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The Indian Civil Liberties Bulletin

Editorial Committee

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"All our freedoms—personal, economic, social, political—are a single bundle. Each is an indispensable part of a single whole. Destruction of any inevitably leads to the destruction of all."—Gen. Dwight D. Eisenhower before the American Bar Association in St. Louis on 5th September.

Our Aim and Method

The aims and objects of the BULLETIN are set out in a Letter to the Reader which goes cut with this number. The BULLETIN will be mainly a news record; comments will for the present be its subsidiary part. But in regard to the comments that it may happen to offer, three points may be emphasised here: 1. The approach of the BULLETIN to civil liberty problems will be wholly non-party. 2. The promoters of the BULLETIN feel no less profound a concern for national security than for civil liberty; they recognise that both are social interests of the highest value and that a proper balance must be struck between the respective claims of these interests; and while they will fight the tendency to regard the individual as nothing and the State as everything, they will ever be ready in all that they will urge to concede in ungrudging measure what is legitimately due to public order and the security of the State. 3. They will not countenance violence in any shape or form, but on the contrary will utterly oppose every attempt to preach or practise violence. The BULLETIN would like to be judged by these principles, which it will always be its resolve strictly to follow.

All India excepting States

The "Times of India's" special representative in New Delhi in his despatch dated 28th September, writes: "The total number of Communists in detention in various provinces were just under 2500 on 15th August. Madras has the biggest batch of 600 detenus, while West Bengal has less than 500, the U. P. 230, East Punjab 250, Bombay 350, Bihar 190, and a lesser number in other provinces. The two Chief Commissioner's provinces of Coorg and Ajmer Merwara have no Communist detenus, while Delhi has five."

Central Provinces

The Home Minister informed the Legislative Assembly on 13th October that 132 Communists were detained in prison.

ARTICLES

POWER OF DETENTION ABSOLUTE

The essence of the provisions relating to detention in the Public Safety Acts of all the provinces is that they render an individual liable to arbitrary imprisonment and cut him off from access to the Courts to test the validity of his imprisonment. All these Acts may well be described, therefore, as Suspension of Habeas Corpus Acts. Although persons can be arrested upon mere suspicion and detained for an indefinite period without charge or trial, the detaining authority is required under the Acts, if the detained person makes such a request, to supply him with the grounds of detention. The Courts cannot of course examine the adequacy or even the truth of the grounds advanced as a basis of detention, but the grounds are reconsidered by the Government concerned, in the light of the representation made by the detained person with a view to a possible cancellation or modification of the detention order. Such a reconsideration by the executive Government itself is hardly ever known to have resulted in the detenu being restored to liberty, but quite a number of detenus have obtained release through the action of the High Courts on the ground that the requirements laid down by the provisions of the Public Safety Acts in regard to the supply of grounds and particulars to the detenus were not observed. The Courts have held that if those grounds and particulars were vague, indefinite or incomplete and did not convey sufficient information to a detenu to enable him to make a representation contemplated by the Acts, further detention of the detenu would be illegal.

Detained persons could thus go to the High Courts with habeas corpus applications, albeit on a very minor issue, and get the Courts to set aside the detention order passed against them. But even such access to the Courts, meagre as it was, is now barred in several provinces. The Madras Government initiated this new policy by issuing an ordinance on 25th May, 1948, and some other Governments were known to be desirous of following suit, banning habeas corpus petitions altogether from any kind of proceeding under the Public Safety Act.

But such a complete ousting of High Court jurisdiction appeared too drastic a step to the Central Government, who it is said issued a directive to the provincial Governments to stay their hand. The provincial Governments, did stay their hand, but only for a time. After a short interval these Governments achieved their object, not directly (it is true) by ousting the jurisdiction of the High Court in all matters, but indirectly by ousting it in those few matters where alone such jurisdiction could previously be exercised. The Central Provinces Government took the lead in enacting the necessary amending legislation. It inserted, in October of last year, the following proviso to the section in its Public Safety Act relating to the supply of grounds of detention to the detained person :

Provided that neither the said order (of detention) nor the detention of the said person thereunder shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made to such person under this section.

The United Provinces, Assam and Madras Governments have passed similar legislation. In Madras the regular legislative procedure was not followed, but an ordinance to this effect was promulgated by the Governor, and it is widely believed that the legislature was prorogued for the deliberate purpose of taking the matter out of the hands of the legislative chambers and placing it in the hands of a Governor who is constitutionally required to carry out the advice of the Ministry.

In these provinces where an amendment of this kind is in force, the power of detention which the executive wields is absolute, the detained person being denied all opportunity to have recourse to an application for the writ of habeas corpus to the High Court, unless he wants the Court to confess its incompetence to look into his case. In the case of Padam Kumar Jain decided by the Allahabad High Court on 25th August, such confession was complete. The Court said that, although a full bench had decided in *Rex v. Durga Das* that if the Court found the grounds of detention supplied to the detenu insufficient it would hold detention illegal, it could no longer do so in view of the amendment of the Act. This means that the doors of the High Court, which were left a little ajar before the Acts were amended, are now securely closed against detained persons. And yet the Central Government does not get busy with the provincial Governments when the latter have done by the back door what they were ordered not to do before by the front door.

PERFECTION OF DETENTION MACHINERY

For once the subjective satisfaction of Government about the necessity of detaining a suspected person, which alone is required under the Public Safety Acts to justify detention in any particular case, was found by a High Court to be not enough reason for such action by Govern-

ment. In the case to be mentioned below the grounds advanced by the Government on which it had based its satisfaction were actually examined by the High Court in the light of evidence available, and having come to the conclusion that the Government was misinformed about the facts of the case, the High Court set aside the order of detention. We do not believe that the subjective discretion of the executive ever suffered from such a reverse before.

Mr. D. R. Paranjpe was arrested on 23rd March and detained in prison. The Central Provinces Government which was responsible for his detention supplied him with the following grounds and particulars in order to enable him to make a representation to Government as required by the Public Safety Act :

(i) You are a member of the Communist Party of India which is spreading its doctrine of violence in different parts of the country, fomenting industrial strikes, causing agrarian unrest, rendering life and property insecure and trying to seize power by violence and you are likely to indulge in some of the subversive activities of the said party. You also acted as a propaganda secretary of the provincial Communist Party.

