

SWATANTRA PARTY

PUNJAB ENQUIRY COMMITTEE

Bharatiya Vidya Bhavan,
Chaupatty Road,
Bombay 7.

October 1, 1960.

The President,
Swatantra Party,
Nidubrolu.
(Andhra Pradesh)

Dear Shri President,

On behalf of the Committee, I have the pleasure of submitting our report of the Punjab Enquiry Committee appointed by the General Council on July 31, 1960, by its Resolution, copy of which is attached hereto.

Yours faithfully,

Sd/- K. M. MUNSHI

MEMBERS OF THE COMMITTEE

1. DR. K. M. MUNSHI, B.A., LL.B., DLITT., LL.D. *—Chairman*
2. SHRI. N. C. CHATTERJEE,
Senior Advocate. Supreme Court. *—Member*
3. SARDAR KARTAR SINGH CAMPBELLPURI,
Retired High Court Judge of Pepsu. *—Member*
4. SHRI C. B. AGARWALA,
Retired Judge, Allahabad High Court and Senior
Advocate, Supreme Court. *—Member*

Copy of Resolution adopted at the open Session of the General Council of the Swatantra Party held in Bombay on July 31, 1960.

REPRESSION IN THE PUNJAB:

While the Swatantra Party has refrained from being involved in local and linguistic issues, it is unhappy over the mounting tension over the people of Punjab and it strongly condemns the periodic repression that has been initiated in the Punjab with the acquiescence of the Union Government and the reign of terror that is reported to be prevailing in the State. The Council apprehends that this sort of repression will tend to have an adverse influence on the security and defence of India.

The Council is grieved to have received the following telegram from Sardar Harbans Singh Gujral, leading advocate of Chandigarh:

“Two lawyers of Ludhiana Amrijtsingh Gursharan-singh defending persons arrested in connection with the Punjabi Suba movement arrested yesterday when waiting to appear in court held inside jail apparently to prevent them from discharging their professional duties as well as to deprive the under-trials of their right to have legal assistance stop. Serious encroachment of the fundamental right of the accused guaranteed under the Constitution on the civil liberties and Rule of Law stop. Defence work in the State paralysed stop. Action being indefensible in a democratic set up, deserves serious notice pray intervene”.

In view of the telegram and other communications, the General Council requests the following Gentlemen (with powers to co-opt) to pay an early visit to the Punjab to make an impartial appraisal of the situation with particular reference to the repressive measures taken by the

Government irrespective of the political issues raised by the various Parties in the State and to make a report to the Central Organising Committee.

- 1. Shri K. M. Munshi.**
- 2. Shri N. C. Chatterjee.**
- 3. Sardar Kartar Singh Campbellpuri.**
- 4. Shri C. B. Agarwala.**

SWATANTRA PARTY

PUNJAB ENQUIRY COMMITTEE

SECTION I

1. *Resolution of appointment:* By a resolution passed by the General Council of the Swatantra Party held at Bombay on July 31, 1960, we, the undersigned, were directed to pay an early visit to the Punjab, to make an impartial appraisal of the situation, with particular reference to the repressive measures taken by the Government, irrespective of the political issues raised by the various parties in the State, and to make a report to the Central Organizing Committee.

2. *Scope of Inquiry:* The scope of our enquiry was limited, both by the terms of our reference and by the statement made by the Chairman at the said meeting of the General Council, to the effect that 'the enquiry would be in the nature of a quasi-judicial enquiry into the infringement, if any, of the fundamental rights and civil liberties arising out of the action of the Punjab Government in respect of the agitation for the Punjabi Suba'. In making this enquiry, therefore, we had to make an appraisal of the situation in which governmental action became necessary or was taken.

3. *Our tour:* Accordingly, we proceeded to Punjab on September 2, 1960, and one or more, or all of us, visited Chandigarh, Amritsar, Jullundur, Ludhiana, Patiala and Ambala. Both in Delhi and at the places we visited we examined a number of witnesses, held interviews with persons including some congressmen who happened to know the relevant facts and collected materials through state-

ments, newspaper reports or otherwise on the issues on which we had to report.

4. *Interview with the Governor:* By his letter of August 27, 1960, the Chairman sought the co-operation of Sardar Pratap Singh Kairon, Chief Minister of Punjab, in collecting relevant materials. In reply, the Home Secretary to the Punjab Government sent a telegram to say that it considered our Committee's visit 'untimely and likely to encourage irresponsible people'. However, the Governor of Punjab, Shri N. V. Gadgil, was pleased to give an interview to our Committee on September 3, and another to the Chairman on September 8. At our request, he also furnished us certain relevant materials.

5. *Inherent defect:* We fully realise that any report submitted by a non-official committee appointed by a political party to scrutinize the actions of a government would invariably suffer from the inherent defect of not being based on materials available to all sides and tested by cross examination. We have, however, tried to view the agitation and the action of the Government as a whole and have refrained from dealing with individual cases. We recognise that the correctness or otherwise of the action in any individual case falls within the sphere of courts, and being *subjudice*, is outside the scope of our enquiry.

6. We owe our acknowledgment to all parties and persons who have helped us in this enquiry, and particularly to Shri Kulwant Rai and Sardar Basant Singh, who were good enough to act as Secretaries, and to Shri V. Sundaresan, who acted as Assistant Secretary. Our thanks are particularly due to the Governor of Punjab for giving us the views of his Government and making materials available.

(Sd.) K. M. Munshi.

(Sd.) N. C. Chatterjee.

(Sd.) Kartar Singh Campbellpuri.

(Subject to a minute of dissent).

(Sd.) C. B. Agarwala.

SECTION II

Convention

7. *Convention:* With the bifurcation of the bilingual State of Bombay into uni-lingual States of Maharashtra and Gujarat on May 1, 1960, the Akalis began to press the demand for a Punjabi State with renewed vigour. On May 22, 1960, a Punjabi Suba Convention sponsored by the Akali Dal was convened at Amritsar, at which Pandit Sunder Lal presided. The Resolution moved by S. Gurnam Singh, a retired Judge of the Punjab High Court and seconded by a Hindu leader from Haryana, Shri Pratap Singh Daulta, M.P., and adopted by the Convention runs as follows:

"In democracy, self-development and self-expression are regarded as basic principles for the development of the masses, their culture and education. Hence the concept of the principle of linguistic states had been adopted here in this country as well as in Russia and other countries where there are multi-lingual, distinct, well-demarcated areas with homogeneity, tradition and culture. The National Congress and the Congress Government have not only accepted this concept, but have carved out linguistic States after the achievement of independence.

"The Constitution of India has already recognised 'Punjabi' as one of the regional languages. And when linguistic States have been carved out for all other languages, it would be unjust to deny Punjabi language to have its own State.

"The Punjabi-speaking State shall not be a communal State as is falsely alleged, but would be a unilingual cultural State (unit).

"It is also alleged that if such a State is formed, the majority will consist of the Sikhs and as such its formation should not be encouraged. This plea does not carry weight with rational people, inasmuch as there are potent minorities in each of the linguistic States that have so far been formed.

"We are demanding a Punjabi-speaking State within the comity of Indian States, i.e. the Federation of India and not as an independent entity. The very federal structure of India stands as a full guarantee for all minorities in every State including 'the coming Punjabi Suba'.

"However, this Amritsar Punjabi Suba Convention unequivocally declares that all minorities in this Punjabi Suba shall receive equal treatment irrespective of caste, creed or religion.

"This Convention regrets to note a tendency recently visible in some Punjabi-speaking people to disown their mother-tongue when they, in their sweet homes right from cradle to cremation, use nothing

but Punjabi. It may be due either to false notions or misleading propaganda.

"This Convention, therefore, appeals to the nation and the Government of India not to delay any more the inevitable formation of Punjabi-speaking State when all other unilingual States have already been carved out on linguistic basis and also hopes that better counsel shall prevail.

"This Convention, therefore, further urges that suitable non-violent, peaceful and constitutional steps as may be deemed necessary be taken for the realisation of our cherished objective, i.e, the Punjabi Suba.

"It also recommends that a memorandum requesting the immediate formation of Punjabi Suba be submitted to the Government of India. It also appeals to all Punjabi-speaking people to participate in the peaceful Delhi March on 12-6-1960 and urges them to maintain peace in the State irrespective of any provocation.

"This Convention also supports the demand of greater Haryana and greater Himachal Pradesh".

