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Right of Personal Freedom

Below are given extracts from the decision of Judge Robert H. Jackson of the U. S. Supreme Court releasing the convicted Communist leaders on bail pending their final appeal against conviction.

If I assume that defendants are disposed to commit every opportune disloyal act helpful to Communist countries, it is still difficult to reconcile with traditional American law the jailing of persons by the courts because of anticipated but as yet uncommitted crimes.

Imprisonment to protect society from predicted but unconsummated offences is so unprecedented in this country and so fraught with danger of excesses and injustices that I am loth to resort to it, even as a discretionary judicial technique to supplement conviction of such offences as those of which defendants stand convicted. . . .

But the very essence of constitutional freedom of press and speech is to allow more liberty than the good citizen will take. The test of its vitality is whether we will suffer and protect much that we think false, mischievous and bad, both in taste and intent.

Judge (Benjamin) Cardozo wisely warned of "the tendency of principle to expand itself to the limit of its logic." If the courts embark upon the practice of granting or withholding discretionary privileges or procedural advantages because of expressions or attitudes of a political nature, it is not difficult to see that within the limits of its logic the precedent could be carried to extremities to suppress or disadvantage political opposition which I am sure the department itself (urging refusal of bail) would deplore. . . .

My task would be simple if a judge were free to order persons imprisoned because he thinks their opinions are obnoxious, their motives evil and that free society would be bettered by their absence. The plea of admitted Communist leaders for liberties and rights here which they deny to all persons wherever they have seized power, is so hypocritical that it can fairly and dispassionately be judged only with effort.

But the right of every American to equal treatment before the law is wrapped up in the same constitutional bundle with those of these Communists. If in anger or disgust with these defendants we throw out the bundle, we also cast aside protection for the liberties of more worthy critics who may be in opposition to the government of some future day.

ARTICLES

A WRIT OF HABEAS CORPUS

Right of Renewing Rejected Applications

A full bench of the Bombay High Court consisting of the Chief Justice, Mr. Justice Gajendragadkar and Mr. Justice Dixit dismissed (3rd October) the habeas corpus petitions which six Communist detenus renewed because their previous petitions had been rejected by a division bench of the same High Court consisting of Mr. Justice Dixit and Mr. Justice Shah. The petitioners claimed under art. 226 of the constitution that they had a right to renew applications till all avenues of redress were exhausted, and contended that whatever restrictions might have been placed under the old constitution on the High Court's power of hearing successive petitions they had been removed by the new constitution. The full bench refused to review their cases on the ground that finality had already been given to the earlier decision of the division bench (which was no other than the High Court itself) and held that the High Court had no inherent power to review its own decisions. It gave leave to the petitioners, however, to appeal to the Supreme Court against the decision of the High Court.

The English law in regard to this matter of renewal of habeas corpus applications is thus stated in Halsbury's "Laws of England" at p. 727, vol. 9 (second edition) :

The applicant has a right to apply successively to every Court competent to issue a writ of habeas corpus, and each tribunal must determine such an application upon its merits unfettered by the decision of any other tribunal of co-ordinate jurisdiction, even though the grounds urged are exactly the same. Thus, each judge of the High Court of Justice has jurisdiction to entertain an application for a writ in term time or vacation, and he is bound to hear and determine the application on its merits, notwithstanding that some other judge has already refused a similar application.

The established practice in habeas corpus cases is that if the decision of the Court is favourable to the detained person there is no appeal; if unfavourable, however, the application may be renewed until each jurisdic-

tion has been exhausted, and " every court in turn and each court or judge was bound to consider the question independently, and not to be influenced by the previous decision refusing to discharge " (Cox v. Hakes [1890] 15 A. C. 506). Thus, the Irish Free State's constitution of 1922, in its art. 6 relating to habeas corpus, provided in full for procedure reached in England by the evolution of habeas corpus in its legal history: e. g., ordering the gaoler to produce the body of the detained; the requirement of a written return of the cause of detention; the obligation imposed on " the High Court and any and every judge thereof " to order the production of the prisoner; and in case of an insufficient return to compel his immediate release. One wishes that our constitution which cannot be charged with being too economical of words had made more detailed provisions about habeas corpus, distinguishing it from the operation of other prerogative writs.

The House of Lords' opinion in the Cox case from which the words quoted above are taken also contained some other expressions which could be interpreted to have implicitly reversed the practice of centuries because it was stated in the opinion that it could not be assumed that " the right of personal freedom was no longer to be determined summarily and finally, but to be subject to the delay and uncertainty of ordinary litigation. " This was probably meant to apply only to an appeal by the Crown against the grant of the writ and not to an appeal by the prisoner against the refusal of the writ. The obiter dicta of Lord Halsbury and Lord Hershell " left little doubt that they would not support a discontinuance of the established practice. " But for a time at any rate an attempt was made to interpret this case as if it involved a denial of the prisoner's right, though expressly conferred by the Judicature Acts, to prefer an appeal from the High Court to the Court of Appeal and from the latter to the House of Lords against a decision refusing the writ. For instance, the question arose in the Irish Courts in the case *Johnstone v. O'Sullivan* ([1923] 2 I. R. 13) which came before the Court of Appeal before the Irish Free State constitution came into force. In this case it was submitted on behalf of the Irish Provisional Government on the strength of the decision of *Cox v. Hakes* that the principle of that case applied also to an order refusing a writ of habeas corpus, and that accordingly no appeal lay from such order. The argument was not accepted by the Court of Appeal, it being held that an order refusing a writ of habeas corpus was a " judgment or order " within the material section of the Judicature Act of 1877 and that the decision of *Cox v. Hakes* could not be held to apply to an appeal against an order refusing the writ.

This slight uncertainty in the state of the law was completely removed by the decision in the great constitutional case of the Secretary of State for Home Affairs v. *O'Brien* ([1923] A. C. 603) " where the fundamental difference between the legal position of the applicant

for the writ and that of the executive in relation to the right of appeal was emphatically asserted and the finality of the verdict granting the writ—even prior to the actual discharge of the detained—affirmed."

This leading case has established the principle of English law beyond all challenge that while once the writ is granted the Crown cannot delay its operation or keep the prisoner in custody by preferring an appeal against the decision of the divisional court, the prisoner may take an appeal against the refusal of the writ right up to the House of Lords. This principle is of the highest importance to the liberty of the subject and must be so authoritatively asserted in India as not to leave its operation in even a shadow of doubt.

LAW OF UNLAWFUL ASSOCIATIONS

Declared Void by Madras High Court

A judgment of the highest importance affecting the fundamental right of Freedom of Association guaranteed in the constitution was delivered by the Madras High Court on 14th September. The judgment was in respect of a petition filed by Mr. V. G. Row, Secretary of the Madras People's Education Society, who asked for the issue of a writ of certiorari to quash the Madras Government's order of 21st March declaring the Society unlawful under the provisions of the Criminal Law Amendment (Madras) Act. The reason given by the government for outlawing the Society was that whatever its professed objects were, the organization's real object was " doing propaganda for the Communist Party and thereby interfering with the maintenance of public order and the administration of the law. " The petition was heard by a full bench of the Madras High Court, who held the Act void as being inconsistent with the provisions of the constitution relating to fundamental rights.

There were many constitutional points raised in this case and the opinions of the three judges of the bench who wrote concurring judgments were not parallel on all of these points. But on the main issue all were agreed, viz., that the restrictions imposed by the impugned Act upon the right, conferred by art. 19 (1) (c) of the constitution, " to form associations or unions " went beyond the " reasonable " restrictions which the savings of art. 19 (5) allow.

It must be admitted that the amending Act of the Madras government introduced some very liberal provisions (detailed at pp. 128 and 129 in the BULLETIN) to check, so far as the Madras State is concerned, the totally uncontrolled powers given to the executive by the central Criminal Law Amendment Act of 1908 to ban associations. But the improvements effected (and particularly the improvement consisting in the establishment of an Advisory Board with compulsory jurisdiction), though generous, were not enough to cure the essential defect of arbitrariness that vitiated the Act. The procedural defects in the amending Act which rendered

the restraints laid on free association unreasonable were set out as follows by the Chief Justice in his judgment :

NO PROPER NOTICE

The first and, in my opinion, the most important defect in the procedural part of the Act which renders the restriction unreasonable, is the absence of any provision for the communication of the order of the Government declaring an association to be unlawful to the association and its members. The Act provides only for a notification in the official Gazette. Though it is true such a notification may in certain cases be treated as amounting to constructive notice of the order of the Government, yet in a case where drastic consequences ensue by reason of the order, the interests of the citizens require a more direct notice. Section 16 (1) (b) provides that the notification shall fix a reasonable period for any office-bearer or member of the association or any other persons interested to make a representation to the State Government in respect of the issue of the notification. Presumably, after the lapse of the period so fixed, there will be no right of representation. It is easily conceivable that the members of an association may not have knowledge of the notification declaring it to be unlawful till after the lapse of the period fixed. Though all persons in a State are presumed to know the law of the land and ignorance of law is no excuse, I do not think there is anything which makes it incumbent on every citizen to peruse regularly the official Gazette. In the case of preventive detention or internment or externment, the order is served on the person concerned. I do not mean to say that personal service is the only mode of service. In case of evasion or absconding or in other cases where it is impracticable to have personal notice, other modes of service may be resorted to. We are familiar with the alternative modes of notice provided under the Code of Civil Procedure. In the case of an association, which is registered or has a distinctive name and a definite place set apart for its use, the notification can be served on any office-bearer of the association or if no such office-bearer is available for service by affixure at the reputed place of the association. Without some such notice, it appears to me to be unreasonable to say that the association and its members would be precluded from making a representation to the Government against issue of the notification after a fixed time.

DEFECTIVE ADVISORY BOARD PROCEDURE

The next procedural provision which I think makes the restriction not reasonable is the prohibition against any person making a representation in respect of the notification from taking any part in the proceedings of the Advisory Board. I see no objection to making the proceedings of the Board and its report confidential in the public interests. But so long as the proceedings are not made public, I can see no

valid objection to the person aggrieved being given an opportunity of establishing his case by relevant evidence. Article 22 (1) of the constitution provides that a person who is arrested shall not be denied the right to consult and to be defended by a legal practitioner of his choice. Clause (3) of the article expressly declares that the provision will not apply to any person who for the time being is an enemy alien or to any person who is arrested or detained under any law providing for preventive detention. It is true that, before a prosecution is launched, under section 17 of the Act, a member of an unlawful association is not arrested, but once a prosecution is launched, the Criminal Court is powerless to decide as to the validity of the declaration by the Government. The fact that he may be entitled to be defended by a practitioner in the Criminal Court will not really be of much use to him. When penal consequences result from a declaration under section 15 (2) (b), I think it is reasonable that there should be provision for the aggrieved person to defend himself. I must also mention the fact to which reference has been made by my learned brothers, namely, that when a person is charged under section 17 as being a member of an unlawful association within the meaning of section 15 (2) (a), established procedure of the Criminal Courts of the land will apply. The onus will be on the prosecution to affirmatively establish that the association encourages all its persons to commit acts of violence or intimidation or that the members of the association habitually commit such acts. I can understand, in the case of a declaration by Government, the onus shifting on to the accused, who may be called upon to establish that the declaration of the Government is unwarranted and illegal.