(ii) You secretly carried on agitation amongst the local railway workers exhorting them to go on strikes with intent to cause or prolong unrest among them. You also agitated the workers of the Khaparkheda Electric Co. to organise etc. You also remained underground.

(iii) From secret information available to them, the provincial Government are satisfied that you are likely to go underground and from there guide the various subversive activities of the party and thus act in a manner prejudicial to the public safety, order and tranquillity.

From evidence which could be produced it was proved that Mr. Paranjpe was no longer a member of the Communist Party and that he had been expelled from it, thus giving the lie to ground (i). It was also proved by an affidavit of the Resident Engineer in charge of the New United Construction and Engineering Co. Ltd. of Khaparkheda that from 1st July, 1948, to the time when he was taken into custody Mr. Paranjpe was working in the factory, leading to the inference that he did not remain underground during this period, that he did not create any agitation among the workers during this time, and that in fact there was no labour trouble at Khaparkheda either during the period or after Mr. Paranjpe's arrest. This disproved much of what was stated in ground (ii). There still remained the Government's allegation in this ground that Mr. Paranjpe secretly carried on agitation among the local railway workers in order to induce them to go on strike, and the further allegation in ground (iii) that he was likely to go underground. As against the latter the High Court had before it the statement of the Resident Engineer that Mr.

Paranjpe was a steady employee. But how was the High Court to dispose of the former allegation about Mr. Paranjpe's secret activities, which Mr. Paranjpe might have successfully withheld from the Resident Engineer's knowledge? That one ground, if true, would be enough to lend validity to the detention order under the Act. And on this point the High Court's remarks are memorable. It said:

It seems to us that if the provincial Government was misinformed in respect of the other matters to which we have adverted, it would in all likelihood have also been misinformed regarding this particular. The result was that Mr. Paranjpe was ordered by the High Court to be set at liberty.

"The Nagpur High Court has created a landmark in the march of freedom by questioning the very information by which the Government persuades itself that the detenu is a danger to public safety, order and tranquillity"—thus writes exultingly a Nagpur newspaper. It is no doubt a landmark, but lovers of civil liberty must not build too high hopes on the power of High Courts to restore personal freedom to detained persons. In this case the C. P. Government was unwary enough to furnish particulars to Mr. Paranjpe which contained demonstrably erroneous information. But suppose it had merely confined itself to stating that it was satisfied that, Mr. Paranjpe, as one having communist leanings, was "likely to foment strikes and thus act" (this is quite enough for the purpose of fulfilling the requirements of the Act) "in a manner prejudicial to the public safety, order or tranquillity." Its action in detaining Mr. Paranjpe would then have been wholly invulnerable, however unwarranted the Government's suspicions about him might in fact have been, and the High Court would have been able to give him no relief, being prevented from examining whether the "suspicions entertained by the Government were well or ill founded. The C. P. Government having gone wrong on facts, the High Court could intervene, but Governments have usually more sense than this Government showed on this occasion in achieving their object.

Another relatively small point arose in this case. Mr. Paranjpe was served with grounds of detention more than six weeks after he was detained, although the law provides that the grounds should be furnished "as soon as may be" after detention, and the time of over six weeks that elapsed between the two events was characterised by the High Court as "unreasonable delay." As on other grounds the Court set aside the order of detention, it did not waste much time on this minor point. Still it was impelled to say:

We are inclined to agree respectfully with the view of a full bench of the Patna High Court in *Murat Patwa v. Province of Bihar* (I. L. R., 26 Patna 628) that the detention is illegal if the grounds for it are not communicated to the detenu within a reasonable

time. We would also quote the following observations in that case: "It is in the highest degree important that all servants of the executive should realise that every formality relating to or attached to the deprivation of the liberty of any individual must be scrupulously carried out."

The obligation to furnish the detenu with grounds of detention has already been very much weakened by the C. P. Government. In its first Public Safety Act (No. 38 of 1947) the obligation assumed by it was very tight: in every case of detention the detaining authority must of its own accord furnish the detenu with grounds "as soon as may be" after detention. But, very quickly, this Government, like several others including the Bombay Government, "improved" this provision (one does not know if this was done under the directive of the Central Government) by deliberately introducing two loopholes in the obligation. The Government need take no initiative in the matter. The detenu must first apply for grounds. Then only would there be any occasion for Government to make a move in this direction. Even after an application is received from the detenu, the obligation resting on the Government to furnish grounds is somewhat tenuous: it is expressed by "may" ("The authority making the order may, on application of the person affected by the order, communicate to him . . . the grounds on which the order has been made"). The High Court in this case referred to the relaxation of the Government's obligation in the revised Public Safety Act (No. 62 of 1948), saying: "It is also true that the provincial Government is not required to issue the communication at all as the word in the section is 'may' and not 'shall' (as in the previous Act)." It may be stated in passing that in the U. P. Legislative Council Begam Aizaz Rasool's amendment to substitute "shall" for "may" in the Bill was opposed by the Government and rejected by the Council. This means that if the C. P. Government had not bothered to supply the grounds of detention at all, probably the High Court would have been able to do nothing in this case. The supply of grounds is not strictly mandatory, and further, if, taking advantage of the phrasing of the section, it had abstained from supplying the grounds, it would not have exposed itself by showing that its action was based on erroneous grounds, and it would not have brought on itself the invalidation of the order by the High Court, as it did.

"Improvement" in the Public Safety Acts, in the sense of keeping the High Courts off from orders of detention, is going on apace. As pointed out earlier, vagueness or insufficiency or any other defect in the grounds of detention supplied to the detenu will no longer operate to nullify the order of detention. The C. P. Government, like some others, has already seen to it. But in respect of the time of the supply of grounds, the previous obligation yet stands: the grounds have to be supplied "as soon as may be after a person is detained." By an oversight, apparently, this obligation about the time was not removed.

ed in the new Act. But other Governments are taking a lesson from this. The Madras Government's recent ordinance has taken care of that. It has removed this obligation also from the High Court's jurisdiction. The new section inserted in the Madras Public Safety Act by this ordinance reads:

No order of detention . . . shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency, or *any delay* in any communication made to such person under this Act.