8. *Shahidi Jatha to Delhi:* Pursuant to the Resolution, on May 29, 1960, Master Tara Singh was to lead a Shahidi jatha (literally, a band of martyrs) of 11 volunteers. Travelling in buses and on foot, through various parts of Punjab it was to reach Delhi on June 12, 1960, there to join a procession, which was expected to reach a strength differently estimated at 2 lakhs to 10 lakhs. After parading through the streets of Delhi, the processionists were to submit a representation to the Government of India demanding Punjabi Suba.

9. *Action taken:* The Government had already prepared itself for action before May 20, that is before the Convention passed the Resolution. Complaints against leading Akali leaders had been filed throughout the State on or about May 20. Between the midnight of May 24 and the morning of May 25, Master Tara Singh was detained under the Preventive Detention Act, and about 700 people arrested all over the State under Section 107/150-151 of the Criminal Procedure Code.

(a) After May, when the agitation entered into what may be called 'Gurudwara stage', a very large number of persons suspected of having sympathy for the Punjabi Suba were arrested, most of them under Section 107/150-151

of the Criminal Procedure Code and the Ordinance No. 1 of 1960.

From May 24 to August 31, 1960, according to official figures, 17,283 persons had been arrested, of whom about 700 were women and 450 children.

(b) Public meetings were banned in the following districts:

Ambala District	..	Up to end of August.
Bhatinda District	..	do do.
Ferozepore District (Muktsar only)	..	Up to 17th October.
Ludhiana District	..	Up to 24th September.
Patiala District	..	25th September 1960.
Amritsar City & Taran Tarn	..	Upto September 1960.
Jullundur (City only)		23rd October 1960.
Hoshiarpur (Garhshankar only)	..	4th October 1960.
Sangrur District	..	26th September 1960.

(c) Police pickets were posted at the gates of the important Gurdwaras as well as in the surrounding areas, and suspected persons seeking ingress or egress were taken to the Kotwali and allowed to go free only if they disowned association with the Akali movement.

(d) All persons against whom warrants had been issued, if not found, were declared offenders and in many cases their properties were attached.

(e) Several newspapers, among them *Pratap* (Hindi and Urdu), *Hind Samachar* (both anti-Punjabi Suba), *Prabhat* and *Akali*, both Akali papers, were prohibited from publishing anything by way of news or comments in connection with the agitation, and several presses were sealed.

(f) Several other ancillary steps were taken, which have been dealt with elsewhere in this Report.

SECTION III

Suggested Motives for restrictive action

10. *Issues before the Committee:* The issue before us is whether, in respect of the action taken by the Punjab Government in regard to the current Punjabi Suba agitation, there has been infringement of fundamental rights and civil liberties. Fundamental rights involved in this agitation are contained in Article 19(1) (a), (b), (c) and (d) and relate to the right to freedom of speech and expression and the right to assemble peacefully and without arms, the right to form associations and unions and the right to move freely throughout the territory of India. However, the right in 19(1) (a) can be restricted in the interests of public order or the security of State; those in clauses 19(1)(b) and (c), in the 'interests of public order'; the right lastly mentioned, in the 'interests of general public'. The question whether civil liberties were infringed would further involve the consideration whether the State action, restrictive of activities, was arbitrary, excessive or indiscriminate, having regard to the reasonable needs of public order in the prevailing situation.

11. Several pleas were put forward officially and non-officially to suggest the motives which impelled the Government to take the action it did. Of them two were of a fundamental character:

(1) "Today in Amritsar a Convention against the division of State was held by the Nationalist Parties. Sardar Darbara Singh in his presidential address said"

"Sardar Darbara Singh further stated that from reliable sources of Akalis and Pakistanis he has got information that a secret arrangement has been arrived at between Master Tara Singh and President Ayub Khan and for the purpose of committing murders and looting in the country they have planned to train the Akalis in Pakistan in guerilla warfare. Master Tara Singh wants to throw back Punjab in the lap of Britishers."

(Daily Vir Bharat of 23-5-1960).

(2) On June 3, 1960, the Chief Minister, referring to the murder of Khushbakhtraï, Sub-Inspector of Police,

said that the incident 'fully substantiated the apprehension of the Government that the Akalies were planning to do something violent'. (vide *Tribune* of 4-6-1960).

If the restrictions were imposed by the State on the two grounds stated in sub-paras (1) and (2), it would, in our opinion, be justified, as the security of State in one case and public order in the other would be involved.

12. *Plea: Conspiracy with Pakistan:* The allegation of conspiracy with Pakistan made by the President of State Congress, S. Darbara Singh, even if remotely true, is very serious. As we understand that action is contemplated against S. Darbara Singh for making this allegation, we refrain from arriving at any conclusion about its truth or otherwise.

However, the facts placed before us are:

(1) In the charge-sheet framed by the Government against Master Tara Singh and placed before the Committee presided over by Justice Shri Dulat appointed under the Preventive Detention Act, no such allegation has been made.

(2) In spite of enquiries made by us from several persons and our request to the Governor of Punjab to supply us with some materials, if any, to justify this allegation, no evidence which would even remotely justify such a serious charge was made available to us.

Without expressing any definite opinion about this charge, therefore, we would, in view of the gravity of the charge, permit ourselves to say that, if the charge had the slightest justification, appropriate proceedings should have been taken by the State against Master Tara Singh; if unfounded, it was made with utter irresponsibility.

13. *Planned violence:* As regards the allegation of planned violence made by the Chief Minister on June 3, 1960, we note that, presumably taking the cue from the Chief Minister, several persons of standing have reported the charge in the press and the platform. We made searching inquiries from those whom we examined and interviewed, but found no evidence to indicate that there

had been any planning or preparation for violent activities prior to May 20. This, in our opinion, gains support from the fact that even on the State taking sweeping action on May 24-25, there was no outburst of violence which could be traced to previous preparation or planned activity on the part of those conducting the agitation.

With regard to the murder of the Sub-Inspector Kushbakhtraï, our enquiry shows that the Government has not been able to trace it to any planned action on the part of the Akalis.

We could find no evidence to justify the charge of planned violence made by the Chief Minister against the Akali Dal.

SECTION IV

Impact of the Punjabi Suba demand

14. In order to assess the situation about the third week of May 1960, the passions and fears aroused in Punjab in connection with the Punjabi Suba movement have to be taken into account. We are not concerned with the merits of the Punjabi Suba as demanded by the Akalis but have only to appraise the situation created by the demand. But in viewing it we have of necessity to consider the impact of the demand for Punjabi Suba and of the movement associated with it on the people of Punjab in general and if in doing so we touch upon the subject, it is only for the very limited purpose of assessing the impact and for no other purpose. In this connection, it has to be noted that in spite of the wording of the Resolution of May 22 and the protestation of those associated with the agitation, few people outside their ranks in Punjab believe that the demand for the Punjabi Suba is similar to the demand of other linguistic States in India. It is believed by several sections of people in Punjab that while in other parts of India all sections of people using a common language either made the demand or opposed it, irrespective of communal allegiance, in the case of this demand it is favoured by the

bulk of one community and bitterly opposed by the other community, though both communities speak Punjabi.

15. *Impact of the demand on Sikhs:* Though some thoughtful Sikhs are striving hard to found the demand on a non-communal basis, the general impression created on the mind of the ordinary Sikh is that the object of the present demand is to secure a homeland for the Sikhs.

Master Tara Singh, the leader of the movement from 1946, has been, time and again in the past, associated with an unequivocal demand for a Panthic Sikh State.

Another element in creating the impact are the maps of Punjabi Suba exhibited in some Gurdwaras indicating that the Suba now demanded, is confined to an area where the Sikhs are in a majority; other Punjabi-speaking areas where they are not in a majority have been excluded, though they were included in the demand put forward before the States Reorganisation Commission. A vast majority of those who have been participating in the movement are also inspired by religious enthusiasm for the Panth, intensively fostered in the Gurdwaras. Besides, the movement has associated Punjabi language with Gurmukhi.

There is also a section of the Sikhs which is opposed to the demand for Punjabi Suba on the ground that it would lead to communal and religious bitterness and therefore prove harmful to national integrity.

16. *Motive power behind the movement:* The motive power behind the Resolution of May 22 was the Akali Dal led by Master Tara Singh, which, in its turn, controls the SGPC. The SGPC controls 11 large Gurdwaras, about 700 small Gurdwaras and 15 institutions and employs over 1,200 men, and with its resources and appeal, exercises unchallenged influence over the community. The materials placed before us and the visit of one or more of us to Manji Saheb at Amritsar and to the Gurdwaras of Ludhiana and Patiala, left us in no doubt that the Gurdwaras, protected by religious sanctity, are both the backbone and the life-blood of the agitation.