But to say that an association shall be deemed to be unlawful once and for ever by a declaration by the Government subject only to the opinion of an Advisory Board which merely considers the material placed before it by the Government and may or may not call for further information from the association or its members and which does not conduct its proceedings in the presence of the aggrieved party or of some one representing him, appears unreasonably to restrict the right conferred by article 19 (1) (c) of the constitution. I may also add that there is nothing making it incumbent on the Government to refer the notification to the Advisory Board within a definite time and there is nothing to compel the Advisory Board to make its report within a particular time, circumstances to which my learned brothers have alluded.

I, therefore, come to the same conclusion as my learned brothers that the amending Act is void as it is inconsistent with the provisions of Part III of the constitution, in particular with the provisions of article 19.

COMPARISON WITH DETENTION ACT

It should be noted that the disability imposed by sec. 16 A (5) of the impugned Act (forbidding an aggrieved person "to attend in person or to appear by any legal representative" before an Advisory Board) which in the above judgment is held to constitute an unreasonable restriction is also a disability which sec. 10 (3) of the Preventive Detention Act imposes. And in fact the defence made on behalf of the Government was that the section was bodily taken from the Preventive Detention Act and should therefore be presumed to give adequate facilities for a proper consideration of representations by the Advisory Board. But the Madras High Court apparently refuses to be guided, in considering the rights enumerated in art. 19 of the constitution, by the provisions of the Preventive Detention Act. Similarly, it should be noted that the Chief Justice thinks that sec. 16 A (3) of the Madras Act is deficient in the matter of making available relevant information and having it thoroughly scrutinised by the Advisory Board. This section also has been borrowed from sec. 10 (1) of the Preventive Detention Act. Surely a question will be raised one of these days as to whether these defective sections of the Preventive Detention Act do not fail to carry out in full the mandate of art. 22 (5) of the constitution about the detained person being given an opportunity of making a representation against the detention order and possibly getting it cancelled.

If the greatly liberalised amending Act about unlawful associations is void it is obvious that the original Act which gave absolute discretion to the executive to ban public bodies would be held, *a fortiori*, void. The Chief Justice after dealing with the Madras Act went on immediately to say so :

It follows that the original Act before its amendment became void on the coming into force of the constitution. In fact the learned Advocate-General found it very difficult to sustain the validity of the original Act which did not provide any opportunity for the declaration by the Government to be challenged in any manner. One could not find a better illustration of the exercise of naked arbitrary power than the original Criminal Law Amendment Act. The Government had only to issue a notification on a subjective satisfaction that an association was unlawful, and it was infallible and conclusive. It is impossible to say that the restriction imposed by the original Act is in any sense reasonable within the meaning of article 19 (4) of the constitution.

Mr. Justice Vishwanatha Sastri also, after giving reasons for holding the amending Act unconstitutional, added : "It follows that the Act as it stood before it was amended was also opposed to the constitution."

Mr. Justice Satyanarayana Rao, besides holding that the Madras Act "impinged upon the fundamental right embodied in art. 19 of the constitution," held that it

infringed art. 14 guaranteeing equal protection of the laws, a point on which the petitioner had laid great stress. His Lordship observed :

An examination of the provisions of the amending Act undoubtedly led to the conclusion that the remedy provided was ineffective to give a right of equal opportunity to the person affected. It was not based on reasonable classification and there was no reason or justification to make an invidious distinction between one kind of unlawful association and another. All members of an unlawful association were not placed on the same footing; and there was no justification for the legislature to have selected persons forming an association for a special kind of treatment unlike other persons who were accused of offences either under [ordinary or under (?)] special laws; nor was there any reason for not following the ordinary procedure for the trial of offences laid down in the Criminal Procedure Code. The legislation was not directly aimed at preventive detention, in which case the constitution recognised an abridgment of the right. He had therefore no hesitation in holding that the impugned provision of the amending Act was wholly inconsistent with article 14 of the constitution of India.

It would appear that the Chief Justice held a somewhat different opinion on this point.

Mr. Justice Viswanatha Sastri recorded an additional reason for invalidating the Act, viz., that "the main Act as amended is in excess of the legislative powers of the State conferred by the constitution." In giving reasons for this opinion he said :

In his opinion the Act exceeded the authority given to the legislature by the constitution. The Act was a permanent part of the statute book and not a piece of emergency legislation. It was not a legislation passed in exercise of the defence powers of the State. The legislative power that was invoked was "public order", in Entry 1 of List II of Schedule 7 of the constitution. Constitutional rights and liberties which were guaranteed by the constitution and which were of supreme importance to the citizens of a free democracy had been considerably eclipsed. The Act created and shaped a crime and provided drastic penalties by way of imprisonment, fine, and forfeiture of property without a fair trial. It did not provide for proper notice to the persons penalised. It did not give further a reasonable and fair opportunity to be heard before being condemned. In effect it placed the sentence before trial and judgment. He did not think the constitution had made this colossal delegation of power to the State legislatures when they were authorised to legislate with respect to public order. There was no provision that any prosecution or forfeiture shall be made after the Advisory Board had given its decision. There was no time-limit for the continuance of the declaration.

The Madras government is prosecuting an appeal against the decision of the High Court which has voided the Madras Act to the Supreme Court, and in the meanwhile, on account of this decision, some 30 associations declared illegal by the government have ceased to be illegal. The decision has not resulted in securing release from detention of Communist members of these organizations because they were detained under the Public Safety Act and presumably have remained in detention under the Preventive Detention Act.

PERIODICAL REVIEW OF DETENTIONS

Urged by the Supreme Court

What has only too often occurred recently is that persons are shut up in gaol on suspicion and when after several months of such preventive detention the detainees petition the High Court or the Supreme Court for a writ of habeas corpus, the courts considering the petitions are informed that the petitioners have already been released by the government, usually just a few days prior to the hearing of the petitions, and the courts are compelled to say that in view of the petitions being rendered infructuous they cannot go into the merits of the detention orders.

In fact, the provisions of the Preventive Detention Act are so tightly drawn and access to the judiciary is so rigorously cut off from the detainees on the question of whether or not there was real necessity for taking action under these provisions that the executive need not be in fear if it only exercises ordinary care in drawing up its detention orders, lest the orders should be cancelled by the courts. The executive has no doubt to set forth grounds of detention, but the sufficiency of the grounds so furnished for sustaining the orders for detention the courts are precluded from examining. The Supreme Court and other courts have repeatedly expressed themselves incompetent to go into this question, which ordinarily would be the main question for consideration by them on habeas corpus applications. This very issue contains several instances of such a frank confession of want of jurisdiction on the part of the courts. It is not open to these courts to go into the truth or otherwise of the allegations made by the executive against the detainees either, unless it so happens that the allegations are such that on the face of them it appears that they cannot possibly be true. The detainees can obtain relief only if the orders for detention are found to contain some technical defect which vitiates the orders and makes them invalid in law on that account. It is only on such minor points that the judiciary have a look-in at all in respect to case of preventive detention. Otherwise detention orders are wholly unchallengeable and irreversible in courts of law; they are deliberately taken out of the permissible scope of judicial review.

Why does then the executive restore to liberty persons in such large numbers whom it has held in detention for long periods just before their habeas corpus applications come on for hearing in the courts? Is it because the execu-

tive has relented and would like these persons to be no longer deprived of their personal freedom? Hardly so; it is mainly because it has been so careless and slipshod in issuing detention orders and has met with a rebuff at the hands of the judiciary in such numerous cases in the past, in spite of the fact the law allows the subjective satisfaction of the detaining authority to prevail and extrudes the judiciary from the whole business, that it fears that when similar cases come before the courts it will meet with a similar rebuff again. What it fears is that it will be exposed to ridicule all over the country because of the sheer lack of a modicum of efficiency on its part to put its detention orders into language in such a way that the judiciary will not find it possible to nullify them as being in contravention of some minor provision of the Act (which is all the power that the Act leaves to the judiciary). It thinks that it would save further loss of face by anticipating the order for release which it fears the courts would make. If instead it had set about examining its orders of its own accord in the light of judicial decisions and revoked such orders as it might find to suffer from defects pointed out by the courts it would have shown that deference to the judiciary which it is its bounden duty to do. But the executive cannot unfortunately be credited with this motive, for it would not then have waited till habeas corpus petitions are actually filed, and it becomes inevitable to move in the matter in order to avert the impending disgrace. There is another reason why the executive should take the initiative in considering proper cases for release. A man loses his personal liberty because of his alleged intent to do some prejudicial act; he thereupon remains in gaol. But surely a time must come when the apprehended danger ceases to be appreciable; and then he must be set at liberty. However, in order that this might happen, the executive should constantly be examining detention cases and finding out which of the detainees can be set free without detriment to the interests of the public. The executive does not seem to be engaged in such a sifting process at all. One who is in gaol just appears to stay there indefinitely without the executive giving any thought to the matter.

It is well that these grave abuses in the working of the law of preventive detention have been noticed by the Supreme Court and that the Court has made a suggestion to the executive (it could do no more) to give a periodical examination to detention cases on its own initiative without waiting for such cases to come before the courts for an inquiry into compliance or non-compliance with the technique laid down in the law. The suggestion was made when the habeas corpus petitions filed by Mr. Meghachandra Singh and two other detenus from Manipur State came up for hearing before the Court on 12th September. The Attorney-General informed the Court that two of the petitioners had already been released and the third had

been detained under a fresh order of detention. The Court therefore ruled, naturally enough, that the petitions of the released detenus had become infructuous and that the case of the one still under detention could be considered only when a fresh petition would be presented. This was an easy ending of the petitions that were before the Court, and ordinarily matters would have rested there. But apparently the Judges felt that they were being balked of an opportunity of giving consideration to the petitions, and that the proceeding followed on this occasion by the executive called for some comments. Mr. Justice Patanjali Sastri remarked :

What does this sort of practice mean? A person is arrested and kept in gaol for a number of months, and after he files a petition in the Court and when the petition is about to come on for hearing he is released, possibly a few days, maybe a week, earlier, with the result that the Court is precluded from going into the case.