Really speaking, the Madras Government has no use for the italicized words given above, for even its original Public Safety Act laid no kind of obligation on it to communicate the grounds "as soon as may be" or within any prescribed period. But obviously the Government thought it best to err on the safe side and make this improvement also while undertaking a general improvement in its machinery of detention. We think it will have to be admitted that this machinery is now perfect. The High Court cannot possibly have a look-in into cases of detention. They will be under the absolute control of the executive.

[Since writing this, the Madras High Court has declared the above-quoted section introduced into the Public Safety Act by an ordinance to be invalid. The original Act, which came into operation on 11th March, 1947, was extended by notification for a year, which was the limit of extension provided for by clause 1 (4). Thereafter it was extended for still another year by notification, and in order to remove doubts about the validity of these notifications the Governor promulgated an ordinance on 11th August, 1949, validating the continuance of the Act after 11th March, 1948. But the validity of the ordinance itself was challenged on habeas corpus applications, and the High Court, relying on the Federal Court's decision in the Bihar Case, held that the Act "died a natural death on 11th March, 1948," and that, since the Act itself had lapsed, the amendment made in the Act was not valid.]

FREEDOM OF ASSOCIATION-

An American Court Decision

A judgment delivered on 15th August by a circuit court in one of the states of the U. S. A., Maryland, bearing on the right to freedom of association deserves careful study in India where this right is under a continuous onslaught by the executive. A statute popularly called Ober law was passed by the Maryland legislature on 1st June, designed to put an end to organized communist activities in the state. It provided, among other things, that if any person was a member of a subversive organization knowing it to be subversive, he would be guilty of a felony liable to five years' imprisonment, a \$5,000 fine, or both; and it made "reasonable grounds on all the evidence to believe that any person is a subversive person" a basis for discharge or denial of employment by public agencies.

The law was declared unconstitutional by the court. In his opinion the judge observed: "(The law) violates the basic freedoms guaranteed by the First and Fourteenth Amendments (to the United States Constitution, guaranteeing freedom of speech, press and assembly), and due process under the Fifth Amendment. It violates the Maryland constitution and Declaration of Rights, it is an unlawful bill of attainder, and is too general for a penal statute."

In invalidating the section making membership of a subversive organization an offence, the principle of "personal guilt, no guilt by association" was invoked. On this point the "New York Times" remarked:

In its broad sweep, this law seems to have carried the principle of guilt by association to its logical, and we think, indefensible extreme. Mere membership in an organization found by state authority to be "subversive"—which normally means following the Communist line—is hardly in a class with conspiracy to overthrow the government by violence. To punish members of such organizations simply as members and with no proof of conspiratorial acts is hardly consistent with the constitutional guarantees.

The state is surely strong enough to protect itself against actual conspiracy or against overt acts or immediate threat of overt acts without the necessity of going so far afield, into what can too easily become the realm of thought control and the suppression of the radical, or the unpopular, point of view. Whatever the danger from Communist front organizations, efforts to police the thinking of the community or of individuals present an even greater danger to the vitality of American institutions.

On the section discharging persons from employment or denying employment to persons believed on "reasonable grounds" to be subversive, the judge says:

What kind of standard is set up by "reasonable grounds?" What may seem reasonable to one may seem extremely arbitrary and unreasonable to another.

Hence the employer need not have evidence that a prospective employee is subversive. All he needs is reasonable grounds.

No man may be convicted of a crime in Maryland except upon evidence; the court and jury must be convinced beyond a reasonable doubt. In civil cases it is the preponderance of the evidence.

Under this statute one may be deprived of an opportunity to work for state, county or city upon no evidence at all, but merely upon "reasonable grounds."

We have referred above to only two sections in the invalidated Maryland statute because they are apposite to the conditions prevailing in this country. The two-year old ban on the Rashtriya Swayamsevak Sangh was recently lifted, but this action was taken not in recognition of the violation it involved of a fundamental human right.

but as a gesture of large-hearted generosity on the part of the executive. The communist organization in West Bengal still remains under a ban, similar organizations in the Madras province have recently been put under a ban, and Government is said to be considering whether such organizations in other provinces should not likewise be outlawed. The Government has taken power to itself to call for the resignation of any of its employees suspected to be sympathetically inclined to subversive organizations without reference to the Public Service Commission who, under the present constitution, have to be consulted in all disciplinary measures. This power, it is believed, has been extensively used against government employees supposed to have R. S. S. and communist leanings, and although the R. S. S. is no longer an unlawful organization and although its members are now freely admitted into the Congress, those employees who were made to resign because they were thought to be well disposed towards the organization are not being reinstated.

These attacks on the right of free association are made by the executive on its own authority. The executive issues a fiat, and that is the end of it. It need not seek even legislative sanction for its repressive action, and the action is, of course, not subject to a challenge in a court of law. The executive is supreme. In U. S. A. the hysteria of even a legislative body is subject to judicial correction. The contrast is indeed great.

MADRAS BANS COMMUNISTS

The Government of Madras issued on 23th September a notification under the Criminal Law Amendment Act, 1908, declaring the constituent branches of the Communist Party in the province and 19 workers' organizations said to be under the control of these branches to be unlawful associations. The reason for such action is stated to be that these bodies have been deliberately creating chaos and committing crimes of murder, loot and arson, particularly in the districts of Malabar, Krishna and Tanjore, and that even the application of the Public Safety Act of the province for the last 18 months is unable to bring their programme of violence under check. In order to convince the public of the existence of a widespread campaign of this kind, the notification refers to certain circulars which have come into the possession of Government and which, the notification says, prove that it is the settled policy of the Communist Party to do everything in its power to subvert the government by violence. Four days after the issue of this notification by the Madras Government, the Government of India published a bulky pamphlet giving long extracts from instructions said to have been given by the Communist Party for the formation of guerilla bands and shock brigades with the object of fighting the police and armed forces.