17. *Impact on Hindus:* The propaganda in favour of the Punjabi Suba and other propaganda materials made available to us are scarcely calculated to soften the communal impact of the demand on the minds of the people not associated with the agitation. The impression of the overwhelming mass of Hindus in the Punjab is that the agitation is directed against them. Its object, according to them, is to put pressure on the Government of India to concede a State in a part of Punjab where 41 lakhs of Hindus would be in a minority and face the fate which befell the Hindus in West Pakistan. Responsible Hindu witnesses have informed us that some sections of Hindus are in panic as they feel that the Government of India, as they did in the case of Bombay State, were likely to surrender to separatist demands.

18. Our conclusion, therefore, is that in May 1960 the people of Punjab, by and large, both Hindus and Sikhs felt that the demand for Punjabi Suba was not purely a linguistic aspiration.

SECTION V

Situation about May 22, 1960

19. *Tendency to clashes:* There is a chronic tendency in the public life of Punjab to erupt in clashes between slogan-shouting processions and counter-processions. It is true that the present agitation has been non-violent and peaceful so far, and the pledges of Hindu-Sikh unity are taken by the Akali volunteers before they offer themselves for arrest. At the same time, we cannot ignore the fact that on the eve of the Convention, the Hindus were very agitated, and on May, 20, some leaders of the Hindu community had met to consider steps to counter the movement. Some persons whom we interviewed observed that the Hindus had not taken to counter-agitation on this occasion only because the Government of Punjab was taking necessary measures, and that if the Government had shown signs of weakening, trouble would have started.

20. *The programme and its impact:* In this connection, the only point to be considered is whether it would

have been in the 'interests of public order' or 'general public interest' to impose restrictions on the elaborate programme through which the Resolution of May 22 was to be implemented. According to the programme, Master Tara Singh was to start on May 29 from Manji Saheb at Amritsar at the head of Shahidi Jatha, that is a band of martyrs, of 11 volunteers. By bus and on foot, the jatha was to pass through Taran Tarn, Baba Bakala, Batala, Dehrul, Gursharpur, Dinanagar, Pathankot, Makherian, Dasuha, Tanda, Jullundur, Adampur, Shamjarshi, Hoshiarpur, Nangal, Rupar, Ludhiana, Muktsar, Bhatinda, Patiala, Ambala, Karnal, Panipat, Sonapat, to reach Delhi on June 12 at 3.20 p.m. On the way Master Tara Singh was to address meetings, presumably in the Gurdwaras as well as in the public, to whip up enthusiasm among the Sikhs to join the proposed procession; to parade at the head of a procession which was expected to reach the strength of several lakhs strong through the streets of the Capital on June 12, and to present the demand for Punjabi Suba to the Government of India. In the course of carrying out the gigantic agitational activity throughout Punjab proposed by the Akali Dal, if at any stage the programme had miscarried or its implementation met with a counter-demonstration, the effect on public order and general public interest might have been prejudicial.

21. *Conclusion:* In the circumstances and the situation which existed in Punjab in the third week of May 1960, in the interests of public order and in the interests of general public, some restrictive action on the part of the Punjab Government was necessary after May, 22, to prevent the implementation of the programme, according to which a shahidi jatha was to tour through Punjab, in a whirlwind campaign to gather several lakhs of Sikhs to go in a procession to Delhi.

SECTION VI

Nature of State Action—Arrests under Sec. 107/150-151 of the Criminal Procedure Code.

22. (1) In the night of May 14 and in the morning of May 25, 1960, about 700 persons were rounded up under

Sec. 107 and 150 of the Criminal Procedure Code. Later, during the rest of May, 1960, and in the months that followed thousands of persons were arrested under the provisions of these sections or under the Punjab Ordinance No. 2 of 1960, which came into force on July 19, 1960. The number of such arrested persons is placed at about 15,000. We are given to understand that in many cases 'show cause' notices were not issued as required by Sec. 110 of the Criminal Procedure Code before the arrests were made.

(2) As stated before us, the amount of interim bail bonds generally required by the magistrates throughout the State from the persons arrested ranged from about Rs. 30,000 to Rs. 100,000/-, irrespective of the means of the person concerned to furnish the same.

(3) The persons arrested under these provisions of law were transferred from the district of origin to far-off districts to be tried in jails by magistrates specially appointed.

(4) Out of several thousands of persons so arrested, large numbers are still in jail without their cases being decided, although more than 3 months have expired since they were sent to jail.

(5) Thousands of transfer applications on behalf of such arrested persons are pending in the High Court of Punjab.

23. Sec. 107 of the Criminal Procedure Code is attracted only when a magistrate receives information that "a person is likely to (a) commit a breach of the peace, (b) disturb the public tranquillity, or (c) do any wrongful act that may probably occasion a breach of the peace or disturb public tranquillity". Sec. 150 directs every police officer to communicate any information to his superiors "of a design to commit any cognizable offence". The Sections, therefore, contemplate individual action on the strength of a report concerning his activities.

24. Statements made and the materials placed before us show that the persons arrested fall into one or the other of the following categories:

(a) Members of the Akali Dal;

- (b) Persons sympathizing or suspected of sympathizing with the Punjabi Suba agitation, including M.L.As, M.L.Cs;
- (c) Lawyers engaged in the defence of those arrested.

25. Some of the notices issued to persons arrested under Sec. 107-150-151 and made available to us show a stereotyped draft. The statement made before us and made in some affidavits filed in the High Court, if true, show that in many cases routine orders were passed without regard to the facts in each particular case.

SECTION VII

Gurdwara Stage of the Agitation after May 29

26. After May 29, 1960, the agitation entered the second stage, when by a concerted move on the part of those leading the agitation, civil resistance from behind the Gurdwaras' walls was organized. This was a move not envisaged by the Resolution of May 22, for it only authorised constitutional agitation.

27. In considering civil liberties which only flow from the free and democratic structure established by the Constitution, we cannot lose sight of the fact that the rights to religious freedom, guaranteed by it, are confined only to religious activities. If, therefore, religious shrines are permitted by those in charge of them to be centres of activities involving resistance or defiance of law, such activities would not be protected by the Constitution.

28. In this connection, the following facts may be noted:

(a) Sant Fateh Singh, the Head of Manji Saheb, against whom a warrant is outstanding, directs the movement from that Gurdwara.

(b) In most Gurdwaras, and particularly Manji Saheb, day after day, speeches are made in support of the

agitation. The number of such meetings held is estimated at over 400 in June, July and August. Holding of such meetings is justified on the ground, which is rejected by the authorities, that the Gurdwaras are not public places and the ban under Section 144 of the Criminal Procedure Code does not affect them.

(c) Persons desirous of offering themselves for arrest come first to the Gurdwaras. We saw hundreds of such people waiting in the Manji Saheb awaiting their turn. When their turn comes, the persons selected for the day attend the meetings, which are attended by 10,000 to 20,000 persons and take solemn pledges before the Akal Takht. Among the pledges there is one of non-violence and another to maintain Hindu-Sikh unity. After they are garlanded, they come out of the Gurdwara gates peacefully and walk into the waiting police vans.

(d) The workers of the movement against whom arrest warrants have been issued, find an asylum in the Gurdwaras.

29. The use of Gurdwaras, as centres of civil resistance, therefore, is a factor which has to be taken into account in considering the nature of the restrictive action taken by the Government in a particular situation, for it is clear that for fear of wounding the religious susceptibilities of the Sikhs, the Punjab Government has found itself in difficult position in dealing with the Gurdwara stage of the agitation.

30. At the same time it is clear that the Gurdwara stage of agitation which began at the end of May 1960 was peaceful. In the circumstances we cannot conceive how, apart from individual cases, there could be a general apprehension of any danger to public order.

31. The power conferred on the police officer to arrest under Sec. 151 of the Criminal Procedure Code ought to be exercised only when there has been a design or plan for committing a particular offence and the person sought to be arrested has been a party to the design. Justice Jagan-

nath Das, in AIR (1950) Orissa p. 107, at p. 111 has laid down that "to arrest a person because he belongs to a party and that party has a programme to commit some offence in general is to exercise the power of preventive detention." The authority of a police officer under Sec. 151 of the Criminal Procedure Code is limited; it is an exceptional power to prevent the commission of a cognizable offence and is in no sense analogous to the power of preventive detention.

32. Under the circumstances, the inference becomes irresistible that except in individual cases on the merits of which we refrain from giving our opinion, the free use by the Government of the powers under Sec. 107/150/151 of the Criminal Procedure Code and the Ordinance was mainly directed to secure the preventive detention of persons associated with or sympathising with the civil resistance movement which, after May 1960, was directed from the Gurdwaras.