The large number of releases effected in this way suggests that when the matter went before the higher authorities with the issue of notice to them by the Court, it was found that the detention was unjustified in many cases and that the detenus had to be consequently released.

Should not action be taken against the officer responsible for detaining a person whom the higher authorities subsequently find to have been unjustifiably detained?

Mr. Justice Mahajan agreed with these observations of Mr. Justice Patanjali Sastri and observed that when on the first occasion during the vacation he came to Delhi from Simla he found that in 80 per cent. of the habeas corpus petitions that came up before him the Advocates-General said that the petitioners had been released. Some of the petitioners had been in detention for two years and more. It showed either that they were unjustifiably in gaol or that the Government did not want them to come before this Court. This happened in 22 out of the 23 cases that came before him. And the Chief Justice, Sir H. J. Kania, referring to the general practice that was being followed by the detaining authorities, said :

A person is detained, and after that the file is put in a pigeon-hole and nobody bothers about it any more. Then all of a sudden somebody at the top wakes up when a petition is filed in the Court.

Considering what the Court has to go through in the cases of habeas corpus petitions, don't you think (he asked the Attorney-General) other aspects of the cases than legality should be taken into consideration? Hundreds or thousands of persons are under detention. Many are under detention for alleged activities of three or more years ago. There is a grievance that only legal technicalities prevent their release. Some machinery satisfactory to the public mind should be established by which grievances of

such types should be investigated. The machinery may not consist of police officers but some other responsible persons. That is the feeling of this Court. He concluded with a suggestion that there should be a periodical review of all detentions under the Preventive Detention Act in order that legitimate grievances of the people be removed which were beyond the scope of courts of law functioning under limited jurisdiction in these matters.

The Attorney-General expressed agreement with the suggestion but did not then indicate the steps he proposed to take to give effect to the observations of His Lordship the Chief Justice; nor has any indication since been given by the Government of India. The Preventive Detention Act imposes restrictions of a most sweeping character, and the gross injustice it is capable of inflicting upon innocent people cannot be remedied until the Act undergoes improvement in vital matters; but in the meanwhile the setting up of some satisfactory machinery for an automatic review of detention cases by the executive will mitigate the evil to some extent. In fact, even after the Act comes to be improved, there will always remain the necessity for a periodic review so long as the executive is clothed with authority to lock up persons in gaol without trial.

SPECIAL ARTICLE

COMMUNIST CONTROL LEGISLATION IN U. S.

The lower house of the U. S. Congress passed on 29th August, by an overwhelming majority, a very stringent bill designed to control the activities of the Communists, treating Communism as an international conspiracy to overthrow democracy throughout the world. The bill was sponsored by the Un-American Activities Committee of the House of Representatives and was called the Wood bill after the name of the Committee's chairman.

It required the Communist Party to register all its members and Communist-front organizations to list all their officers and to publish their financial reports. A five-man Control Board would be set up to name Communist organizations in both these categories. Under the bill members of the organizations so named would be barred from employment in the Government or in any defence plant; they would be unable to get passports; and they could use the mails for Communist propaganda only when they labelled it plainly as such. Government employees who knowingly supplied military intelligence to Communist spies would be liable to prison sentences up to ten years.

Though intended only to curb espionage and subversion, it in fact went very much farther than what it professed to achieve, and was denounced by all freedom-loving people as imposing "thought control" and "police state" tactics upon the United States. Some three weeks prior to the passing of the bill in the House of Representa-

tives Mr. Truman sent Congress a special message specifically condemning Communist-control legislation such as had been passed. In his message the President argued that, aside from such violent acts as sabotage, communism can best be dealt with at home by demonstrating the values of democracy. A harsh law, he said, would simply drive the Communists underground, in the meantime endangering everyone's freedom of opinion. The wide-reaching evil effects of the measure, should it reach the statute book, were clearly anticipated by the President when he uttered a warning in this message in the following significant words:

We must be eternally vigilant against those who would undermine freedom in the name of security.

While such denunciation was taking place, Congress was suddenly called upon, by a series of somewhat obscure manoeuvrings, to consider a still more drastic piece of legislation, in which the provisions of the Wood bill were left entire and to them were added some provisions of even far more sweeping character, one of which authorised, in the event of war, insurrection or invasion, the apprehension and summary internment of Communists and others suspected of espionage or sabotage potentialities. This omnibus bill consisting of a double-barrelled programme of compulsory registration and concentration camp was easily the toughest possible anti-Communist measure ever placed before the legislature of the Republic of the United States, and as originally planned, the detention programme that was to be carried out involved suspension of habeas corpus. This particular provision was later modified so as to restore the "writ of liberty" to suspected spies and saboteurs. Even so, it was an exceedingly harsh measure, and it was passed, on 22nd and 23rd September, by large majorities in both houses of Congress, so great was the feeling prevalent in both parties that something effective must be done to check the subversive activities of the Communists.

The President, with remarkable courage in view of the impending elections, vetoed the measure. In his veto message to the Congress he pointed out how the bill, if given legislative effect, would do nothing to check Communist depredations but would on the contrary help them. The compulsory registration programme, he said, was like a proposal to require thieves to register with the sheriff. While it would necessarily fail of effect, it would only give "vast powers" to government officials "to harass all of our citizens in the exercise of their right of free speech," and "instead of striking blows at Communism, it would strike blows at our own liberties and at our position in the forefront of those working for freedom in the world." While the main provisions of the bill would be unworkable, "they represent 'a clear and present danger' to our [free] institutions." But so determined was Congress about giving these powers to the executive that, even without discussion, it overrode the presidential veto and put

the bill on the statute book. The Attorney-General has begun putting the legislation into operation as he must, and the only hope is that when after re-election the members of Congress are again safe in their seats they will shake themselves free from the prevailing hysteria and amend the more obnoxious provisions of the measure unless they are declared void by the Supreme Court.

Court Review Preserved

The law is admittedly of the very harshest kind; it aims, as the "New York Times" said in an editorial, "a blunderbus straight at the precious liberties of all the American people." But it behooves us in India to note how care has been taken even in such a measure to preserve court processes. First, about forced registration of Communist and Communist "front" organizations. The Attorney-General is obligated under this law to draw up a list of all subversive organizations. Then this blacklist will go, as stated above, to a specially constituted Subversive Activities Control Board which is to determine, on the basis of evidence that the Government will place before it, which of these organizations deserve to be kept on the list. The Board will arrive at its determination after giving an open hearing to the organizations concerned to make their defence. The organizations may appear with counsel who will be permitted to cross-examine the Government's witnesses. But even the Board's finding, if adverse to an organization, is subject to court review. It may first be taken to the Court of Appeals and eventually to the Supreme Court, possibly in a test of the law's constitutionality. Only after the highest court has ruled in favour of the Government can the defendant be compelled to obey the law by registering or face criminal prosecution.

Thus it will be seen that the due process of law is not avoided, and that there will be no scope for the exercise of arbitrary discretion by the executive. The same holds good about the provision authorising the President to send Communists and others deemed subversive to detention camps. The provision runs:

The President . . . is hereby authorised to apprehend and by order detain . . . each person as to whom there is reasonable ground to believe that [he might] engage in acts of espionage or of sabotage [during an emergency i. e., a declaration of war by Congress, an invasion, or an insurrection to help a foreign enemy] . . . A Detention Review Board . . . [shall] review upon petition of any detainee any order of detention issued.

Let it be clearly understood that the detention allowed by the law is not preventive detention of the kind that the Indian constitution allows. Originally the framers of the bill had intended to provide for preventive detention, authorising the Attorney-General to apprehend suspects without warrants, but the law as passed does not provide for it, for there is nothing in it which can be construed

as denying the right of a habeas corpus writ. The procedure contemplated in the law is as follows. The Attorney-General, himself or through deputies assigned, could issue warrants for a round-up of suspects. Such persons would be given preliminary hearings within forty-eight hours. Trial examiners would decide whether they would be interned or freed. A Detention Review Board of nine members would be established to go into the merits of each case. But even the Board's decisions are not final; they could be appealed against, and the need for detention would have to be proved in a court of law in every case under the rule of habeas corpus. The President's veto message which condemned the bill from top to bottom in the most scathing terms did not deem it necessary to criticise the "concentration camp" provisions thereof any further than that they would prove "ineffective" for the purpose for which they were apparently intended "since they would not suspend the writ of habeas corpus," implying, as the "New York Times" says, "that a Communist or anyone else suspected of prospective overt acts (of spying or subversive acts in a national emergency) could be jailed in the morning and released that afternoon, and would cover no detention at all."

Thus, for us Indians, the moral is that a law passed by the Americans in the most vicious of their moods to secure the nation against subversion may be vastly better than our coercive laws passed under the authority of a constitution adopted after two or three years' cool and mature deliberation.

COMMENTS

Civil Liberty under Congress Regime

DR. PARANJPYE'S ESTIMATE

Sir R. P. Paranjpye, a member of the All-India Civil Liberties Council, writes as follows in the special Congress session number of the Poona "Kesari" about the infractions of civil liberty under the Congress régime:

How bitterly the Congress leaders used to complain of breaches of freedom of the person, freedom of speech, freedom of the press and freedom of assembly on the part of the British Government, and with what sanctimoniousness! Then all used to feel that once power came into the hands of the Congress, our dear old country would be a place where civil liberties would be absolutely secure. But our actual experience has been just the reverse. The Congress Governments have refurbished old laws of coercion handed down to them by the British, but not content with this, they have added other coercive laws of their own manufacture to their armoury. There is a constant attempt to find ways of invading the liberties guaranteed by the constitution, so much so that, but for the Supreme Court and the High Courts, human freedom would

have remained wholly unprotected. Scratch a democrat and you find an autocrat: the truth of this is being borne in upon us by most of the Congress leaders.

Detention for Black Marketers?

The black market is still rampant all over the country, and though authorities everywhere have been hurling wild threats against those who are battenning on the miseries of the poor (Bombay's Civil Supply Minister, e.g., threatened to parade black marketers through the streets with placards round their necks), vigorous deeds are woefully lagging behind, with the result that profiteering has been flourishing almost without check. Latterly the evil has grown to such dimensions that, in several provinces like Bihar and Assam, the government added to other threats that of summary detention for black marketers under the Preventive Detention Act.