We very much regret the action of the Madras Government in proscribing the bodies it has. We have no

manner of sympathy with anyone who either preaches or practises violence and will always lend the fullest support to any measures a government may take to discover and punish all such as are guilty of these crimes. No one can be more solicitous of the protection of the public from those who either incite to violence or perpetrate acts of violence than avowed champions of civil liberty, for these realise probably more than any others that civil liberty will be possible only when public order is maintained in such a way as cannot be challenged by those who resort to violence. Nevertheless we can never support but must always condemn notifications like that of the Madras Government attributing to whole bodies of men the guilt which must be proved in each individual case by due process of law. Guilt by association, which is the doctrine on which this notification proceeds, is destructive of the right to freedom of association which in every country is recognised to be one of the fundamental human freedoms.

The circulars to which the Government of Madras refers must be highly objectionable and those from which the Government of India quotes extensively are highly objectionable. The authors of these cannot expect to receive any sympathy from any sane person. But to punish whole organizations on the basis of such material is entirely contrary to the first principles of justice. Instead of using this material for the purpose of justifying action against the Communists en masse, it should have been used in a court of law to bring offenders to justice in the ordinary way. The Government of India concludes its pamphlet with the observation that it cannot and will not permit any group, whatever its political complexion, to preach, incite and organize acts of sabotage and violence. This BULLETIN, which is free from all political ties, reciprocates this sentiment to the full. Only it hopes that, in combating lawlessness and violence, Government will take care, as it is its bounden duty, to see that its measures do not affect the guilty and the innocent alike, and it is only because the Madras Government's recent action is indiscriminate that the BULLETIN feels it is bound to protest against it with all the force at its command.

How is Outlawing done in U. S. A.?

We admit that the situation which the Government has to cope with is difficult; but the difficulties will not be lightened by Authority becoming panicky and laying its hands on all whom it suspects to be subversive, outlawing public bodies of such suspects in the process. How such difficult situations are handled in countries where fundamental human rights are respected can be seen from what is going on today in the United States. The Communist Party is no less active there than in this country, and the anxieties of Government no less severe. Yet in the U. S. the democratic due process is not departed from because of the difficulties. The Government in that country has not proclaimed the Communist Party by an edict. It has put the chiefs of that party on their trial for crimi-

nal conspiracy to advocate the overthrow of government by force and violence. If it succeeds in proving the charge it has brought, the Communist Party will in effect be banned. But the banning, if it takes place, will be the result, not of the discretionary orders of the executive Government, but of the verdict of the jury. The trial has been in progress for nine months, and the case, after commencing in January, was expected to go to the jury in the second week of October. As many as fifty witnesses were called, and tomes of evidence (some 20,000 pages) have accumulated. If there is a conviction, an appeal is certain to be preferred to the Supreme Court, where the constitutionality of the Smith Act, under which the trial is proceeding, will itself be challenged, and even if the validity of the Act is upheld, the point will be taken whether or not communism constitutes "a clear and present danger" to the United States sufficient to warrant what many consider abridgment of the constitutional guarantees of civil liberty. It is only if the decision of the highest court on these questions is favourable to government that the Communist Party will become an illegal body.

This is a very tedious process, many will say. It undoubtedly is, but it is such a process which democratic countries invariably follow. Totalitarian countries have short shrift with offenders and suspects, but democratic countries are prohibited by their very basic principles from following these evil ways. Quite a number of respectable organs of public opinion in this country are in fact egging on the Government to follow these ways in even a more vigorous way. They say: Why does the Central Government leave it to the discretion of the provincial Governments to ban or not to ban the Communist Party in their provinces? Why does it not itself impose an all-India ban everywhere in one fell swoop? They even say: How is the Communist Party, which is out to defy law in every open or clandestine way, entitled to the protection of law at all? A short answer may be made to this latter question, which is often asked: it is that it is far more for our sake than for the sake of the Communist Party that we have to follow in every case the due process of law; the society in which we live, and move, and have our being, cannot be sustained otherwise. It is entirely wrong to think that it is out of solicitude for the Communists that scrupulous and unflinching adherence to due process is advocated; it is out of regard for the moral values which as a democratic people we must cherish.

Congress Ban on Civil Liberty Unions

In some respects even more deplorable and fraught with more far-reaching consequences is the decree issued by the President of the Congress prohibiting true Congressmen from joining any civil liberty organization in the country. The occasion for this interdict was the formation of a Civil Liberties Union in the province of Bihar on 18th September. While the embargo itself is bad enough, the avowed motive behind it is even worse. The Congress President says to the party executives in Bihar

and other provinces that "it is not advisable for Congressmen to join any civil liberties union as the Congress itself is running the Government of the day." If there are any breaches of civil liberty, Congressmen may seek redress through negotiation with the Congress Government which rules in every province, but they must not agitate about such matters through outside organizations. This is euphemistically called only a directive to members of the Congress, but, as the Congress now functions, it will work as rigidly in practice as any prohibitory order issued by Government: no Congressman can ever have anything to do with any independent civil liberty organizations with impunity. It is not as if Congressmen give up contact with such bodies voluntarily: they are forced to do so as if by law. Violation of the right to freedom of association, not at the hands of the Government, but at the hands of a party running the Government, is just as complete.

The Bihar Union was formed by the efforts of Mr. P. R. Das; he and Mr. Nageshwar Prasad, a distinguished lawyer, are among the members of its executive committee, and Dr. Sachchidanand Sinha is its President. These names would be regarded anywhere as a guarantee that the Union would look honestly into any infractions of civil liberty and would not exploit them to create an anti-Congress atmosphere. Mr. Das is an eminent jurist, a former judge of the Patna High Court, but has taken no part, either before joining the bench or after retiring from it, in politics. He takes no interest in it. Dr. Sinha, if anything can be predicated of his politics, leans more heavily towards the Congress than towards any other group, though his detachment is such that he did not fail to warn Congress Governments on the occasion of the formation of the Union that they must not take advantage of "petty emergencies" and "keep the people cribbed, caged and confined" on the frivolous ground that if they departed from the coercive practices of the British regime they would jeopardise the safety and stability of the State. It is clear that when the Congress President warns off all Congress bodies from such men, he fears just this detachment and the independence that is born of it. There is no place for these qualities in the Congress scheme of things. Congress now rules; civil liberty must therefore be entirely at its disposition.