SECTION VIII

Excessive Bail Bonds

33. In this connection it is a curious accident that in many cases throughout the State the amount of the bail bond demanded under Sec. 107 read with Sec. 112 of the Criminal Procedure Code ranged from Rs. 30,000 to Rs. 100,000. It is surprising that the magistrates in different districts came to demand surety from most persons arrested in almost similar order of amounts. It is either a case of common impulse simultaneously experienced by all the magistrates in different parts of the State or is the result of executive instructions.

34. Law provides that bail required from a person arrested shall be determined with due regard to the means of such person and shall not be excessive. It is a well-known principle of law that, if an excessive amount is asked for by way of bail, it would be a denial of justice.

35. Calling upon persons indiscriminately to furnish bails in such excessive amounts, except where the

merits of the case so require, therefore, is an infringement of one of the vital rights conferred on the people by law.

SECTION IX

Ordinance 2 of 1960

36. On July 19, 1960, the Punjab Criminal Law (Amendment) Ordinance 2 of 1960, was enacted. Under this Ordinance certain new offences have been created and offences under Section 153A and under Section 174 of the Indian Penal Code and offences under Section 9 of the Punjab Security of the State Act, 1953, are declared to be scheduled offences. A scrutiny of the provisions of the Ordinance would show that it is difficult to come across such a drastic law during normal times in any civilised country which respects the rule of law.

37. In respect of the new offences created which are of an ancillary character, the punishment provided for the offender is very much more severe than the punishment that would be incurred by the person who is held guilty of committing the substantive offence.

(i) Section 3 provides penalty for assisting offenders who are accused of any scheduled offence or in respect of whom proceedings under Section 107 of the Code of Criminal Procedure have been commenced. While under Section 107 Criminal Procedure Code—widely and indiscriminately used by the Punjab Government as stated above—the person proceeded against may be required to furnish bail for one year, under Section 3 of the Ordinance a person giving assistance to such persons—for example providing food and shelter—would be liable to imprisonment which may extend to three years or fine or with both.

(ii) Similarly, while under Section 174 of the Criminal Procedure Code a person who is himself bound to attend at a certain place and time in obedience to an order from any public servant and intentionally omits to attend at the place or time, etc. is liable to punishment with simple imprisonment for a term which may extend to one month or with fine which may extend to Rs. 500/-or with both, this being a scheduled offence under the Ordinance,

under Clause 3 thereof, the person giving assistance to such offender in the manner indicated therein is made liable to a punishment which may extend to three years imprisonment or fine or both.

38. Clause 4 creates another offence with a heavy penalty. Under Section 174 of the Indian Penal Code, disobedience of a proclamation under Section 87 of the Criminal Procedure Code is punishable with simple imprisonment for a term which may extend to a month or with a fine which may extend to Rs. 500/-. Under Clause 4 of the Ordinance, however, he would be liable to a punishment for a term which may extend to three years or fine, or with both, for such disobedience.

39. Section 5 of the Ordinance provides penalty for giving false particulars relating to identity. Overwhelming majority of persons arrested in this movement have given their parentage by which they are ordinarily known. However some devout Sikhs, who obey the injunction given to them at the time of baptism, have given their father's name as Guru Gobind Singh and their mother's name as Sahib Devan. Regardless of the fact that those devout persons have on all previous occasions declared themselves to be sons of Guru Gobind Singh and Mata Sahib Devan, they are now prosecuted under Section 5 of the Ordinance.

40. (i) Clause 6 of the Ordinance is still more extravagant. Under ordinary Criminal Law, a person who acts in disobedience of any order made under Section 144 of the Criminal Procedure Code is, under Section 188 of the Criminal Procedure Code, guilty of an offence only if such disobedience tends to cause injury of the kind specifically mentioned therein, and on conviction he would make himself liable to a punishment which may extend to six months or fine which may extend to Rs. 1000/-, or both. But, under Clause 6 Sub-Clause (1) of the Ordinance, a new offence is created for instigation or incitement of any other person to act in disobedience of any order under Section 144 of the Criminal Procedure Code or "does any other act for

the purpose of *encouraging* the disobedience of any such order". The word "encouraging" is a word of vague and indefinite meaning. While the person who disobeys the order under Section 144 of the Criminal Procedure Code is liable for punishment for six months, the person who encourages him to do so—even if he does not abet or instigate him—would be liable to a sentence of one year or fine, or both.

(ii) Sub-Clause (2) of Clause 6 is still more drastic. The offence of instigating or encouraging a person under Sub-Clause (1) is made cognizable, while the original offence under Section 188 is non-cognizable.

(iii) With regard to bail also, the provision runs as follows:

"No person accused of an offence under that sub section shall be released on bail or on his own bond—

- (a) unless the prosecution has been given an opportunity to oppose the application for such release; and
- (b) where the prosecution opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence".

The first clause renders nugatory the essential safeguard provided by Criminal Procedure Code which enables a person accused of an offence to apply for his release on bail. The second part limits the discretion granted by the Code to the judiciary to grant or refuse bail and makes the exercise of such discretion contingent upon its being satisfied that the person accused is *not* guilty. Thus, in a way, the burden of proof of proving innocence is shifted on the accused.

41. To summarise, the provisions of this Ordinance are extraordinary in their sweep and severity. It confers on the authorities wide powers which can easily be abused, thus placing the citizen at their mercy. It is oppressive as disproportionately heavy penalties are imposed in respect

of ancillary offences. At the bail stage, it transfers the onus on the accused to prove his innocence. In substance, the Ordinance, which is a violent departure from the canons of our criminal jurisprudence, places in the hands of the Executive a powerful instrument to curb the freedom of the citizens and is subversive of civil liberties.

SECTION X

Legal Defence Hampered

42. From the materials before us we find that in a large number of cases the authorities appear to have taken steps to deprive the person arrested of his fundamental right given by Article 22 of the Constitution to defend himself with the aid of a lawyer of his choice. This was generally done in the manner following:

- (1) In most cases, as soon as a person was arrested in one district, he was transferred to another far-away district, and his whereabouts were kept back from his friends and relations and he was also not allowed to communicate with them or with his lawyer.
- (2) In the general atmosphere of fear created by wholesale arrests, the relations of the persons arrested did not take steps for their defence as a result of which a Defence Committee of lawyers of standing was set up to undertake the defence of such persons.
- (3) The file of a person arrested was not made available at the place of arrest and no information was supplied where he was transferred; as a result the lawyer working for the Defence Committee found it impossible to trace the place where he could be found, nor was he allowed access to his lawyer.
- (4) In these circumstances, the Defence Committee asked its representatives in the different districts to contact local magistrates and offer themselves to defend all persons arrested in the course of

the agitation and tried within the jurisdiction of each of them. The magistrates in many cases, however, insisted upon knowing the name of the individual accused for whom the lawyer appeared. This, in the very nature of things, was impossible, because the lawyer himself did not know where a particular person was transferred.

- (5) In many cases, the defence lawyer was not allowed to appear for all the accused arrested in the course of the agitation who were being tried in the jail by the magistrate.
- (6) In some cases the magistrate concerned did not co-operate with the lawyers by giving the date and time of the trial, which was mostly held in jail; sometimes he suddenly came to the jail for conducting the trial, on occasion even after the court hours, and the local Defence Committee was not informed of the time.
- (7) In several cases, even if the lawyer came to know of the trial, he was not allowed to enter the jail and, in most cases, the accused remained undefended.

This indicates that facilities for conducting a proper defence were not made available to the individual citizen.

43. But a more shocking feature of State action was the treatment meted out to the lawyers who wanted to defend persons arrested in this agitation.

44. Anticipating large-scale action on the part of the Government, a Central Legal Defence Committee was formed by Shiromani Akali Dal on May 21, 1960. The Committee consisted of 7 lawyers with an option to the members to coopt. Immediately after the formation of the Central Defence Committee, the following advocates were appointed as conveners of Local Defence Committees in various districts of the State:—

- (1) S. Sahib Singh Bhatia, Advocate, Jullundur,

- (2) S. Inder Singh, Advocate at Mansa Mandi, Dist. Sangrur,
- (3) S. Gian Singh Vohra, Advocate at Delhi,
- (4) S. Shamsheer Singh Bedi, Advocate at Hoshiarpur,
- (5) S. Gurdev Singh Gujral, Advocate of Ludhiana,
- (6) S. Gurdial Singh, Advocate at Bassi, Dist. Patiala,
- (7) S. Gurbachan Singh, Advocate at Gurdaspur.