If governments are really serious about rooting out the black market, they can do so without recourse to such special measures. Ordinary law provides them with means drastic enough to put an end to the black market. Evidence of this is afforded by the successful results which have followed the belated but forceful campaign recently launched by the Bihar government against cloth and grain merchants of evil ways under the Essential Supplies Act. It began on 4th October making raids all over the State on profiteers in cloth and in the space of six days seized over a million yards of cloth (21,000 pairs of dhotis and saris in Bhagalpur alone). It has now started making a drive against the grain market and there is no reason to believe that this drive will yield less encouraging results.

This proves, if proof were necessary, that, given the will to take necessary action, the black market can be successfully attacked within the limit of resources afforded by ordinary law and that use of such lawless laws as the Preventive Detention Act is unnecessary for the purpose. Nor can it be said that if in spite of repeated threats this Act has not yet been employed anywhere, it is because the governments are conscience-stricken in the matter. They surely have no scruple in shutting up people in gaol on mere suspicion when the people to suffer from this short-cut method of government are, or are supposed to be, Communists or communalists. It is therefore impossible to believe that when they have to deal with social blood-suckers in the form of black-marketers, they suddenly become seized with a love for the due process of law and insist upon sufficiency of tested evidence before they could bring themselves to lay their hands upon any of this class of miscreants.

But this glaring discrepancy in the behaviour of governments is widely noticed: great alacrity in handling one set of people and unconquerable hesitancy in handling another with the aid of the law of preventive detention. The "Statesman" of Calcutta, always

urging governments to take strong, but not necessarily exceptional, measures to extirpate the pest of profiteers, is prompted thus to remark on this wide divergence :

Reluctance to use exceptional process is on democratic grounds laudable. But India has already recognized that the special circumstances of our era demand the existence of security legislation; and a wide body of opinion, shared apparently by several State governments, can find no theoretical objection to use, against the less desirable breed of capitalist, of a form of social self-defence most agree to be necessary and permissible against Communists. It was, indeed, widely expected that provision for the detention of black-marketers would be included in the recent Supply and Prices of Goods Ordinance. Omission was in fact later explained, not by any argument that such provision was unnecessary or undesirable, but by discovery at the last Chief Ministers' Conference that adequate powers already existed under the Preventive Detention Act. That view is now reported to have been reiterated by Pandit Nehru in communications to the States. If, then, any lingering doubts persist about the legality of such action, the obvious course would seem to be to arrest black-marketers and find out.

While this criticism is obviously cogent, we must say that it is our firm opinion that preventive detention is as unjustifiable in the case of social as in the case of political suspects. The governments must lay aside this weapon altogether; they can achieve everything they legitimately can desire by the use of the normal processes of law.

Security Acts of Madhya Pradesh and Bengal

The Public Safety Act, 1948, of Madhya Pradesh having expired on 14th October, the government of the province invited its legislature to pass a new law, which the legislature did in a single sitting on 6th October. The new legislation is milder in some respects than the old one, but the important question in respect to all such special laws is whether it has justification for any special legislation in existing circumstances. This provincial government like every other thinks that the whole country is living in conditions of dangerous emergency and that though the emergency has lasted for several years together has not yet passed away and that the government cannot allow ordinary law to have full sway.

The provision in the new law which softens the rigours of the old law consists mainly in the requirement that all restriction orders like those of internment or externment will be subject to an inquiry: grounds for such an order will be communicated to the person on whom the order is served; he will be allowed to make a representation against the order; and the order and the representation will be placed before an Advisory Council. The government is not bound to accept the opinion of this body even if it holds

that no justification exists for the restriction imposed on movements and actions. The executive's discretion will prevail, but the final exercise of the discretion will have been preceded by some kind of inquiry, in which the person subjected to restrictions will have an opportunity of answering charges. Previously there was no scope for any inquiry; and now inasmuch as grounds will have to be furnished and the facts of the case will be looked into by an independent tribunal, though endowed with only advisory jurisdiction (as in detention cases previously), this is an improvement.

All the old press restrictions have been re-enacted, but in order to bring them into accord with the constitutional guarantee of free press as interpreted by the Supreme Court in the "Cross Roads" and "Organiser" cases the section of the Act concerning control of the press lays down that such restrictions can be enforced in respect to publications which the government is satisfied "will undermine the security of the State or tend to overthrow the State." Provisions concerning Special Courts have not been deleted. The government is authorised thereunder to name any offences or classes of offences for trial in special courts with a special procedure as regards evidence. An important provision among these is :

No Court shall have jurisdiction to transfer any case from any special judge or to make any order under sec. 491 of the (Criminal Procedure) Code in respect of any person triable by a special judge, or save as herein otherwise provided have jurisdiction of any kind in respect of any proceedings of any special judge.

Similarly, all other provisions, relating to the imposition of collective fines, e. g., remain intact. The delegation of powers allowed in sec. 22 is as wide as in sec. 38 of the West Bengal Act, which the Calcutta High Court declared invalid, as reported elsewhere in this issue (the government may delegate any of its powers to "any officer or authority subordinate to it").

In the legislation amending the Public Safety Act of West Bengal, sec. 38, which was exactly like sec. 22 of the Madhya Pradesh Act, has been modified: now it restricts the delegation of powers to the Commissioner of Police and first and second Land Acquisition Collector in Calcutta and to district and additional district magistrates and a special Land Acquisition Officer elsewhere. The only other important change effected is that in respect to pre-censorship and other press restrictions the formula of "overthrowing or undermining the security of the State" has been employed. On the question as to whether there should any longer be any provision at all concerning pre-censorship, the Chief Minister, Dr. B. C. Roy, observed that "the necessity for a provision regarding the pre-censorship of the press had arisen out of the Delhi Agreement on Minorities under which the two (India and Pakistan) Governments had agreed that they should take prompt measures against dissemination of statements and news calculated to

rouse passion by their publication in newspapers or broadcasts by radio and other means of an organization."

Freedom for Deniers of Freedom

A question is often asked: When the Government deprives Communists of their personal freedom, perhaps even unjustly in some cases, why should the civil liberty movement worry about it, because the leaders of this movement surely know that Communists are the people who, when they have a chance, deny such freedom to all non-Communists? And our answer every time has been that the civil liberty movement exists to raise its voice of protest against all unjust deprivations of liberty, whosoever such high-handed acts may affect. But a deeper reason for these protests lies in the fact that, apart from any injustice which the deprivations might do to individuals, they tend to destroy the democracy which at any rate every non-Communist wishes to preserve in our country. The deprivations thus inflict injury upon ourselves.

We are glad to find that the Fellowship of Reconciliation (U. S.), a pacifist body, gave a similar answer to such a question recently. Though wedded to unconditional peace, the Fellowship rejected participation in the Stockholm peace petition on the ground that such campaigns "were largely initiated and dominated" by Communists and opened the way to infiltrations of Communists into peace and church groups. "Our religious pacifist position leads us," it was said, "to reject totalitarianism of every kind, including Communist totalitarianism." And what follows is pertinent to the question we are considering. The Fellowship stated in a resolution:

It has been and is our policy to defend the civil rights and liberties of all individuals and groups, and this applies specifically to Communists and other believers in totalitarian philosophy, even though we recognise that they do not believe in extending such rights and liberties to all. We shall continue to do all we can to encourage objective consideration of the facts about... the Communist movement, and to combat and allay the current anti-Communist... hysteria which leads to measures which undermine our democratic way of life....

Racial Segregation Ending in U. S.

The decision of the Supreme Court of the U. S. A. in the two cases relating to admission of Negroes into educational institutions, to which we referred at pp. 111 and 112 in the July number of the BULLETIN, is producing quick results in the field of higher education inasmuch as the segregation line is being widely breached in the Southern States.

The Supreme Court, in its decision of 5th June, left the doctrine of "separate but equal" facilities juridically intact, but it showed on that occasion its determination to

insist that the facilities, if separately provided, are really equal in every respect, and to treat anything that savoured of inferiority for the coloured race as contravention of the "equal protection" clause of the Fourteenth Amendment. This is enough, however, as present trends show, to make the South open its white universities to the Negroes on a non-segregated basis, the crux of the matter being the inability of the Southern States, from a financial point of view, to provide equal education to Negro students, particularly on the graduate and professional level, and the "separate but equal" doctrine is by force of circumstances being turned in practice into the "equal and common" facilities doctrine.

Out of the fourteen States in the South only three are inactive at present in throwing down the barriers. And they are so inactive because no demand has yet come for admission from the Negroes. These States are: Georgia, Alabama and Mississippi. All the rest are moving in the right direction. Of these Kentucky has gone farther than others in carrying out the letter and spirit of the Supreme Court's rulings. The University of that State has enrolled 75 Negro students. The state of Tennessee "cracked the deep South's solid front against mixed education" as recently as 27th September by ruling that Negroes could take professional courses at its state university. The Attorney General of the state whose opinion was sought on the matter said that perhaps "strife and turmoil would follow the letting down of the bars," but the Federal Supreme Court's decision must be followed since Negroes could not get the kind of advanced training they wanted at state-supported Negro schools. The Governor of Georgia remarked that it might be difficult to compel Negroes and whites to sit in the same class, but the people should allow voluntary mixing-up. "We must bow to the inevitable," he declared, "and go along as good citizens of the United States. The opinions of the Supreme Court become the law of the land, notwithstanding any opinions that may be entertained by any individuals, however sound such opinions may be."

In the report submitted by the United States to the Human Rights Commission of the United Nations it has been stated that the "fundamental" gains of the year in citizens' rights were in the direction of eliminating discrimination on account of race, creed, colour or national origin. Many state legislatures, the report said, took steps to prevent the exercise of discriminatory practices in labour, education, housing and state military service.

On the international side the report notes that clauses have been written into various treaties, specifically aimed at the protection of human rights. As an example, it cites the joint agreement signed with Britain and France covering the occupation of Western Germany, "which contains guarantees against arbitrary arrest, search or seizure" and promises fair trials to all accused persons.

HABEAS CORPUS PETITIONS

Those Supplementary Grounds !

It is becoming very common for the governments to furnish fragmentary grounds of detention to the detenu in the beginning and later, as occasion requires, to supplement these by additional grounds (see pp. 120, 136 and 148 of the BULLETIN). One naturally is very suspicious of such after-thoughts on the part of the governments, because they leave much scope for manoeuvring by the executive and weaken considerably the ability of the detenu to make his defence either before a tribunal like the Advisory Board or before a court of law.

This question of supplementary grounds came up prominently in the consideration of a batch of 155 habeas corpus applications by the Vacation Bench of the Calcutta High Court consisting of Mukerji and Guha JJ. on 16th October. The Court allowed 83 of these applications and ordered the detenues to be set at liberty because the grounds originally supplied to them were not sufficient to enable them to make a proper representation.