One would think that we are already using the civil liberty plank as a handle to work up feeling against the Congress. Nothing of the kind. The All-India Civil Liberties Council, of which Mr. Das is President, proclaims as its watchword that it will seek its object of the maintenance of civil liberty "wholly without political partisanship," following in this respect the creed of the American Civil Liberties Union. In fact wherever such unions are formed the promoters make a special effort to induce leading Congressmen to join them. When, for instance, a Union was formed in Poona, an earnest appeal was made to local Congressmen to be active members of it, not only with a view to strengthening the Union on a non-party basis, but also with a view to making its activities

more balanced and sober than perhaps otherwise they might be. It was said in the appeal that those who are remote from Government are sometimes apt to consider civil liberty problems from a doctrinaire point of view and not to make sufficient allowance for emergent situations. If, however, Congressmen joined the Union, they, being close to Government and aware of administrative difficulties, would help by their contribution maintain a proper perspective in the discussions and the conclusions finally arrived at would be free from any unreality. Such genuine desire of civil liberty unions in the country to seek the co-operation of Congressmen. But now Congressmen have been ordered to have no truck with such bodies. The meaning of the taboo is that civil liberty will be enjoyed by the people, but only to the extent that the ruling party will allow it.

COMMENTS

Mr. Nehru's Visit to U. S. A.

It will gladden the hearts of all Indians to see that the American government and the American people have lavished upon our Premier, Pandit Jawaharlal Nehru, all the honours that a national hero can ever wish for. Mr. Nehru himself, with characteristic modesty, declared some time ago that he was going to the United States, not to teach anything to its people, but to learn something from them. While during his stay there he will undoubtedly inform himself of T. V. A.'s marvellous achievements and many other things which every Indian who has a chance to do so must be eager to learn, may we humbly suggest that he might give the first priority to a close study of the Bill of Rights of that great country, the constitutional limitations which it imposes and the manner in which they are in practice enforced? He it was who founded the Civil Liberties Union in India in the British régime, and he it was who insisted upon the insertion of a Bill of Rights in Free India's constitution. It would be well if he now availed himself of the opportunity which a visit to U. S. in the capacity of the chief of the Indian State gives him of acquainting himself fully at first hand how civil liberty is made effective in the only country in the world where it is secured in the constitution and how the imperfections still left in its implementation are being removed. It will help India as nothing else will to enjoy the precious heritage of democratic freedom and make it our immortal glory as it is of the Americans.

A Certificate of Respectability

Cannot be claimed by India

Towards the end of August the Government of Northern Ireland abandoned the power of detention without trial and certain other powers which it had taken to itself in the Special Powers Act of 1922, though there

are still some powers which the Government has retained. Writing on this long overdue step, the "Manchester Guardian" observes:

Sir Basil Brooke has often been reminded that the Northern Ireland Government has greatly weakened its position in the country and in the Commonwealth by maintaining an apparatus of extraordinary powers long after the emergency which created it (viz. the activities of the Irish Republican Army) has passed. . . . (These extra-legal powers are) more appropriate to a Fascist than to a democratic regime. It is satisfactory that part at least of this tyrannical apparatus has been revoked. . . . Careful study of the remainder will be needed before we can be assured that a certificate of complete respectability could be given. . . . But it is something to be able to say that in 1949 it has had the courage to undo the work of 1922! Things do move even in Ulster.

What, one wonders, will be said about India who, after ridding herself of British domination, has retained on its statute book all the Coercion Laws which the British Government had enacted and has added to them some of its own which are even more drastic, and is extensively applying them all? Will it be given a certificate of respectability in the Commonwealth? We do not believe so. But the question is, Will it at all claim or value such a certificate? Will it not rather assert the new freedom which it claims to have secured for members of the Commonwealth by a broader interpretation being put on this membership by going its own way in respect of fundamental freedoms, although it may be a Fascist way?

Master Tara Singh's Release

After a detention of over six months under Bengal Regulation III of 1818, Master Tara Singh, the leader of the Akalis, was released on 4th October. His agitation for the creation of a separate Punjabi-speaking province and for representation of the Sikhs in the legislature and services of East Punjab was the cause of his detention and the release now ordered is evidently due to these problems being finally disposed of.

The late Mr. A. K. Pillai

We deeply regret to record the premature death from heart failure of Mr. A. K. Pillai on 5th October. He was a tower of strength to all those who suffered from government repression in the Madras province, and whenever any habeas corpus applications were to be presented or legal aid in any other sphere was needed, he placed his great legal knowledge freely at the disposal of people. He was Chairman of the Reception Committee of the All-India Civil Liberties Conference held in Madras in July last and was one of the most active members of the Madras Civil Liberties Union. In politics he belonged to Mr. M. N. Roy's party. The cause of civil liberty has suffered a serious loss by his death.

An Independent Judiciary

We have great pleasure in commending the Madras Government's action (and the greater is our pleasure because of our criticism of the embargo placed by it upon the Communist Party by an executive decree) in introducing on 2nd October a scheme for the separation of the Executive from the Judiciary. The scheme is yet experimental and has been introduced in only two districts. But it effects a radical change in the existing vicious system which prevails all over India. It provides what it calls Judicial Magistrates to do purely judicial work, leaving it to other magistrates to do non-judicial work "including that relating to the preservation of law and order." Thus in these two districts the prosecutor will no longer be also the judge. The Judicial Magistrates are placed under the control of the High Court and will not be as heretofore under the control of the District Magistrate who is also in charge of the maintenance of peace in his district. Their independence as judges is thus assured. The one consolation that the people have in the midst of the wholesale repression that is now rife everywhere is that, within the exceedingly limited ambit that is yet left to them, the High Courts do everything they possibly can to protect the fundamental rights of citizens. The High Courts were always independent, but with the independence of the lower magistracy, where it will be secured as in the two districts of Madras, the people will breathe more freely, to the extent that Coercion Laws will allow any power to the judiciary.