45. In the meeting of the Central Legal Defence Committee, Chandigarh, on May 27, 1960, S. Dara Singh, Advocate (Ex. Minister of Pepsu) was appointed General Secretary of the Committee and S. Harbans Singh Gujral, Advocate, as Organising Secretary-cum-Treasurer thereof. On the same day, a circular letter was issued by the Organizing Secretary to a number of lawyers to co-operate with the defence work.

46. Members of the Defence Committee were promptly dealt with:

(1) On May 25, 1960, S. Inder Singh, Pleader, Mansa, was arrested while coming out of a court after attending a case.

(2) On May 29, 1960, S. Harbans Singh Gujral, Organising Secretary of Central Committee, was arrested at about 11 p.m. while returning from Gurdwara.

(3) On or about June 1, 1960, S. Gian Singh Vohra, Advocate of Delhi, was arrested in Karnal where he came to attend a private case on behalf of the Panipat Electric Supply Co. Ltd.

(4) On June 5, 1960, S. Sahib Singh Bhatia, Advocate, Convenor, Jullundur Defence Committee, was arrested about 1.30 A.M. from his house.

(5) On June 4, 1960, S. Shamsheer Singh Bedi, Advocate, Convenor, Hoshiarpur, was attempted to be arrested at about 4 P.M. by the Police at Hoshiarpur, but he was not found at his house. He surrendered before the High

Court and got himself admitted to bail in a sum of Rs. 1,000/- while the lower court had demanded a surety of Rs. 50,000/-.

(6) About this time, S. Gurdial Singh, Advocate, Bassi, was arrested and called upon to furnish bail in the sum of Rs. 50,000/-. The High Court ordered him to be released on his furnishing a personal bond only of Rs. 500/-. In spite of his release under the High Court order, he was again arrested and on September 2, was still confined as an under-trial in Ambala District Jail.

(7) S. Gurbachan Singh, Advocate, Gurdaspur, who was defending some of the Akali cases of his district, was also arrested some time in June 1960 and is still confined in some jail.

In this way, the entire defence organisation was put out of action.

47. Another attempt was made by certain public-spirited lawyers to reorganise the defence work by engaging paid lawyers and the following gentlemen were persuaded to take up the said work:—

1. S. Gursharan Singh and S. Amarjit Singh, Advocates at Ludhiana,
2. Giani Sulakhan Singh, Pleader, at Amritsar, and
3. Shri Prabhakar, Advocate, at Patiala.

(1) On or about July 28, 1960, S. Gursharan Singh and S. Amarjit Singh were arrested under Sec. 107/150, Criminal Procedure Code while they were waiting outside the jail to defend some persons.

(2) Giani Sulakhan Singh of Amritsar and Shri Prabhakar of Patiala have stated that they were threatened by the police that if they did not give up the defence work, they also, like the Ludhiana lawyers, would be arrested.

The result was that many lawyers withdrew themselves from conducting the legal defence of the persons arrested, as they could not afford to continue the work at the cost of their personal liberty.

48 The manner in which charges were levelled against some of the lawyers throws light on the motive of their arrests.

(1) S. Harbans Singh Gujral, Advocate of the Supreme Court and Legal Adviser to the Shiromani Akali Dal, has been a practising advocate for the last 27 years.

On May 29, 1960, at about 11 P.M. he was driving his car in the company of his wife and children, when he was stopped by an Inspector of Police about 100 yards away from his house and was arrested. He was not allowed to drive the car even a distance of hardly 100 yards to take his wife and children home and was served with a notice under Sec. 107 of the Criminal Procedure Code. One of the main grounds against him was that he had called S. Pratap Singh Kairon, Chief Minister, as "Chandu who was responsible for betraying the fifth Guru".

According to his statement, he was taken to a cell in the lock-up and given a mat to sleep near the latrine. Four other persons were brought into the cell at about 2 A.M. in the small hours of the morning. None of them could sleep, as the cell appeared to be infested by scorpions. In the morning, when some of the members of the Defence Committee contacted S. Harbans Singh Gujral, he was not allowed to sign his power of attorney to move the High Court.

At 4-30 P.M. he was taken to Rugar where he was told by the Senior District Magistrate that Government had withdrawn the case against him as they apprehended no breach of peace by him.

49. Similar statements were made before us by lawyers who have been engaged in defending persons arrested. Some of them told us how they were treated with indignity in the jail; how excessive bail was demanded from them; how their demand for contact with friends was denied; how on occasions even meals were denied to them; how in some cases they were even called upon to sign false statements. Some of these matters are before the High Court.

50. Without going into individual cases, we come to the following conclusions:—

- A. In many cases, the action taken by the authorities was calculated to deprive the persons arrested of their right to have access to lawyers of their choice.
- B. The wholesale action taken by the authorities to deprive lawyers of their liberty when engaged in discharging their professional duties has had the effect of penalising such lawyers, denying the persons arrested the right to defend and of frightening the lawyers generally from undertaking defence of such persons.
- C. These actions were subversive of the Rule of Law.

SECTION XI

Ban on Meetings

51. In Paragraph 9(b) we have already referred to the areas in which Section 144 of the Criminal Procedure Code had been promulgated and public meetings banned.

52. We do not want to pronounce any opinion on whether meetings in the Gurdwaras are affected by the promulgation of the order under Section 144 in the areas concerned; we understand that the matter is *sub judice*. But as these meetings, on account of the sanctity of the shrines, cannot be interfered with, the Government, in order to counteract the Akali propoganda, had been permitting public meetings sponsored by those who oppose the Punjabi Suba as claimed by the Akali Dal in the areas where meetings are banned.

53. During the months of June, July and August 1960, public meetings held in the State are as follows:—

P.S.P.	..	5	
Socialists	..	4	
Swatantra	..	3	
B.J.S.	..	24	
Congress	..	51	
Communists	..	106	
Akalis	..	421	(all in Gurdwaras)

In addition, we are told that the Congress also celebrated an Anti-Punjabi Suba Week in the month of August with the permission of the authorities.

54. In respect of the promulgation of Section 144 banning meetings, therefore, we come to the conclusions:

- (a) that in view of the tension that prevailed as a result of the Punjabi Suba agitation, the promulgation of Section 144 banning public meetings in certain areas was not unjustified;
- (b) that in view of the use of Gurdwaras made by the sponsors of the Punjabi Suba agitation for holding meetings, the Government's action in giving parties and persons permission to hold meetings to counteract the situation was not discriminative.

SECTION XII

Harassment of persons proceeding to Gurdwaras

55. In order to prevent the use of the Gurdwaras as centres of civil resistance, the Government has been taking action more or less on the following lines:

- (1) Police men are posted in the areas surrounding the Manji Sahib or in the outskirts of Amritsar, who search such persons coming on foot, trams, buses, trucks or motor-cars, as are suspected of being associated with the agitation.
- (2) Statements have been made before us that women who bring flowers and sweets to the Gurdwaras are also harassed and foodstuffs carried by them are taken possession of by the police.

56. From the materials placed before us, we come to the conclusion that while it is true that the position, so far as the Government is concerned, is complicated by the fact that Gurdwaras are being used as centres of civil resistance, the action of the Government in allowing the police to

conduct indiscriminate search of persons who come into Amritsar or desire to go to the Gurdwaras is not justified by law.

SECTION XIII.

Action against absconders

57. Several instances have been brought to our notice that in attaching the properties of those who were not found in their homes when the police went to arrest them, or who had sought an asylum, the authorities have acted in an arbitrary manner.

58. We may refer to a few illustrative instances: In the case of one absconder, when absent on business, we are told, his property was attached, including the articles belonging to his wife and children, and in the absence of his wife, his children were left without food and shelter at the mercy of the neighbours.

59. In the case of another absconder, the materials placed before us show that the police took away all the furniture of the college run by him and closed it; they raided the house of his wife and attached her property, and when she filed a writ in the High Court, she was arrested herself. His brother, who is a Hindu and entirely unconnected with the Akali movement, who had come from Rajasthan to fix the date of the wedding of his daughter, was also arrested. His other brother, who was an inspector of the Municipal Committee, was suspended from service.

60. The following were among the cases which came to our notice may be taken as illustrative:

- (1) Certain brothers had been arrested by the police for offering civil resistance; thereafter, the police are stated to have gone to their village and attached the property of their uncle who was living entirely separate.
- (2) The police went to the house of an absconder and asked his wife to produce the husband within

eight days. The next day, however, they came and took away all the household goods. The same evening, small children were put out of the house and the house was locked. It was reported that the relations of the absconder are also being harassed.

- (3) The house of an absconder was attached and the household articles were taken away. Not content with this, the police also attached the household goods of his mother-in-law who was living in a separate house. Two of his brothers employed in the Municipal Committee were also arrested.