Their Lordships held inter alia that for the validity of the detention order it was not necessary that each of the grounds of detention which were served on the detenu should be clear and specific. If one of those grounds was found to be a valid ground the court could not question the validity of the detention order.

On the subject of supplementary grounds Their Lordships observed :

Under art. 22 (5) of the constitution and under sec. 7 of the Preventive Detention Act the grounds on which the detaining authority was satisfied before the passing of the detention order must be supplied as soon as may be after the order of detention had been made. These provisions might be defeated by allowing the authorities to serve these grounds by instalments, for in that case that might prevent the detenu concerned from making any effective representation. Further, the validity of the detention order depended on the grounds which were before the authority concerned at the time of the passing of the order. In practically all the cases which were before Their Lordships the so-called supplementary grounds were supplied long after the original orders for detention were made.

The Court must be satisfied that those supplementary grounds were before the authority when the orders for detention were made. There were no affidavits on behalf of the State, and in the absence of any evidence to that effect Their Lordships could not but exclude from their consideration those supplementary grounds for deciding on the validity of the detention orders. Their Lordships, after excluding those supplementary grounds from consideration, eventually came to the conclusion that in the cases of 83 detenues the

detention orders were invalid as the original grounds supplied were not sufficient to enable them to make proper representation, and directed their release forthwith. As regards others the detention orders were held to be valid.

An appeal is being made by the West Bengal Government against this decision to the Supreme Court, leave to do so being given by Their Lordships. They, however, refused the prayer made on behalf of the State either to stay the operation of the orders for release in the cases of the above 83 detenues or to order their release on bail pending decision of the appeal.

Mrs. Kusum Sharma

This case came up again before the Nagpur High Court last month. Mrs. Kusum Sharma has been in detention for over a year. She was first detained under the Public Safety Act of the Central Provinces Government on 5th May, 1949, but was ordered to be released by the High Court (7th March, 1950) on a habeas corpus petition preferred by the detenu (vide p. 92 of the BULLETIN). On that occasion the Court found, on comparing the affidavit filed by the petitioner and the counter-affidavit filed by the Chief Secretary to Government, that Government were misinformed about the grounds on which they had based the detention order. But though the High Court had directed Mrs. Sharma's release, the release had not materialised. For already, on 26th February, 1950, she was served with an order for detention under the Central Government's Preventive Detention Act and this latter order being challenged in a fresh petition for the issue of habeas corpus, the matter came up once again before the High Court.

The petitioner's contention was that her detention under the Public Safety Act had already been declared to be illegal by the Court, and since the grounds that were supplied to her in support of the detention order issued under the Preventive Detention Act were identically the same as those supplied to her previously this latter order must be held to be equally void, there being admittedly no fresh material which would justify her being held under restraint. But this contention was not accepted by a division bench of the Court consisting of the Chief Justice and Mr. Justice Hidayatullah. In their judgment the Judges said that if the evidence now available about the detenu's activities were available on the earlier occasion it was doubtful whether she would have been ordered to be released then. The evidence consisted of a more detailed affidavit filed by the Chief Secretary in the present case, which went to show that the detenu was a member and an active worker of the Communist Party. At the hearing of the first petition the detenu had denied any connection with the Party, but now a letter purporting to be written by her while on parole was produced by the Chief Secretary which, its authorship not being denied by Mrs. Sharma, must be assumed, "in the absence of any traverse by her,"

to prove that "she was concerned with the activities of the Communist Party in this country, and particularly in this State." Their Lordships said: "We, therefore, assume that the petitioner is an active worker and member of the Communist Party, and all we have to see is whether, in view of this fact and the antecedents described in the grounds of detention, the satisfaction of the State Government was reasonable and bona fide."

On the sufficiency of the grounds or otherwise from the objective point of view, the judiciary cannot pronounce. The Court observed:

It is settled law that the power given under s. 491 of the Code of Criminal Procedure or the power to issue a writ of habeas corpus under article 226 of the constitution of India is not a power to sit as an appellate Court against the decision of the State Government to detain a person. It is not open to this Court to substitute its own judgment for the satisfaction of the State Government. It is only when there is a question of want of bona fides, mistake of facts, or mistake of identity that this Court interferes. This Court also satisfies itself whether the case of the detenu was in fact considered by the detaining authority and whether, having considered it, there was a real satisfaction that the detention was necessary.

And the finding of the Court was that the subjective satisfaction of the Government about the necessity of detention must be held to be bona fide and reasonable.

Another contention that was put forward by the petitioner was that as one of the grounds for detention was that which came within sub-clause (iii) of clause (a) of sub-section (1) of sec. 3 of the Preventive Detention Act (*viz.* "the maintenance of supplies and services essential to the community") it was incumbent on the State Government, under sec. 9 of the Act, to refer her case to an Advisory Board for review, but as the Government failed to do this her detention must be held to be contrary to the provisions of law, as was decided by Mr. Justice Mudholkar in the case of Mr. Gadekar (*vide* p. 150 of the BULLETIN). But in the present case the Court refused to follow the decision in the Gadekar case. Their Lordships said in this connection:

It is obvious that if the matter fell within the second sub-clause of section 3 (1) (a) the case need not go before the Advisory Board. A person's conduct and action may have a bearing upon the maintenance of supplies and services essential to the community or the security of the State or the maintenance of public order or both. Indeed, the self-same acts may affect the maintenance of supplies and services as also the maintenance of public order. Whether a person's acts and conduct have to be viewed in relation to the maintenance of public order or the maintenance of supplies, etc., is a matter which has advisedly been left to the State Government. It is for the State Government to decide whether they

detain him under sub-clause (ii) or sub-clause (iii) of section 3 (1) (a). Once the State Government view that the action of the person detained affects the maintenance of public order, it is not for this Court to decide whether the case should have been viewed in relation to the maintenance of supplies, etc. In the result the Court held (13th September) that the detention of the petitioner was lawful and that the petition must fail.

An important point is raised in cases like those of Mr. Gadekar and Mrs. Kusum Sharma. When passing orders for detention, the Government does not even specify whether the detention was for reasons mentioned in sub-clause (i) or (ii) or (iii) of sec. 3 (1) (a) of the Preventive Detention Act. The persons detained are left guessing as to which of these three sub-clauses is supposed to apply to them. Because of the withholding of such essential information, they do not know whether their cases will be placed before an Advisory Board under sec. 9 or whether they will only be reviewed by the Government itself under sec. 12 of the Act. It may be, as the Nagpur High Court says in the case of Mrs. Sharma, that it is for the State Government which takes action to decide whether any particular case comes under sub-clause (i) or (ii) or (iii) of sec. 3 (1) (a). But surely it is elementary justice that it should be made known to the detenu at the outset as to which of these sub-clauses is intended to operate in his case and whether he is entitled to expect his case to be scrutinised and finally decided by an Advisory Board or whether he is to be relegated to an inquiry by the detaining authority itself. In England, persons detained under Regulation 18 B of 1939 used to be served first with grounds. The grounds merely stated to which of the categories the detained person was supposed to belong, i. e., whether he was believed to be of hostile origin or associations or that he was "recently concerned" in prejudicial acts; etc. And particulars were later supplied which gave details to support the grounds. From the very first the detenu was told what was the nature of the suspicions against him. In India he may not know till the very end under which of the provisions of the Preventive Detention Act action is being taken against him. It is of particular importance in this country that a detenu should be informed as to which provision applies to him because that determines before which kind of tribunal he will be placed, i. e., whether before an Advisory Board or before the Government who passed the detention order. And if a case goes before a court, it declares that it is for the Government itself to determine under which provision of the law the case comes! The court may be unable to do anything else, but this shows under what a prolonged suspense the detenu must live and what opportunities this leaves for a Government to wangle things afterwards. Should it not be incumbent upon the detaining authority to state in the detention order itself under which sub-clause of sec. 3 (1) (a) he is being detained?

Detention does not Become Invalid

BECAUSE THE ORDER DOES NOT MENTION THE PERIOD

Overruling the line of reasoning followed by a single judge of the Allahabad High Court (Mr. Justice V. Bhargava) in his decision of the M. M. Bashir case (vide p. 121 of the BULLETIN), a division bench of the High Court consisting of Mr. Justice Sankar Saran and Mr. Justice Harish Chandra held (14th September), in dismissing nine habeas corpus applications of Ram Adhar and other Communist detenus, that an order for detention passed under sec. 3 of the Preventive Detention Act which did not specify the period of detention was not illegal. The analogy of the Indian Penal Code on which the judgment in the Bashir case was based did not hold good, according to Mr. Justice Harish Chandra who delivered the judgment of the Court. He said that the position under the Preventive Detention Act seemed to be entirely different :

According to the scheme of the Act, the period of detention need not be fixed and after the Advisory Board had reported that there was in its opinion sufficient cause for the detention of the person concerned the Government was authorised to continue the detention of such person "for such period as it thinks fit," and, in his view, an order of detention which did not specify the period of detention was by no means illegal.

From the newspaper report that is available it appears that while the Court made reference to sec. 11 of the Preventive Detention Act under which the government concerned is authorised, in the case of a detenu whose case has been placed before an Advisory Board and in regard to whom the Advisory Board has reported that "there is in its opinion sufficient cause" for his detention, to continue his detention "for such period as it (the government) thinks fit," it made no reference to the other type of detenus whose cases do not go to an Advisory Board at all if the period of their detention does not exceed a year. The cases of such persons are capable of being reviewed by the government itself under sec. 12, and if one is to judge from the cases that come before the courts such cases far outnumber the cases that are referred to an Advisory Board. Indeed one begins to wonder whether an Advisory Board considered any case at all in any of the States under sec. 9. As sec. 12 applies to detenus who have been detained for from three to twelve months, the period for which a person is detained becomes a material factor; it is not altogether irrelevant.