Undeserved Clemency

To such a high pitch has the evil of blackmarketing gone in India at present that no lesser persons than the Premier of India and the President of the Congress were recently impelled to exclaim that those who by their unsocial activities batten themselves on the starvation of the common man must be shot and whipped in street corners. These were of course only expressions indicative of sheer desperation. If they were meant in earnest, we should have pleaded that even these social pests should not be subjected to such barbarous ill-usage. But now the Premier and the Government of India have gone to the other extreme: they have in sober truth offered to blackmarketeers to condone all their past misdeeds if only they would voluntarily surrender a percentage of the income tax due on their ill-gotten gains. Even if such a fraction of the income tax is paid, it is estimated that Rs. 300 crores (three billions) of rupees will be added to the Treasury! However much or little may actually come into the Treasury in this way, what a great fillip it gives to criminality! Why should not the very extensive machinery that Government has and that it employs vigorously in detecting political crimes be used in uncovering these blackmarketeers and make them disgorge all that they have earned at the cost of the starving masses? We for

our part would insist upon due process even in their behalf. But we can imagine some advocates of Public Safety Acts saying: "If political suspects can be detained in prison without trial for an indefinite period, cannot the same measure be meted out to suspects among blackmarketeers by including their activities within the scope of these Acts? These activities, besides being heinous in themselves, bring grist to the Communist mill. If their perpetrators are locked up, even the banning of Communist organizations may perhaps not be so necessary."

ACTION AGAINST THE PRESS

Case of the "Cross Roads"

Public Safety Acts come generally into public view as laws conferring absolute power on the executive to detain persons without trial. But they have some other equally restrictive provisions. One such is the power to take action against the Press. This provision in the Bombay Public Security Measures Act (sec. 9A) was recently used to order the suppression for three months of the "Cross Roads," a weekly started only at the end of April last. When a petition challenging the validity of the order and praying for a writ of certiorari for quashing the order came up for hearing in the High Court, the question arose as to whether the Court could at all go into the merits of a news item published in the paper which was the cause of the issue of the order, or whether it was debarred from going into the merits of anything connected with the order by reason of the fact that the order was an executive one, and not judicial or quasi-judicial. The section provides: "If the provincial Government is satisfied that such action is necessary for the purpose of preventing any activity prejudicial to the public safety, the maintenance of public order or the tranquillity of the province or any part thereof," the provincial Government may take action of the kind mentioned in the section.

The Advocate General argued: "The test—and the only test—in these circumstances is the opinion of the Government and nothing else (about the necessity for the action taken), inasmuch as it is just the subjective mental process referred to; viz., the satisfaction of the Government, and no objective test is possible because no condition or contingency is contemplated by the section at all." The Judge, Mr. Coyajee, agreed that the section must be construed in this way. He said: "It may be observed that the section does not refer to any 'reasonable grounds' or any such expression which may in certain circumstances entitle the Court to look into the matter and examine the facts. The section indicates only one test—the acid test—and that is that the provincial Government must be satisfied that such action is necessary. . . . If the object of the legislature is to invest the authority with sole discretion to make the order under the section on being

satisfied, then the Court must give that plain meaning to the section which the legislature intended, however regrettable it may be that the result of that would be that courts of law would be unable to examine the question on merits." The petition was dismissed.

Against this decision (pronounced on 18th August) an appeal was filed before the Chief Justice and Mr. Justice Tendolkar. The sole question before the Court again was whether it was entirely within the subjective consideration of Government to issue such an order or whether there was any objective condition precedent to its application. Their Lordships observed on this point that it was perfectly clear that it was left to the satisfaction of Government to decide as to what action was to be taken under sec. 9A. Government were constituted sole judges as regards the nature of the action. But the question was whether the legislature constituted Government sole judges of the "purpose" of the action (referring to the words "for the purpose of" in the section). In other words, were Government to decide subjectively for what purpose the action was to be taken, even as they were to decide subjectively whether action was to be taken at all, and if so what action? Their Lordships held that sec. 9A created a contingency, namely, prevention of prejudicial activity, and that circumstance was not left to the subjective determination of Government but had to be objectively determined as a fact. Their Lordships contrasted the wording of sec. 9A, which mentions the "purpose", with that of sec. 2, sec. 6 and sec. 8, which merely says, "if the provincial Government is satisfied" that something or other is happening, it may take action of various sorts. In the light of the phraseology used in sec. 9A, it would be difficult, Their Lordships observed, to come to the conclusion that the legislature had given unrestricted power to Government not only to determine as to the necessity of action, but also to determine subjectively, without any control or check whatsoever, the purpose for which that action was being taken. Their Lordships held that the legislature did impose limitations on the power of the Government to take action under sec. 9A, and, setting aside the order of the trial court, directed it to dispose of the petition on merits. The decision was given on 19th September.

The High Court has thus managed to get a footing in this business: it can look into the merits of a case and examine whether any repressive action was at all warranted. So far so good. But the question which the public have to consider, though the courts of course cannot consider it, is: Why should resort be made by Governments to Public Safety Acts in taking action against the Press when they have ready to hand the Press Act of 1931, which itself is so drastic that High Court judges have declared that it is incompatible with the democratic regime now established in India and should be repealed? We shall in the next number of the BULLETIN give extracts from the judgment of the Calcutta High Court in the case of the

"Saptaha," a Bengali newspaper, in which the suggestion was made. In the recent "Daily Pratap" case, the East Punjab High Court observed (5th April, 1949), in setting aside the order of forfeiture of the deposit taken from the paper: "These proceedings clearly bring home to us that the official mind still moves in the old grooves of suspicion and distrust, . . . that people still require protection against the Executive Government even though it is our National Government." The High Courts, though they have to administer it, very much wish that the Press Act was removed from the statute book.

This Act itself must go into the discard, but our Governments, while having the advantage of it all the time, find it more convenient to take recourse to Public Safety Acts. Why? Because they believed, till at any rate the "Cross Roads" decision was known, that under them they would be altogether immune from the control of the High Court and would not expose themselves to strictures at its hands as in the "Daily Pratap" case. The further question which the public may ask themselves is: If the Press Act deserves to be sent to the limbo, should the far more sweeping provisions of the Public Safety Acts be retained?