It is also stated to us that the authorities have cancelled the licences, permits and depots held by Sikhs suspected of sympathising with the Akali movement.

61. It has been stated to us that in several cases the manner of attaching the goods of the absconders under conditions of extreme rigour, the harassment of women and children, the arrests and attachment of the property of the relations of the absconders, the cancellation of depots, permits and licences of those suspected of sympathy with the Punjabi Suba, were indiscriminate and oppressive. Whatever the merits of individual cases, the action taken as a whole in this connection has had the effect of striking terror and has caused serious resentment in the community.

SECTION XIV.

Action against the Press

62. Action was taken against a few newspapers, among them two Akali papers styled *Akali* and *Prabhat*, and two anti-Punjabi Suba papers *Pratap* (Hindi and Urdu) and *Hind Samachar* prohibiting them from publishing anything by way of news or comments in connection with the agitation. With the general arrests on the night of May 24/25, the editor and publisher of *Akali* and *Prabhat* newspapers were also arrested.

63. In 1956, when the 'Save Hindi' agitation was at its height, the Punjab Press (Special Powers) Act, 1956, was enacted, authorising the Government to seize any press for a period of two months from the date of the order. On May 24, 1960, the two presses—Akash and Khalsa Presses—in which the two Akali Dailies *Prabhat* and *Akali* were respectively printed, were seized under Section 2 of the Act.

64. The Akash Press applied for a writ to the Punjab High Court on the ground that the Press was wrongfully seized because after the order was issued, they had issued no publication at all. In the middle of June, the High Court dismissed the petition as the Punjab Government on June 8, released the order unconditionally.

65. On July 7, 1960, by the Punjab Ordinance No. 1 of 1960, relevant sections were amended authorising the Government to seize any press for a period of six months. After the disposal of the writ petition, on June 17, 1960 the Punjab Government again sealed the press, continuing the order till July 23, 1960.

66. On July 21, 1960, they extended the period of seizure upto September 23, 1960. On September 21, they further extended the period of seizure till November 23, 1960. Police guards are posted on the premises and the owners of the Press have not been supplied with copies of the order in order to enable them to move the Supreme Court.

67. In regard to the Khalsa Press, the situation is almost identical barring the fact that the seizure of the press was not withdrawn on 8th of June 1960. This press is also guarded by the police during all hours of the day with the result that nobody can enter the premises of the Press. As a result of the seizure, they have not been able even to carry on their ordinary job business or to print matters unconnected with the agitation.

68. After May 24, 1960, at the instance of one Kesra Singh, that the journalists had beaten him, all the members of the staff of *Prabhat* and *Akali*, including Hindu

machine-men, *katibs*, mechanics and others, were handcuffed, arrested and marched to the police station. The All-India Working Journalists' Federation strongly protested against this high-handedness and the cases against the working journalists were withdrawn unconditionally. In a similar way, the Gurdwara Printing Press owned by the SGPC was sealed, on an application made by one Atma Singh, making charges against the press management. On an application to the High Court, it ordered the function of the press against a surety of Rs. 10,000/-.

69. We have no materials to judge the merits of the orders issued on *Pratap* (Hindi and Urdu) and *Hind Samachar*, nor on the merits of the action taken against the *Prabhat* and *Akali* newspapers.

70. On the facts stated above, we have come to the conclusion that the arrest of the whole staff of *Akali* and *Prabhat* newspapers was an indiscriminate exercise of authority and so was the continued sealing of the *Akash* and the *Khalsa* presses, and both the actions show the scant regard in which freedom of press is held by the Punjab Government.

General Conclusion:

71. While we realise the difficulties of the Punjab Government which faces an embarrassing situation created by the Gurdwaras being used as the centres of civil resistance, the various actions taken by it to meet it, on the whole, have been excessive and indiscriminate and taken with a view to strike terror.

Our attention has been drawn by several persons who were interviewed by us to the fact that in the case of the 'Save Hindi Agitation', the action of the Punjab Government was more drastic; but that can establish no prescriptive right in that Government to disregard the appropriate forms and restraints necessary to maintain the Rule of Law and thereby to infringe civil liberties in the manner it has been doing. To condone or tolerate such actions would be to put our freedom in jeopardy.

NOTE OF DISSENT

by

SARDAR KARTAR SINGH

Campbellpuri, Member.

I agree with the findings and conclusions, subject to a note of dissent on two of the findings, which I am appending herewith.

1. I regret that I have not been able to persuade myself to fall in line with the findings and observations made in the report with regard to the use of Gurdwaras for the purpose of this agitation. I have, therefore, ventured to append a separate note by way of explanation or dissent on this important issue, which is not being appreciated by most of the leaders of the country inasmuch as they honestly feel that Gurdwara is a *sanctum-sanctorum* for worship only and political issues ought not to be discussed or canvassed in the Gurdwaras. The difficulty, however, is that this crucial point constitutes a doctrinal issue based on Sikh tenets like wearing of *kirpan*, and affects the basic postulates of Sikh religion, which emphasizes more on true living than mere doctrine of truth. Sikhism, in sooth, is not only a spiritual philosophy, but is a pragmatic and congregational religion and almost all the historical Gurdwaras are surrounded by aura of politics.

2. It is, moreover, significant that Gurdwaras' pulpits were used for political propaganda under the auspices of the Congress Party itself in the days of British rule and addresses have been presented to Congress leaders on their visit to Gurdwaras even after 1947 and speeches delivered by them on social, political and economic matters in recent past. The use of Gurdwaras for cultural and political purposes accordingly is not tabooed by any injunction or convention. Dr. Gokul Chand Narang, in his book "Transformation of Sikhism", has said that the Sikh religion had taken a political colour from the early stage of its history for protection against tyranny. It is a truism again, as said by another eminent writer, that every political question is a social question and every social question is a religious question. Even Mahatma Gandhi preached in his

prayers a synthesis of religion and politics. In point of fact, Gurdwaras, as envisaged by Guru Nanak and subsequently developed by his successors, constitute a multi-purpose institution. It is a place of worship but also provides food and lodging to whosoever that comes in the langar. It also serves as an educational institution, and trading centres have grown around almost all these historical Gurdwaras.

3. S. Gurnam Singh, Retired High Court Judge, when examined by the Committee, placed on record a monograph entitled 'The Theo-political Status of Golden Temple', wherein the reasons for this Sikh attitude have been fully explained. The approach, however, in this monograph is scholarly and philosophical, and though believing that the position and status of Golden Temple is unique, I am not prepared to approve, in view of change of times, the use of Gurdwaras as maintained in the monograph as a permanent religious-cum-political institution. But at critical times, when Sikhs are terrorised and muzzled to raise their voice in press and public for ventilating their grievances with regard to their religion or other legitimate rights provided under the Constitution, it is only just that they should canvass the cultural-cum-political issues truthfully from the Gurdwara precincts in a peaceful and non-violent manner, of course without converting the Gurdwaras into hideouts for proclaimed offenders, which is against the long cherished traditions of the Sikhs.

4. Now this principle ordained by religious dogmas or Sikh tenets as discussed above does not apply in the first instance to the present Punjab situation for the simple reason that the whole agitation is based on the question of language, namely Punjabi, and as such, the demand for a new State by alteration of area and boundary under Article 3 of the Constitution read with Article 29 of the Constitution, is a Cultural agitation. Language is bracketed with culture under Article 29 of the Constitution, which reads as follows:

"Any section of the citizens residing in the territory of India or any part thereof, having distinct language script

or culture of its own, shall have the right to conserve the same”.

It is noteworthy that Punjabi language, which is recognised by the Constitution and the way of life of Punjab as compared with other States, fall within the purview of Article 29, and as such, any agitation by any section of citizens on the basis of language and culture is manifestly a legitimate and constitutional right. It follows that the use of Gurdwaras for the purpose of this agitation is not exactly political as given out and propagated by those who oppose it; it is a cultural agitation, and the use of Gurdwaras for this purpose cannot be said to be inappropriate. Of course, no one can be allowed to preach violence in any manner for the propagation of one's ideas and legitimate right in Gurdwaras.

5. Judged in this perspective, the question of 'theopolitical status' of Gurdwaras does not arise in the present case. But even if the agitation, for the sake of argument, be believed to have political colour for the purpose of administration or the maintenance of law and order, even then not a single instance has been cited in the course of inquiry by anyone that any Hindu has been mishandled by any Sikh or vice-versa during these four months of agitation. Regarding any apprehension oft-repeated by Government side that opponents of the demand would disturb the law and order, it is for the Government to curb such activities to meet the situation if at all it arises, but to send thousands of Sikhs behind the bars and create terror by indiscriminate arrests of people during night hours while in bed or while returning from Durbar Sahib after paying homage, on the vague suspicion of breach of peace only, is clearly to ride roughshod the rule of law in Secular Democratic Republic of India.