The Allahabad High Court, overruling the opinion of a single judge, lays down that it makes no difference to the validity of a detention order whether the period of detention is specified therein or not. The Nagpur High Court, overruling the opinion of a single judge, lays down that even if from the grounds supplied to a detenu it appears that he is entitled to be placed before an Advisory

Board so that if the Board expresses an opinion that he need not be held in detention he would have to be let out, it would be for the detaining authority to decide whether on the whole he should be placed before an Advisory Board or whether the government itself should review his case. The rulings of the respective High Courts may be perfectly correct in law, but they certainly contribute to making a detenu's position pitiable. Because he is not told that the government does not intend to keep him under detention for over a year, he does not know that he can claim an inquiry by an independent tribunal whose decision would be binding on the government. Because he is not expressly told under which of the three sub-clauses of sec. 3 (1) (a) he has been detained and because he cannot draw any valid inference from the grounds furnished to him as to which of these clauses is intended to apply to him, he does not know who is to inquire into his case, an Advisory Board or the government. He must hold his soul in patience and wait to see what actually happens. Till then he knows nothing, and when something does happen he will have no remedy in a court of law: he cannot make out a case for having his detention reviewed by an Advisory Board instead of by the government who has ordered his detention; the court leaves the matter entirely to the discretion of the government. In England the process of inquiry was identical in every case of detention: an inquiry by an Advisory Committee whose opinion was morally, though not legally, binding. In our country two kinds of inquiry are provided: a tribunal endowed with compulsory jurisdiction for one set of detenus, though infinitesimally small in number, and an inquiry by the government itself, without even a preliminary scrutiny of his case by an independent body like the Advisory Council of the Public Safety Act régime. When the difference between the two kinds of inquiries is so vast, the detenu need not even be informed, according to the provisions of law as interpreted by the courts, what is the kind of inquiry which he is fated to have. A very nice law indeed!

A Person Arrested by Bombay Police for Detention in Madras State

The Madras Government issued on 18th April an order for detaining Mr. S. Mohan Kumaramangalam believed by the Government to be a member of the central committee of the Communist Party of India, a belief the correctness of which was denied by Mr. Kumaramanglam. The detention order could not however be immediately served upon Mr. Kumaramanglam as he was, at the time the order was passed, in Bombay (and, according to his statement, he had been in Bombay since the end of 1942 and was residing there permanently and that after 12th August, 1947 he had not visited Madras even once). And the question that arose was how the Madras Government could serve the order for detention on a man living in Bombay. The Government solved it in this way. It wrote

to the Bombay Government suggesting that the latter should first detain Mr. Kumaramangalam under its own order and later transfer him to Madras under the Transfer of Detained Persons Act, whereupon the Madras Government would detain him within its territory under its own order for detention which it had already got ready.

This plan was executed. Mr. Kumaramangalam was arrested by the Bombay police on 26th June and kept in detention. When he challenged the detention order in the Bombay High Court, the Bombay Government sent (5th July) a telegram to the Madras Government asking for his removal to Madras State. The telegram said:

The arrest was effected mainly because he (Mr. Kumaramangalam) was wanted by the Madras police for detention. There is not much specific material to form the grounds to sustain his detention in Bombay.

When the habeas corpus petition came on for hearing in the Bombay High Court, it was stated on behalf of the Government that an order for the petitioner's release had already been sent, and the Court therefore saw no need for ordering his release. This happened on 13th July.

But the Bombay Government's order for release was not served on Mr. Kumaramangalam and he was not in fact released. He was only brought over from Bombay State to Madras State, and while locked up in gaol in the latter State he was served on 12th July with the order for detention which the Madras Government had passed against him on 18th April. Then he filed a habeas corpus petition against this order and the Madras High Court on 4th October held the order to be illegal and directed his release. Govinda Menon and Basheer Ahmed Sayeed JJ., who heard the petition, said in their judgment:

Whatever might have been the structure of the government of India and the Provinces prior to the coming into existence of the Indian Republic, after January 26, 1950, there is no doubt whatever that the territory of India consists of a Union of autonomous constituent States. It seems to us, therefore, that when the Commissioner of Police, Bombay, arrested the petitioner as he was wanted by the Madras police for detention, the arrest was illegal and the petitioner's detention was also illegal. When the petitioner was transferred to the Vellore Jail, the provisions of the Bombay Act alone could apply to him as if he had not been removed from that State.

The Advocate-General had contended that, since the power of detention implies a power of arrest, in whatever way the petitioner came to be within the State of Madras, when once an order of detention was served on him, he must be deemed to have been validly detained in pursuance of the order passed by the Government of Madras. If the arrest of the petitioner under the authority of the Commissioner of Police,

Bombay, was because he was wanted by the Madras police for detention, then the Bombay police or the Bombay Government could have had no reason to believe that the petitioner's being at large in Bombay State was prejudicial to the maintenance of public order.

Even though the petitioner had been removed to Madras from Bombay according to the provisions of the Transfer of Detained Persons Act, still the reason underlying the arrest and detention was the fact that the petitioner was required by the Madras police for being detained. For such a purpose, in our opinion, the Bombay police or the Bombay Government cannot arrest the petitioner because, according to us, there is no provision analogous to section 82, Cr. P. C., in the Preventive Detention Act of 1950. The Bombay police cannot arrest him for being detained in the Madras State. It was on that basis that, after the petitioner was transferred to the Madras State, the order of detention passed by the Commissioner of Police, Bombay, was cancelled. And therefore, when once this order of detention has been nullified by the cancellation of the same, it cannot be validated by the Madras Government by serving a fresh order of detention.

Their Lordships then pointed out what the Madras Government could have done in the circumstances. They observed:

Since the Bombay Government has cancelled the order of detention passed on the petitioner, the proper procedure to be followed should have been for the Madras Government to release him and, if they considered that he should be detained in the State of Madras, a fresh order of detention should have been served on him.

The Madras Government, following this clue, has served a fresh order for detention. Its chief object that it should somehow get at the detenu had been gained.

The petitioner's counsel had pleaded that if the Court considered the detention order illegal, it should order release of the petitioner in Bombay. He said that the practical effect of his release in Madras would be to enable the Madras Government to do a thing which it had no power to do. The release should be a genuine one, i. e., within the border of Bombay State, and if the Madras Government wanted to get at the petitioner it should observe the due process prescribed by law and get at him. If Their Lordships were satisfied that the detention was illegal, the remedy must be effective. The Advocate-General resisted this plea. He said he had no objection if the Court ordered his release in Madras. But if he was released outside the State it would not be possible to get at the petitioner. To the Madras Government it mattered little whether in the eye of the law its order was valid or invalid. All that it was anxious about was that the

detenu should not get out of the grip which it had obtained over him. And the Government succeeded in its objective.

On behalf of the petitioner it was also urged that the grounds of his detention were insufficient. It was said that the grounds related solely to the detenu's activities before the achievement of freedom, and even if these activities were subversive they were directed towards subverting a foreign government and could give no indication that his activities would be subversive in respect to a national government. "In 1942 Congressmen (too) indulged in activities like cutting telegraph wires." The Advocate-General, countering this argument, pointed to the Federal Court's ruling reported in 1950 A. I. R. and submitted that, if the Government were satisfied that a person was a member of an association which was indulging in subversive activities and from which he had not dissociated himself, that was sufficient ground for his detention. He further added that the Supreme Court had repeatedly held that it was only the subjective satisfaction of the Government that was necessary in the case of detention, and that if the grounds were relevant it was not for the Court to interfere in the discretion of the Government. Their Lordships of the Madras High Court, as was only to be expected, admitted the force of the Advocate-General's plea. After quoting the observations in the judgment of the Supreme Court in *Machindra Sivaji v. King*, they said they agreed with the observations in that judgment and held that they could not go into the merits of the grounds of detention.

Grounds "Exiguous and Vague"

Mr. Dhanraj Acharya was detained by the Madhya Pradesh Government on 26th February and the grounds for detention that were communicated to him were :

1. At a secret meeting of railway Communists convened by you on the 6th November 1948 at Nagpur, you exhorted the workers assembled to win over railway labour for taking strike ballot at the conference of the All-India Railwaymen's Federation at Nagpur with a view to inciting the railway workers to strike and thereby paralyse the running of the railways.
2. From the record of your activities and other information available to them, Government are satisfied that you are likely to act in a manner prejudicial to the maintenance of public order.

In an affidavit filed by the detenu in connection with his application for a writ of habeas corpus in the Nagpur High Court, the general statement in what purported to be the second ground was met by him by a total rebuttal, and the particular statements made in the first ground were denied: the petitioner did not convene the meeting referred to and did not exhort the railway workers to have a strike ballot though even if he had done so it could not constitute a ground for his detention. The State Government in their return supported by an affidavit

said that the Government were in possession of secret documents indicating that while the detenu was on parole in March 1949 he was preparing to go underground apparently to guide subversive activities therefrom and before doing so intended to make arrangements so that his property would escape confiscation by Government. And the Government added that it would be against the public interest to disclose these secret documents.

Acting Chief Justice Mr. C. R. Hemeon and Mr. Justice M. Hidayatullah, who disposed of the application (18th September), in their judgment conceded to the Government the right to withhold facts the disclosure of which they might think against the public interest in accordance with art. 22 (6) of the constitution, and then added :

The duty of communicating the grounds of detention to the applicant remained, however; and we are clear that those supplied to him were so exiguous and vague that he was inhibited from making a real representation against the order of detention.

If, as it now appears, one of the grounds for his detention was the fact that he had, while on parole in March 1949, made preparations to go underground in order to control subversive activities therefrom and intended to make arrangements to safeguard his property from confiscation by the State, an indication thereto should have appeared in the grounds of detention. It was not a fact which it would have been against the public interest to disclose and it was a ground which the detenu would have to meet in his representation.

As it was, the only definite thing disclosed to the detenu was that he had convened a secret meeting and exhorted those present to arrange for a strike ballot. The second ground referred to activities and information without specification of the nature of either; and in the upshot the detenu was put in the unenviable position of having to make a representation against material which was almost entirely undisclosed to him in the grounds furnished to him by the detaining authority. There was thus non-compliance with the provisions of sec. 7 of the Preventive Detention Act, 1950, and the detention was not in accordance with law.

Their Lordships ordered the release of the detenu.

No Jurisdiction

The Vacation Judge of the Supreme Court, Mr. Justice Mehr Chand Mahajan, disposed of a number of habeas corpus applications on 8th and 9th September. Amongst these were eight from Communist detenus of Bihar, the Punjab and West Bengal, which he dismissed on the ground that he had no jurisdiction to go into "the sufficiency or accuracy of the grounds given by the Government for their detention."

However, he allowed the petitions of eight Communist detenus from the Punjab who were in detention for about two years and a half and ordered their release because he found that the grounds for detention supplied to them were vague. One of these detenus was Sardar Sohan Singh Josh. The charge against him was that he was a member of the Communist Party and as such went to Calcutta in 1948 to participate in a conference held there and on his return was about to incite people to armed revolution in accordance with the plans made in Calcutta. His Lordship observed that the Communist Party was legal in the State and that it could not be a crime either to belong to the party or to organise it. As for the detenu being about to incite people to armed revolution, he said: "This is wholly vague. Nothing is being established by saying that a person is about to do something. Such grounds for detention cannot stand much chance in this Court." The Advocate-General submitted that in the Home Secretary's affidavit details of the charge were given (viz., that the detenu was a dangerous Communist who, after his return from Calcutta, was engaged in implementing the programme formulated there), and they were quite specific and clear. But the Judge held that the grounds for detention originally served on the detenu were in the nature of vague allegations and that the affidavit now sworn in by the Home Secretary did not in any way improve matters. The grounds given in the affidavit too alluded to vague charges and allegations, and "after all," His Lordship added, "the Preventive Detention Act was not there for one party to use against another." Sardar Sohan Singh was directed to be released. Another detenu who was similarly ordered to be set at liberty was Hari Bhagat. The charge against him was that he delivered speeches favouring the abolition of jagirdaris and the liquidation of capitalism and strongly criticising the land allotment policy of the Government and its manner of handling the refugee problem. His Lordship observed that this was an entirely legal activity which could not form the basis for detaining anyone.