HABEAS CORPUS APPLICATIONS

Detention after Acquittal

Cases are not rare of persons being detained under Public Safety Acts on grounds which were no other than those for which they were previously charged and tried, sometimes even acquitted. Two such cases arose in the Madras High Court within the space of four days in the month of July. Mr. B. Ammu Shetty of Bantwal, South Kanara, was arrested on 19th August, 1948, and the case against him was that he was an active Communist worker and was responsible for beedi labour strikes in Bantwal in 1946 and 1947. But it came out in the hearing of his habeas corpus petition that he had been prosecuted for inciting labourers to strike in 1946 and had been acquitted. The High Court ordered (25th July) the detenu to be released.

Similarly, in the grounds of detention served on Mr. Ramanathan of Mathurai it was alleged that he was concerned in "the Mathurai daylight robbery case" of 1929. He was not prosecuted on that occasion, but only for want of evidence. The High Court, ordering the detenu to be released, said (21st July): If there was so little evidence that he could not be prosecuted in 1929, it was difficult to see how that circumstance would, nearly 20 years later, furnish any basis for the detaining authority being satisfied that the detenu would do something prejudicial to public safety.

These two cases appear to have reached the very climax of irresponsibility in officials in exercising powers of detention. One man was charged with a specific offence

tried and found not guilty; and yet the Public Safety Act is enforced against him in order to circumvent the process of justice under the normal law! Another man is brought under the clutches of this special legislation for something for which he could not be prosecuted twenty years ago! Irresponsibility cannot possibly go any further. It is true that in these particular cases the High Court could go to the rescue of the detained persons, but it is doubtful whether, under the "improvement" effected in the Public Safety Act by the ordinance promulgated on 11th August, the High Court could now give redress even in such flagrant cases of injustice.

Detention Continued after Release Order

The Patna High Court passed strong strictures against the Government in a habeas corpus application of Mr. Ajit Kumar Chatterjee, editor of "Truth" published from Ranchi. Mr. Chatterjee, detained under the Public Safety Act, had been ordered by the High Court to be released on 21st June; yet he continued to be detained till 27th June. And on that day an order came down from the Bihar Government to keep on holding him in detention. The Court set aside this later order of detention, saying: "It is a matter of grave apprehension for this High Court to find a person who has been directed to be released by its order to be once again taken in custody by the police on behalf of Government. A time may well come when this Court will closely examine the circumstances in which such arrests are made." But may it not happen that when this time comes the High Court will be rendered impotent for any kind of intervention? If Bihar adopts the kind of amendment that the Central Provinces and some other provinces have, will the High Court have the power?

A case somewhat similar to the above came up in the United Provinces High Court. Mr. S. S. Yusuf, Vice-President of A. I. T. U. C. and a prominent Communist leader in the United Provinces, was first detained on 20th May, 1948, for a period of six months, but on a habeas corpus application the High Court ordered his release on 24th September, 1948. Actually, however, he was released four days later, and according to Mr. Yusuf, as he came out of the prison gate he was served with an order of internment. The internment order was dated 25th September, 1948, and the Home Secretary explained that the internment order was not something which was considered necessary because of the High Court's order setting aside Mr. Yusuf's earlier detention and that it was not meant to circumvent the powers of the High Court. When a habeas corpus petition was presented to set aside the new order on the ground that the circumstances of the case could not reasonably satisfy the detaining authority about the necessity of detention, Mr. Justice Kidwai, rejecting the petition, said that he was bound to abide by an earlier ruling of the full bench of the High Court that the satisfaction required under the Public Safety Act must be the satis-

faction of the authority issuing the order and that it was not open to a court to determine the efficiency (adequacy?) of the reasons which induced the authority to issue the order, or to investigate into the evidence upon which that authority was satisfied to detain a person, or to decide whether such order could be reasonably or honestly issued.

The habeas corpus petition of Bapurao, a Communist leader of Wardha, who was detained under the Public Safety Act on 18th March, 1949, was dismissed by the Nagpur High Court. The Government case was that he was closely associated with two leading Communists of Wardha, had incited the workers of the Electric Power House Workers Union of that place to observe a t ken strike, that he had exhorted railway workers there to go on strike, and that he was generally carrying on communistic activities. The petitioner pleaded that Government had no material on which to take action against him. The Court refused this plea of want of material. When the petitioner denied the truth of the allegations of Government, the Court declared it was incompetent to examine such a contention. It said: "The provincial Government was satisfied that the applicant was acting or was likely to act in a manner prejudicial to the public safety, order or tranquillity, and as we have repeatedly pointed out, this Court cannot go beyond that satisfaction in a case in which there is some material on which it is based."

PRESS ACT

Order under Press Act Cancelled

In May last the Madras Government ordered four Tamil newspapers to deposit security under the Press (Emergency Powers) Act, 1931. One of these papers, "Dharmika Hindu", filed an application against the order to the Madras High Court, and the High Court set aside the order, holding that none of the three articles considered offending by the Government contained words which came within the mischief of sec. 4 (1) (b) of the Act, which formed the basis for a demand of security. This section empowers Government to demand security from any Press which, in their opinion, publishes matter tending directly or indirectly "to promote feelings of enmity or hatred between different classes of His Majesty's subjects".

The first of the three impugned articles, according to their Lordships, drew the attention of the Congress to the anti-Brahmin propaganda carried on by the so-called Self-Respecters and appealed to the Congress to suppress it. "It is impossible for us", said the Judges, "to find in this article any attempt directly or indirectly to promote feelings of enmity or hatred between different classes. On the other hand, the article draws attention to the existence of a party, which is engaged in stirring

up feelings of hostility against a particular community".

Another article was an attack on some Muslims who had joined the group of the "Vidhuthalai" newspaper for their anti-Hindi agitation, and the constant refrain in the third article, the Judges said, was a denouncement of the attempts made by the "Vidhuthalai" and the leaders of the Self-Respect movement to vilify the Brahmins of South India because the assassin of Mahatma Gandhi was a Brahmin. Neither of these articles, according to them, came within the scope of the section.