7. The other finding to which I cannot subscribe is contained in para 18 which reads as follows:—

“Our conclusion, therefore, is that in May 1960 the people of Punjab, by and large, both Hindus and Sikhs felt

that the demand for Punjabi Suba was not purely a linguistic aspiration.”

This conclusion no doubt is attributed to the impact of the Punjabi Suba demand, as discussed in paras 14 and 17 of the report; but this conclusion normally gives the impression that the majority of Sikhs and Hindus consider the demand to secure a home-land for the Sikhs and not a Punjabi State on linguistic basis.

The position exactly prevailing at present in the Punjab is that the whole atmosphere has been surcharged and permeated with catch-words and slogans as well as detached quotations from speeches made years ago by some Akali leaders, conveying that the Akalis actually want a Sikh State. This, to my mind, is due to confused thinking for which the Akalis themselves are also responsible. I have gone through the representations, memoranda and letters addressed to higher authorities, by the Akali leaders dispassionately in this quasi-judicial inquiry. It appears to me that in these lengthy representations, the mention of sacrifices made by the Sikhs in the struggle for independence, the assertion of having ruled Punjab at one time and the demand for the preservation of their honour and prestige etc. has been construed by their opponents to the effect that in the heart of hearts they want a Sikh State.

8. It is, however, unintelligible and preposterous even to think that any separate state can be carved out within the polity of India and under the federal Constitution of India. And this by itself furnishes a complete answer to the objection that Akalis want a Sikh State. The hard fact is that a large number of Hindus in the Punjab had denounced their mother tongue in the last census and forfeited the right of asking for a linguistic Punjabi State on the basis of Punjabi language, hence the task of making the demand has been taken up by the Akalis.

9. Furthermore, the evidence on the point of impact on Hindus and Sikhs brought on the record relates to the writings of some of the Sikh papers of 1955—Riyasat in

particular, and cannot be safely treated as an evidence against the present agitation. The demand as now stated in the Resolution passed in the Punjabi Suba Convention of May 22, 1960, upon which the present agitation is based, bespeaks unequivocally as follows:—

“We are demanding a Punjabi-speaking State within the comity of India and not an independent entity. The very federal structure of India stands as a full guarantee for all minorities in every State including the ‘coming Punjabi Suba’ ”.

The Resolution further states that:—

“The Convention, therefore, appeals to the nation and the Government of India not to delay any more the inevitable formation of Punjabi-speaking State when all other unilingual States have already been carved out on linguistic basis and also hopes that better counsel shall prevail. This Convention, therefore, further urges that suitable non-violent, peaceful and constitutional steps as may be deemed necessary be taken for the realisation of our cherished objective, i.e. the Punjabi Suba”.

The latest position as enunciated in the above quotation from the Resolution of the Punjabi Suba Convention accordingly leaves no room for doubt that the agitation is for carving out unilingual Punjabi Suba on linguistic basis and the isolated extracts from previous speeches of 1955 or even after that, have no bearing. For all these reasons, I cannot see eye to eye with my learned colleagues on the conclusion arrived at in para 18 of the report. At the same time it may well be made clear that I am not concerned with the merits and demerits of the demand whatever it may be as said in para 14 of the report as well.

New Delhi.

Dated the 1st October, 1960.

KARTAR SINGH
Campbellpuri.

SUMMARY OF THE REPORT

1. *Resolution of appointment:* By a resolution passed by the General Council of the Swatantra Party at Bombay on July 31, 1960, we, the undersigned, were directed to pay an early visit to the Punjab, to make an impartial appraisal of the situation, with particular reference to the repressive measures taken by the Government, irrespective of the political issues raised by the various parties in the State, and to make a report to the Central Organizing Committee.

2. *Our tour:* Accordingly, we proceeded to Punjab on September 2, 1960, and one or more, or all of us, visited Chandigarh, Amritsar, Jullundur, Ludhiana, Patiala and Ambala. Both in Delhi and at the places we visited we examined a number of witnesses, held interviews with persons including some Congressmen who happened to know the relevant facts and collected materials through statements, newspaper reports or otherwise on the issues on which we had to report.

3. *Inherent defect:* We fully realise that any report submitted by a non-official committee appointed by a political party to scrutinize the actions of a government would invariably suffer from the inherent defect of not being based on materials available to all sides and tested by cross examination. We have, however, tried to view the agitation and the action of the Government as a whole and have refrained from dealing with individual cases. We recognise that the correctness or otherwise of the action in any individual case falls within the sphere of courts, and being *sub judice*, is outside the scope of our enquiry.

Convention

4. *Shahidi Jatha to Delhi:* Pursuant to the Resolution, on May 29, 1960, Master Tara Singh was to lead a Shahidi jatha (literally, a band of martyrs) of 11 volunteers. Travelling in buses and on foot, through various parts of Punjab, it was to reach Delhi on June 12, 1960,

there to join a procession, which was expected to reach a strength differently estimated at 2 lakhs to 10 lakhs. After parading through the streets of Delhi, the processionists were to submit a representation to the Government of India demanding Punjabi Suba.

Suggested Motives for Restrictive Action

5. *Issues before the Committee:* The issue before us is whether, in respect of the action taken by the Punjab Government in regard to the current Punjabi Suba agitation, there has been infringement of fundamental rights and civil liberties.

6. *Plea: Conspiracy with Pakistan:* The allegation of conspiracy with Pakistan made by the President of State Congress, S. Darbara Singh, even if remotely true, is very serious.

Without expressing any definite opinion about this charge, therefore, we would, in view of the gravity of the charge, permit ourselves to say that, if the charge had the slightest justification, appropriate proceedings should have been taken by the State against Master Tara Singh; if unfounded, it was made with utter irresponsibility.

7. *Planned Violence:* We could find no evidence to justify the charge of planned violence made by the Chief Minister against the Akali Dal.

Impact of the Punjabi Suba demand:

8. We are not concerned with the merits of the Punjabi Suba as demanded by the Akalis, but have only to appraise the situation created by the demand. But in viewing it, we have of necessity to consider the impact of the demand for Punjabi Suba and of the movement associated with it on the people of Punjab in general, and if in doing so we touch upon the subject, it is only for the very limited purpose of assessing the impact and for no other purpose.

9. *Impact of the demand of Sikhs:* Though some thoughtful Sikhs are striving hard to found the demand on a non-communal basis, the general impression created on

the mind of the ordinary Sikh is that the object of the present demand is to secure a homeland for the Sikhs.

10. *Motive power behind the movement:* The materials placed before us and the visit of one or more of us to Manji Saheb at Amritsar and to the Gurdwaras of Ludhiana and Patiala, left us in no doubt that the Gurdwaras, protected by religious sanctity, are both the backbone and the lifeblood of the agitation.

11. *Impact on Hindus:* The impression of the overwhelming mass of Hindus in the Punjab is that the agitation is directed against them.

12. Our conclusion, therefore, is that in May 1960 the people of Punjab, by and large, both Hindus and Sikhs felt that the demand for Punjabi Suba was not purely a linguistic aspiration.

Situation about May 22, 1960

13. *Tendency to clashes:* There is a chronic tendency in the public life of Punjab to erupt in clashes between slogan-shouting processions and counter-processions. It is true that the present agitation has been non-violent and peaceful so far, and the pledges of Hindu-Sikh unity are taken by the Akali volunteers before they offer themselves for arrest.

14. *The programme and its impact:* In the course of carrying out the gigantic agitational activity throughout Punjab proposed by the Akali Dal, if at any stage the programme had miscarried or its implementation met with a counter-demonstration, the effect on public order and general public interest might have been prejudicial.

15. *Conclusion:* In the circumstances and the situation which existed in Punjab in the third week of May 1960, in the interests of public order and in the interests of general public, some restrictive action on the part of the Punjab Government was necessary after May 22, to prevent the implementation of the programme, according to which a *shahidi jatha* was to tour through Punjab, in a whirlwind campaign to gather several lakhs of Sikhs to go in a procession to Delhi.

Gurdwara Stage of the Agitation after May 29

16. After May 29, 1960, the agitation entered the second stage, when by a concerted move on the part of those leading the agitation, civil resistance from behind the Gurdwaras' walls was organized. This was a move not envisaged by the Resolution of May 22, for it only authorised constitutional agitation.

17. If, therefore, religious shrines are permitted by those in charge of them to be centres of activities involving resistance or defiance of law, such activities would not be protected by the Constitution.