Three Akali Detenus Released

Of the six Akali detenus who had applied for habeas corpus three (Sardars Bakhshish Singh, Pritam Singh and Manohar Singh) were ordered to be released on 4th October by a division bench of the Punjab High Court consisting of Falshaw and Soni JJ., the detention of the other three being held valid. It was alleged against the petitioners whose petitions were allowed that at the meeting of the Shiromani Akali Dal's working committee meeting which issued a directive to Panthik members of the legislative assembly to quit the Congress an unwritten resolution was passed directing the use of coercive measures to compel those who were disinclined to obey the directive of the committee and the three petitioners were believed by the district magistrate of Amritsar who had issued detention orders against them to be likely to use coercion. The

magistrate had also affirmed in an affidavit that he was satisfied that the petitioners' activities were likely to disturb the peace.

It was submitted on behalf of the petitioners that there were two groups among Akalis, viz., the Master Tara Singh group and the Giani Kartar Singh group, and that the petitioners who belonged to the former group had been detained at the instance of the latter group in order that the Master Tara Singh group might not succeed. Moreover, it was said, the working committee's resolution was passed at a meeting at which representatives of both groups were present, and it was therefore impossible that there should be any such unwritten part of the resolution as had been alleged. The Assistant Advocate-General argued that the sole question in the case was whether the district magistrate was satisfied or not, and the district magistrate was satisfied that the detention of the petitioners was necessary.

Their Lordships held that the grounds of their detention were "vague and indefinite" and allowed their petitions.

Delay in Communication of Grounds

Art. 22 (5) of the constitution provides that when an order for preventive detention is made against a person, "the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made," and the question of interpretation of the words "as soon as may be" in this provision arose on a habeas corpus petition filed by Mr. P. K. More, an employee of the Bombay Telephone Workshop, in the Bombay High Court. The petition was first considered by a division bench of the High court, but was referred, at the instance of the division bench, to a full bench for pronouncing on the question as to whether delay in furnishing the grounds of detention to the detenu would invalidate the detention order. (In the present case grounds of detention were supplied to the detenu 20 days after he had been served with a detention order.) The full bench consisting of the Chief Justice and Gajendragadkar and Dixit JJ. ruled (4th October) that detention would become invalid if the grounds of detention were not furnished to the detenu within a reasonable time of about a week. Their Lordships held, however, that the explanation offered by the detaining authority in an affidavit as to the cause of delay in the present case was satisfactory. The full bench referred the petition back to the division bench for disposal on merits.

Detention for a 2½-year old Speech

Mr. Mukund Krishnaji Khanolkar was detained by the Bombay Government under an order dated 6th March 1948, and the ground set out in the order was that he had made a speech on 28th February, 1948, at Ahoj village in

which he instigated the people to follow the example of the farmers in Red China. Mr. Khanolkar was in detention for about three months and then released. Then after about two years he was again detained on 22nd June, 1950. And the grounds given for this second order for detention were identically the same as those that were put forward for the first order, viz., his alleged speech of 28th February, 1948. When Mr. Khanolkar's habeas corpus petition came for hearing in the High Court, Bavdekar and Vyas JJ. set aside the detention order and directed that the detenu be released. Their Lordships observed (5th October) that the detention could not be sustained "on an old ground relating to an incident which was so old." Although it was contended on behalf of the Government that the petitioner was continuing to address secret meetings no mention of this was made in the affidavit justifying detention.

Grounds beyond Act's Scope

One Dharamdas Shyamdas of Ahmedabad was externed as a bad character from the city in 1947 for two years, and when he returned after the expiry of the order, he was served with an externment order under the Public Safety Act. Thereafter, in August 1949 he was arrested for breach of this externment order. While trial in connection with this charge was pending, the district magistrate of Ahmedabad passed on 31st May last an order for detention against him under the Preventive Detention Act. Among the grounds of detention were that the detenu was a notorious bully in the Sabarmati area, and that he had been committing anti-social crimes and had engaged persons for importing excisable articles. Against this order the detenu filed a habeas corpus petition in the Bombay High Court, challenging its validity. Bavdekar and Vyas JJ. allowed the petition (11th October), holding that the grounds of detention, besides being vague, were beyond the scope of the Preventive Detention Act.

EXTERNMENT ORDERS DECLARED INVALID

Calcutta High Court's Judgment

The Public Safety Act of every province gives to the executive arbitrary power of internment and externment. In some provinces like East Punjab and Madras the power is surrounded with certain safeguards though they are ineffective; but in other provinces the power is wholly unchecked. Under the old constitution persons subjected to internment or externment orders in these latter provinces had no kind of remedy available to them, but the new constitution provides a remedy inasmuch as art. 19 (1) (d) confers the right of free movement on all citizens, and though art. 19 (5) qualifies that right it lays down that only "reasonable restrictions" may be imposed on the exercise of the right in the interest

of the general public. What was thus previously left solely to executive discretion is now open to judicial review, and as a result of such review Mr. Khagendra Nath De succeeded (8th September) in having the order of externment passed on him by the district magistrate of West Dinajpur cancelled in the Calcutta High Court.

Sec. 21 (1) (a) of the West Bengal Security Act, 1950, under which the order was made, empowers the executive to issue such an order against any person if in its opinion it is necessary to do so with a view to preventing him from doing any "subversive act," and the widest possible definition is given in the statute of "subversive act." It means among other things any act which is intended or is likely to endanger communal harmony or the safety or stability of the province. Before 26th January the provision of the Act could be set in motion against anyone as a precautionary measure, and the Government was not even required to state what were the circumstances which led it to believe that a subversive act would be done or what was the kind of subversive act which it feared. Now the conditions are different: the Government has to satisfy the High Court or the Supreme Court that in any particular case the preventive action was justified and that it did not overstep the limitations set by the constitution in art. 19 (5) on its power to restrict the right of free movement.

In the case above referred to it could not so satisfy the Calcutta High Court. The Chief Justice who spoke for the Court said:

Merey stating that a person was doing a subversive act amounted to nothing, as it would give no real indication why the order was made. Common justice demanded that the person proposed to be externed should be told why he was being externed, so that he could take steps, if he thought fit to challenge the order in any way open to him. In His Lordship's view sec. 21 contemplated that the order should contain a statement as to what the subversive act was, and as the present order did not contain such a statement, His Lordship held that it was not an order made under the Act and therefore not binding upon the petitioner.

The order in the case not being a valid order, the petitioner was entitled to an order in the nature of mandamus calling upon the district magistrate of West Dinajpur to refrain from giving effect to it.

DELEGATION OF POWERS TOO WIDE

As a by-product of the judgment in this case, sec. 38 of the Act which empowers the Government to delegate any powers conferred by the Act to "any officer or authority" subordinate to the Government has been found to be ultra vires. The observation of the Chief Justice on this point was as follows:

It appeared to His Lordship that sec. 38 was framed wide enough to allow Government to authorise a sub-

inspector to make such an order. A havildar was a lowly and humble officer of Government. He was certainly a servant of the Government and His Lordship did not think that the term 'officer' had any precise meaning. In any event it seemed to His Lordship that sec. 38 was framed in such a manner as would permit Government to delegate its powers to officers who, His Lordship thought, would be wholly unfitted to be entrusted with the power of making such orders. It appeared to His Lordship that a section which entitled Government to delegate its power to any officer subordinate to it irrespective of whether the officer was fit to make such orders was to His Lordship's mind a procedure which was wholly unreasonable and that being so, this Court must hold that sec. 38 was ultra vires as being beyond the power given to the State by cl. 5 of article 19 of the constitution. This section was however severable from other portions of the Act.

One would like, however, to see a High Court examine in relevant cases the reasons given for externment orders with a view to finding out whether the danger apprehended was real and such as to bring the orders within the ambit of "reasonable restrictions" contemplated by the constitution. We have already noticed that in the case of the externment order passed on Dr. Khare the Supreme Court did not enter upon such examination.

Sections of Bengal Safety Act Voided

Orders passed by the Bengal government on five persons restricting their movements were declared illegal by the Calcutta High Court on 13th October and the sections of the Public Safety Act under which the orders were passed declared ultra vires of the constitution. The question came up before the Vacation Bench of the High Court consisting of Mookerji and Guha JJ. in the rules obtained by Janab Atar Ali and Janab Tazammal for issue of writs in the nature of mandamus in respect of notices issued by the State under sec. 21 (1) (a) of the West Bengal Public Security Act directing them not to enter or remain within the district of 24-Parganas.

In course of the judgment Their Lordships observed inter alia that on a careful consideration of the provisions contained in secs. 21 and 22 of the Act there was no escape from the conclusion that the restrictions imposed thereby on free movement of a citizen were not reasonable.

Their Lordships held that secs. 21 and 22 of the Act imposed unreasonable restrictions on the exercise of the fundamental rights of a citizen of India secured by art. 19 (1) (d) and (e) of the constitution. These two sections of the above Act were ultra vires the constitution. The orders of externment passed under those sections were void and illegal. Sections 21 and 22 of the Act were clearly severable from the rest of

the Act and Their Lordships' decision did not, in any way, affect or touch other separate provisions.

Similar orders were passed in the rules obtained by Sarjoo Prasad Sinha, Gouri Shankar and Ramji Pandey and, the orders for externment passed on them held invalid.

PRESS EMERGENCY POWERS ACT

Sec. (4) (1) (a) Declared Void

This section of the Press Act of 1931 empowering forfeiture of a security deposited by a press "whenever it appears to the Local Government that any printing press . . . is used for the purpose of publishing (matter containing words) which incite to or encourage, or tend to incite to or encourage, the commission of any offence of murder or any cognisable offence" was declared void by a 2 to 1 majority of the full bench of the Patna High Court on 13th October.