The "Vidhuthalai" was one of the papers against which the Government took action along with the "Dharmika Hindu", the underlying policy of Government apparently being to set the Act in motion against papers indulging in mutual recrimination. Their Lordships observed: "We are not called upon in this application to decide whether the editor or publisher of 'Vidhuthalai' has any cause of action against the writer or the publisher of the journal ('Dharmika Hindu' which contained 'a strong vituperative attack'). What we are concerned with is whether there is anything in the article (in 'Dharmika Hindu') which tends directly or indirectly to promote feelings of enmity or hatred between different classes. We think not".

The Nagpur High Court similarly set aside on 13th August the C. P. Government's order requiring a deposit of security from "Azadi," a Hindi weekly of Nagpur, under the same Act. The order was issued in view of an article which attacked Mr. D. P. Mishra, the Home Minister, as "carrying out downright repression of workers." Objection was taken by the Government to the article under sec. 4 (1) (d) of the Act, which incorporates the law of sedition into the Act, with the addition that anything which "tends directly or indirectly" to promote sedition is punishable under the section.

After reviewing the article in question, their Lordships observed that though it was not couched in "balanced language" and the criticism directed against Mr. Mishra was "not fair," we would say without hesitation that neither the criticism contained in the article nor the statements objected to in particular amount to sedition."

NUMBER OF DETENUS

Bombay

From the time the Public Safety Act was enacted in 1947 till the end of February, 1949, the total number of persons detained in the Bombay province from time to time, it was stated in answer to a question in the Bombay Legislative Assembly, was 8,644, and of these 915 had remained in detention on 15th March, 1949. It was also

stated that 289 persons had so far been released by the High Court as a result of habeas corpus petitions.

Asked in the Bombay Legislative Assembly whether Government intended to declare the Communist Party to be an unlawful organization, the Home Minister replied that Government was closely watching the situation and would take whatever action was necessary. The number of Communists in detention in the Bombay Province, he said, was about 270. In regard to the banning of newspapers it was stated on behalf of Government that a ban was imposed on the "People's Age" and other Communist papers because Government was satisfied that such action was necessary for the purpose of preventing prejudicial activity on their part; and that although Government had evidence to prove this charge against the papers, it was not going to place that evidence before the House.

About the Rashtriya Swayamsevak Sangh, it was stated that the number of R. S. S. workers arrested in the province was 9,334; that 8,319 were convicted (of participation in the Satyagraha movement) and 334 were detained for security reasons; that about 280 Government servants were arrested for participation in the R. S. S. movement; and that appropriate disciplinary action including dismissal was taken against all Government servants who were directly or indirectly connected with the movement. It was stated by Government that the Satyagraha movement of the R. S. S. was generally carried on peacefully and non-violently.

The numbers of Special Courts constituted and of Special Judges appointed under secs. 10 and 11 of the Public Safety Act are 11 and 12 respectively. A list of areas in which the sections were enforced and a list of areas in which public meetings were banned continuously for a period exceeding a month were supplied in answer to a question in the Assembly.

It was stated in answer to a question in the Council that the recommendations made by the Reviewing Officer, Mr. K. B. Wassoodev, in respect of the detenus whose cases were examined by him were being considered by Government. It was also stated, in regard to detenus in Ahmednagar district, that no family maintenance allowance was paid to detenus.

Bihar

At a press conference on 14th September, the Prime Minister of Bihar told the press that 204 persons were under detention at present in Bihar, and that of these 192 were Communists.

East Punjab

The Premier informed the Legislative Assembly that 230 Communists were confined in gaols in the province on 26th September, in addition to 34 detained in their own villages, and that 268 Communists had been sent to the tribunal for examination, of whom 55 had been released.

THE INDIAN CIVIL LIBERTIES BULLETIN

Dear Reader,

This monthly BULLETIN, which will normally consist of four pages, has a very modest aim: it is no more than to bring together from all available sources significant news of the month affecting civil liberty — and to offer some comments, which it is hoped will be regarded as sane, on such news.

An assiduous reader of newspapers will probably have read most, if not all, of the news given in the BULLETIN. Still a record of this specialised news in one sheet will help to refresh his memory. Such a record may be of great use in forming a comprehensive view of the status which civil liberty in its various forms occupies in our society at present in law and in practice. Every person who takes an interest in public affairs will desire to have ready to hand material on which such a view, supported by facts, can be formulated.

The views that the BULLETIN will express in its comments will be the least valuable part of its contents, and yet it may well be that these comments will give some little help in forming a just estimate of what is happening in India in this field. Whatever be the value of the comments made, they will be made from a strictly non-partisan point of view.

But the chief aim of the BULLETIN will be to keep the reader constantly well-informed on civil liberty matters.

I have no doubt that you are acquainted with many persons who take an interest in civil liberty and would

like to help forward the beginnings of a small movement intended to do something to keep our civil liberties intact. The importance of maintaining civil liberties has, as you well know, not been lessened but only enhanced by reason of the attainment of political freedom by our people. And this movement, I wish again to assure you, is in the hands of men who, to whatever political persuasion they may individually belong, will approach questions concerning civil liberty from an objective angle and will not seek to derive party advantage from anything that they may happen to do in this sphere. It is indeed a movement which deserves, and will ever seek to enlist, the support of all men of good [will belonging to all political parties or to none.

This humble effort to focus the attention of the public on questions of civil liberty will be greatly forwarded by the BULLETIN being able to command a large circulation. You will readily understand that it cannot possibly make any profit and is not intended to make any profit.

WILL YOU, THEREFORE, BE GOOD ENOUGH TO BRING THE BULLETIN TO THE ATTENTION OF YOUR FRIENDS AND PERSUADE THEM TO SUBSCRIBE TO IT ?

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Sincerely yours,
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Editor

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Report of the All-India Civil Liberties Conference (July 1949) containing Mr. P. R. Das's presidential address. Pp. 16+25+16.

To be had of the Madras Civil Liberties Union, Tambaram, Madras.

To The Editor, CIVIL LIBERTIES BULLETIN,

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