18. The use of Gurdwaras, as centres of civil resistance, therefore, is a factor which has to be taken into account in considering the nature of the restrictive action taken by the Government in a particular situation, for it is clear that for fear of wounding the religious susceptibilities of the Sikhs, the Punjab Government has found itself in difficult position in dealing with the Gurdwara stage of the agitation.

19. Under the circumstances, the inference becomes irresistible that except in individual cases on the merits of which we refrain from giving our opinion, the free use by the Government of the powers under Sec. 107/150/151 of the Criminal Procedure Code and the Ordinance was mainly directed to secure the preventive detention of persons associated with or sympathising with the civil resistance movement which, after May 1960, was directed from the Gurdwaras.

Excessive Bail Bonds

20. In this connection it is a curious accident that in many cases throughout the State the amount of the bail bond demanded under Sec. 107 read with Sec. 112 of the Criminal Procedure Code ranged from Rs. 30,000 to Rs. 100,000. It is surprising that the magistrates in different districts came to demand surety from most persons arrested in almost similar order of amounts. It is either a case of common impulse simultaneously experienced by all the magistrates in different parts of the State or is the result of executive instructions.

21. Calling upon persons indiscriminately to furnish bails in such excessive amounts, except where the merits of the case so require, therefore, is an infringement of one of the vital rights conferred on the people by law.

Ordinance 2 of 1960

22. A scrutiny of the provisions of the Ordinance would show that it is difficult to come across such a drastic law during normal times in any civilised country which respects the rule of law.

23. In respect of the new offences created which are of an ancillary character, the punishment provided for the offender is very much more severe than the punishment that would be incurred by the person who is held guilty of committing the substantive offence.

24. *Sub-Clause (2) of Clause 6 with regard to bail:* The first clause renders nugatory the essential safeguard provided by the Criminal Procedure Code which enables a person accused of an offence to apply for his release on bail. The second part limits the discretion granted by the Code to the judiciary to grant or refuse bail and makes the exercise of such discretion contingent upon its being satisfied that the person accused is not guilty. Thus, in a way, the burden of proof of proving innocence is shifted on the accused.

25. To summarise, the provisions of this Ordinance are extraordinary in their sweep and severity. It confers on the authorities wide powers which can easily be abused, thus placing the citizen at their mercy. It is oppressive, as disproportionately heavy penalties are imposed in respect of ancillary offences. At the bail stage, it transfers the onus on the accused to prove his innocence. In substance, the Ordinance, which is a violent departure from the canons of our criminal jurisprudence, places in the hands of the Executive a powerful instrument to curb the freedom of the citizens and is subversive of civil liberties.

Legal Defence Hampered

26. From the materials before us we find that in a large number of cases the authorities appear to have taken

steps to deprive the person arrested of his fundamental right given by Article 22 of the Constitution to defend himself with the aid of a lawyer of his choice and facilities for conducting a proper defence were not made available to the individual citizen.

27. But a more shocking feature of State action was the treatment meted out to the lawyers who wanted to defend persons arrested in this agitation. In this way, at the first stage, the entire defence organisation was put out of action by Governmental action.

28. Another attempt was made by certain public-spirited lawyers to reorganise the defence work by engaging paid lawyers and a few gentlemen were persuaded to take up the said work. Some of them were arrested and others threatened with arrest, with the result that many lawyers withdrew themselves from conducting the legal defence of the persons arrested, as they could not afford to continue the work at the cost of their personal liberty.

29. Statements were made before us by lawyers who have been engaged in defending persons arrested. Some of them told us how they were treated with indignity in the jail; how excessive bail was demanded from them; how their demand for contact with friends was denied; how on occasions even meals were denied to them; how in some cases they were even called upon to sign false statements. Some of these matters are before the High Court.

30. Without going into individual cases, we come to the following conclusions:

- A. In many cases, the action taken by the authorities was calculated to deprive the persons arrested of their right to have access to lawyers of their choice.
- B. The wholesale action taken by the authorities to deprive lawyers of their liberty when engaged in discharging their professional duties has had the effect of penalising such lawyers, denying the persons arrested the right to defend and of frightening the

lawyers generally from undertaking defence of such persons.

C. These actions were subversive of the Rule of Law.

Ban on Meetings

31. In respect of the promulgation of Section 144 banning meetings, therefore, we come to the conclusions:

- (a) that in view of the tension that prevailed as a result of the Punjab Suba agitation, the promulgation of Section 144 banning public meetings in certain areas was not unjustified;
- (b) that in view of the use of Gurdwaras made by the sponsors of the Punjabi Suba agitation for holding meetings, the Government's action in giving parties and persons permission to hold meetings to counteract the situation was not discriminative.

Harassment of persons proceeding to Gurdwaras

32. From the materials placed before us, we come to the conclusion that while it is true that the position, so far as the Government is concerned, is complicated by the fact that Gurdwaras are being used as centres of civil resistance, the action of the Government in allowing the police to conduct indiscriminate search of persons who come into Amritsar or desire to go to the Gurdwaras is not justified by law.

Action against absconders

33. It has been stated to us that in several cases the manner of attaching the goods of the absconders under conditions of extreme rigour, the harassment of women and children, the arrests and attachment of the property of the relations of the absconders, the cancellation of depots, permits and licences of those suspected of sympathy with the Punjabi Suba, were indiscriminate and oppressive. Whatever the merits of individual cases, the action taken as a whole in this connection has had the effect of striking terror and has caused serious resentment in the country.

Action against the Press

34. We have come to the conclusion that the arrest of the whole staff of *Akali* and *Prabhat* newspapers was an indiscriminate exercise of authority and so was the continued sealing of the *Akash* and the *Khalsa* presses, and both the actions show the scant regard in which freedom of press is held by the Punjab Government.

General Conclusion

35. While we realise the difficulties of the Punjab Government which faces an embarrassing situation created by the Gurdwaras being used as the centres of civil resistance, the various actions taken by it to meet it, on the whole, have been excessive and indiscriminate and taken with a view to strike terror.

Our attention has been drawn by several persons who were interviewed by us to the fact that in the case of the 'Save Hindi Agitation', the action of the Punjab Government was more drastic; but that can establish no prescriptive right in that Government to disregard the appropriate forms and restraints necessary to maintain the Rule of Law and thereby to infringe civil liberties in the manner it has been doing. To condone or tolerate such actions would be to put our freedom in jeopardy.



SUMMARY OF NOTE OF DISSENT

1. In a Note of Dissent, Sardar Kartar Singh Campbelpuri says that Sikhism is 'a pragmatic and congregational religion' and 'the use of Gurdwaras for cultural and political purposes is tabooed neither by injunction nor by convention.' 'It is a place of worship, but also provides food and lodging to whosoever that comes in the langar. It also serves as an educational institution.'

2. The claim that the Golden Temple and the Gurdwaras are permanent religious-cum-political institutions cannot be sustained, but 'at critical times' they can be

utilised for ventilating the grievances of Sikhs with regard to their religion and other legitimate rights provided under the Constitution. However, that does not justify 'converting the Gurdwaras into hide-outs for proclaimed offenders which is against the long-cherished traditions of the Sikhs'.

3. The agitation for the Punjabi Suba is based on the 'question of language' and is a 'cultural agitation' within the meaning of the Constitution. The use of the Gurdwaras for the purpose is 'not exactly political' and their use for this purpose cannot be stated to be inappropriate, so long as no violence is preached. It is for the Government to curb the activities of those who are opposed to the Punjabi Suba demand, if their activities disturb law and order, but repressive action against the Sikhs on the mere suspicion of breach of peace is 'clearly to ride rough-shod over the rule of law'. Sardar Kartar Singh Campbellpuri does not agree with the majority finding in so far as paragraph 18 is concerned, and he states that the position prevailing in the Punjab is that 'the whole atmosphere is surcharged and permeated with catch-words and slogans which to his mind is due to confused thinking for which the Akalis themselves are responsible'. In the representations, memoranda, letters, etc., addressed by the Akalis to higher authorities, the mention of 'sacrifice made by the Sikhs in the struggle for independence, the assertion of having ruled the Punjab at one time and the demand for the preservation of their honour and prestige, etc., had been taken by their opponents to mean that in their heart of hearts the Sikhs wanted a Sikh State. But in view of the resolution passed at the Punjabi Suba Convention on May 22, 1960, the 'agitation is only for carving out a unilingual Punjabi Suba on a linguistic basis'.

4. The task of making the demand of the Punjabi Suba was taken up by Akalis because a large number of Hindus had disclaimed their mother-tongue in the last census.

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