The petitioner in this case was Shaila Bala Devi, keeper of the Bharati Press of Purulia who moved the High Court against an order of the Bihar Government demanding from her security of Rs. 2,000 for publishing a pamphlet which in the opinion the Government purported to preach violence and bloodshed. The bench of the High Court consisted of three Judges, of whom two—Mr. Justice Sarjoo Prasad and Mr. Justice Ramaswami—held the section unconstitutional and ordered that the forfeiture order of the Government against the petitioner be set aside, and the third—Mr. Justice Shearer—delivered a dissenting judgment.

There does not seem to be any doubt that the impugned pamphlet fully answered to the description given of it by the Government. For, in his judgment Mr. Justice Sarjoo Prasad says:

These passages to my mind indicate beyond any shadow of doubt that the revolution contemplated by the writer was a revolution built on blood and carnage by the destruction of those who are in the opposite camp, in other words, persons who are regarded as oppressors. The writer wants a total destruction of those oppressors and he appears to enjoin upon the readers of the pamphlet that they should break the proud head of the oppressor. The document as a whole is a clear invocation to the readers to join the deadly struggle to bring about a revolution by violence resulting in the complete annihilation of those whom the writer considers oppressors.

Notwithstanding such clear incitement to violence, His Lordship came to the conclusion that the relevant section the Press Act could not be enforced in this case because of the guarantee of freedom of the press contained in art. 19 (1) of the constitution. Nor did he think that the section would be saved under art. 19 (3). He was driven to this conclusion "on the authority of the Supreme Court

judgments with which we are bound." What these judgments are newspaper reports do not make clear, but His Lordship naturally felt greatly embarrassed that these judgments should compel him to decide that even a pamphlet of this character could not be penalised. "I, therefore, wish," he said, "that any decision on the point would sooner than ever come to be tested by the Supreme Court itself and the position re-examined in the light of the anomalous situation" that had been created. Mr. Justice Ramaswami also in a separate judgment held sec. 4 (1) of the Press Act unconstitutional and void.

It is not possible to comment upon the case till a full report of the judgment is available.

Section 15 Held Unconstitutional

The Third Presidency Magistrate of Madras on 10th October held in a case that came before him that sec. 15 of the Press Emergency Powers Act, 1931, was void because it imposed pre-censorship and was an infringement of the right of a free press guaranteed by the constitution.

One Mr. Sankaranarayanan stood charged under sec. 18 of the Act with having distributed on 2nd January "unauthorised" leaflets of the All-India Trade Union Congress calling for a general strike on the same day. These leaflets were "unauthorised news-sheets" according to the provisions of sec. 15. The accused admitted that he did distribute these leaflets but claimed that under art. 19 (1) (a) he had every right to distribute them. Sec. 15 (1) of the Act gives power to a magistrate to authorise publication of certain news-sheets and also gives him power to make the authorization "subject to such conditions as he may think fit to impose."

The Presidency Magistrate says in his finding about sec. 15 (1): "I am definitely of the opinion that it prescribes pre-censorship on a journal or a leaflet. . . . Sec. 15 (1) and (3) is an arbitrary restriction on the freedom of speech and expression guaranteed under articles 13 and 19 of the Indian constitution because it imposes pre-censorship. I hold that sec. 15 of the Indian Press Emergency Powers Act is void and cannot be quoted against the accused." The Magistrate ordered that Mr. Sankaranarayanan be discharged.

Punjab Act's Section Ultra Vires

The sessions judge of Jullundur on appeal quashed the conviction (.9th October) and sentence of one year's rigorous imprisonment awarded by the district magistrate upon Mr. Mahabir Singh for publishing a book "Antak Mijit" containing passages allegedly "prejudicial to the public safety and the maintenance of public order." For the purpose of combating such prejudicial activity sec. 24 of the Punjab Safety Act gives power to the executive to control publications. The judge pointed out that this section was identical with sec. 7 (1) of the East Punjab Public Safety Act, 1949, and this latter section had been declared unconstitutional by the Supreme Court as infringing the right of free press conferred by art. 19 (1) of the constitution. Following the Supreme Court's judgment, the judge ruled that sec. 24 of the Punjab Safety Act was void.

AICLC'S SUGGESTION TO HOME MINISTER

Primordial Right of Personal Liberty

The Assistant Secretary of the All-India Civil Liberties Council addressed on 5th October the following letter to the Hon'ble the Home Minister of the Government of India.

It is expected that the considered proposals of the Government of India to amend the Preventive Detention Act will be laid in the form of a bill before Parliament at its ensuing session.

The present measure was confessedly drawn up in great haste and considered and passed by Parliament in great haste. The desire of the Government, therefore, to put it in proper form and possibly to introduce in it certain changes of substance which might have been suggested by its actual working is very commendable. The measure certainly requires reconsideration from many points of view.

In order that such reconsideration may be fully effective, the All-India Civil Liberties Council urges that the contents of the proposed bill should be made available a good long time in advance, and that in doing so the Government should keep in view, not only the needs of those who will be called upon to consider the bill in Parliament, but also the needs of the public outside who are equally vitally interested in it.

There is no doubt that the Government will give the members of Parliament enough time to study the bill's provisions, but it is possible that those individuals who are not members of Parliament but who take a very keen interest in questions relating to Freedom of Person and civil liberty organizations and other public bodies in the country may not be afforded sufficient time for the purpose. The desire of AICLC is that this should not happen.

It is therefore the request of AICLC that the Government of India will let the general public have a full knowledge of the provisions of the bill sufficiently early to enable all those who are particularly interested in the question to formulate their considered opinion on the provisions and to suggest any improvements therein before the bill actually comes before Parliament.

Although it is for Parliament to arrive at a final decision on the matter, members of the Government of India and other members of Parliament will, I have no doubt, be anxious to see that the decision affecting the most primordial right of the individual is as far as possible in conformity with enlightened public opinion. For this purpose it is suggested that such public opinion should be afforded ample time to crystallise and express itself before Parliament itself is seized of the matter.

There is another suggestion which AICLC would like to put forward. Some of the provisions in the bill involving changes in the existing law will obviously be based on the experience that has been obtained by the Government of India and the States' Governments by the working of the present measure, and in order properly to understand the reasons and implications of such provisions it is necessary that the individuals and organizations that desire to suggest any possible improvements should also be given sufficient information about the working of the measure since 25th February last.

AICLC would therefore suggest that the Government of India might prepare a memorandum on Act No IV of 1950 giving full details of the working of the Act and publish it for the information of the public. The memorandum should in particular specify the number of persons ordered to be detained by the Central Government and the States' Governments under sub-clause (i), (ii) and (iii) of sec. 3 (1) (a) separately and to state how many of the orders for detention were placed before an Advisory Board under sec. 9 and how many were reviewed by the Government concerned under sec. 12—and with what results. AICLC desires that full information should be given in every particular, and these particulars have been singled out for separate mention only because AICLC lays particular stress on them.

I might finally add that the provisions of the present Act have caused deep concern and alarm in several civil liberty unions in other countries, which are neither communist nor communist-dominated bodies, and that these bodies have expressed the hope that when time comes for re-thinking the Act civil liberty organizations in this country will succeed by making constructive suggestions at any rate so to modify the provisions as to lessen greatly their drastic nature. AICLC requests that adequate opportunities will be given to such organizations to frame and put forward properly thought-out suggestions.

NEWS OF C. L. UNIONS

Firing in Bombay.

B. C. L. U.'S RESOLUTIONS

The Bombay Civil Liberties Union, at a meeting of its executive committee, passed on 9th September the following resolution on the firing that took place in Bombay on 31st August and on collective fine imposed in that connection :

The Executive Committee of the Bombay Civil Liberties Union views with grave concern the reported firing that was resorted to in connection with the present textile strike in Bombay and the demonstrations held in support thereof. The firing was exceedingly severe and to all appearances indiscriminate and excessive. The Committee strongly urges the Government to institute a public judicial inquiry into these incidents.

The inquiry by the Chief Presidency Magistrate that the Government proposes to hold, being of the nature of a departmental inquiry, cannot by any means be a substitute for the kind of inquiry that the Committee insists upon. It may at best be treated as a preliminary inquiry and may serve some useful purpose if it be held in public, but it must be followed subsequently by a proper judicial inquiry. The ends of justice will not be met unless such an inquiry takes place.

The Committee protests against the use of the Home Guards in this connection and condemns further the resort to firing by them. The Home Guards cannot be expected to be altogether free from political partisanship, and employment of them in dealing with strikes is, in the opinion of the Committee,

wholly unjustifiable. The bulk of firing that took place on 31st August was accounted for by the Home Guards who, being naturally unfamiliar with the restrictions to which firing by the police is subject, are always apt to indulge in unwarrantable firing. Use of fire-arms by them on occasions like these must be strictly prohibited.

The Committee also protests against the general prohibition of public meetings that accompanied these incidents.

The Committee also wishes to bring to the notice of Government that the imposition of a general tax which the Government is contemplating either on the striking workers or on the residents of the locality would be wholly unjustifiable as in its very nature it will hit some who are wholly innocent. The system of collective fines is a barbarous method which it is time the Bombay Government abandoned once for all.

After the Chief Presidency Magistrate submitted his report justifying both the necessity and extent of firing B. C. L. U. passed another resolution on the subject on 23rd September, which was as under :

The Executive Committee of the Bombay Civil Liberties Union regrets that the inquiry made by the Chief Presidency Magistrate into the firing resorted to by the police and the Home Guards on 31st August in Bombay was not a public inquiry based upon judicial procedure and consequently the Committee is unable to accept his report approving of the conduct of the police and Home Guards as the finding of a preliminary inquiry much less of a proper public judicial inquiry. The Committee, therefore, reiterates its demand that the Government should immediately order a public judicial inquiry into the facts of the firing which took place on 31st August.

This meeting also passed another resolution protesting against the refusal of permission to hold a public meeting.

The Executive Committee of the Bombay Civil Liberties Union protests against the refusal by the Police Commissioner of permission to the Textile Workers' Family Relief Fund Committee to hold a public meeting at the Servants of India Society to enlist public support for its humanitarian work of relieving the distress of the starving dependents of the textile workers in the city who are at present on strike.

Proposed C. L. U. for Madhya Bharat

Thanks to the spade work done by Mr. Pratap Shah, a member of the National Executive of the Socialist Party, there is a good prospect of a Provincial Civil Liberties Union being organized for Madhya Bharat in the near future. Mr. Anand Bhari Mishra and Mr. R. C. Khandekar of Gwalior and Mr. Laxmi Shankar Shukla of Indore, all High Court Advocates, have been appointed as an ad hoc committee for the purpose of taking necessary steps to convene a Provincial Civil Liberties Conference under the presidency of Mr. N. M. Joshi, at which the Provincial Union will be formed and a regular committee elected to take charge of administrative work.