

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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PATNA CIVIL LIBERTIES CONFERENCE

International League's Approval

As Chairman of the International League for the Rights of Man, Mr. Roger N. Baldwin writes to the Secretary of the All-India Civil Liberties Council as follows under date 9th April, 1951 :

We are in receipt of your Report on the (All-India Civil Liberties) Conference in Patna on April 15th and 16th last year.

We have read the document with great interest and warm approval of the vigour and integrity with which you deal with your difficult problems.

A PECULIARITY OF THE INDIAN CONSTITUTION

This legislation (i. e., the Preventive Detention Act) is not conditioned upon the existence of any war with a foreign power or upon the proclamation of emergency under Part XVIII of the Constitution. Our Constitution has, therefore, accepted preventive detention as the subject-matter of peace-time legislation as distinct from emergency legislation. It is a novel feature to provide for preventive detention in the Constitution. There is no such provision in the Constitution of any other country that I know of. Be that as it may, for reasons good or bad, our Constitution has deliberately and plainly given power to Parliament and the State Legislatures to enact preventive detention laws even in peace time. To many of us a preventive detention law is odious at all times, but what I desire to emphasize is that it is not for the Court to question the wisdom and policy of the Constitution which the people have given unto themselves.—Mr. Justice Das of the Supreme Court in the Gopalan case (19th May 1950).

Freedom of religion, freedom of the press, FREEDOM OF THE PERSON UNDER THE PROTECTION OF HABEAS CORPUS, and trial by judges impartially selected—these principles form the bright constellations which have gone before us and guided our steps through an age of revolution and reformation.—Thomas Jefferson in his first Inaugural Address

ARTICLES

PREVENTIVE ACTION

I would like to ask members this straight question: Have you any doubt in your mind as to the need for this measure? Are you prepared to advise the Government to rest content with the ordinary law and give up this weapon and leave men to commit crimes before taking up any investigation? Are you prepared to say, "Let Communists and other conspirators do what they like, wait till the offence is committed and prosecute when and if you get evidence"? If you cannot go as far as that then I say this measure has been proposed after full consideration of the principles [of individual liberty] that must be partly put aside if at all any preventive action is to be taken. We must nip the thing in the bud

We want those who have made it a creed to work secretly and through violence to have no place in the political organizations of our country. [These men] have practically by their own efforts made themselves into outlaws.

With these words Mr. Rajagopalachari sought to justify the necessity of a preventive detention law in Parliament. According to him, preventing crime is better than punishing persons guilty of crime, and therefore he prefers throwing suspected criminals into prison when the apprehended crime is in the stage, as he said, of "plots and plans" to doing so after the crime has been consummated and brought home.

Now, to be fair to Rajaji, it must be admitted that prevention of crime is just as proper and legitimate an object of criminal law as punishment of criminals, and one therefore often comes across sentiments of the kind to which our Home Minister gave expression emphasizing the need for preventive action. Take, for instance, the following utterance of Sir Donald Somervell, the Solicitor General in the debate on the Incitement to Disaffection Bill, 1934, in the House of Commons:

Prevention of crime is better than having to wait until it is actually committed. Obviously, if you can take away the ammunition before it has been used to murder somebody, for goodness' sake take it. Let us not have laws of such a nature that we have to stand by and say, "I am very sorry, but until there is a dead body we cannot do anything."

Some speeches seemed to suggest that we should wait until a serious situation had arisen; that we

should allow activities which are already criminal under our law to continue without taking the appropriate and necessary powers to deal with them until some grave situation had arisen. That seems to me a fantastic suggestion. Leaving the stable door unlocked until the horse has been stolen may be a political principle of hon. Gentlemen opposite, but it is not one which we believe it wise to follow.

The hon. Member for Bodmin says that if there were an emergency he would support an emergency measure. I know that type of politician. They wait for a panic and then they are the most panic-stricken of the lot. That would mean that we had to wait until the leaven had begun to work in the lump and disaffection had spread in the Forces.

The speeches of the Indian Home Minister and the British officer of law, quoted above, have nearly the same sound, but how different were the measures which occasioned them and therefore how different was the sense in which they were meant! While the measure which Sir Donald supported in his speech was in accordance with the broad principles of the Rule of Law, the one which Mr. Rajagopalachari supported in his speech violated those principles in every particular. The Incitement to Disaffection Bill only sought to fill up the gaps in the then existing law (the Incitement to Mutiny Act of 1797) which had come to light by organized attempts being made mainly by foreign agents to seduce the troops from their loyalty by disseminating objectionable pamphlets, always anonymously published, among them. Those who distributed such literature could already be punished under the law that existed at the time, but they were often tools in the hands of the real culprits, who themselves carefully remained behind the scene, and the object of the Bill was merely to get at these culprits by taking power, first, to punish those who had such pamphlets in their possession for a criminal purpose and, secondly, to search and seize these implements of crime. But both these powers were to be used in accordance with the due process of law under the surveillance of the law courts. The judiciary was not given the go-by, as is done under the Preventive Detention Act. The provision in the English Act, sec. 2(1), conferring the former power was:

If any person, with intent to commit or to aid, abet, counsel, or procure the commission of an offence under section 1 of this Act, has in his possession or under his control any document of such a nature that the dissemination of copies thereof among members of His Majesty's forces would constitute such an offence, he shall be guilty of an offence under this Act.

The safeguard in this provision consists in the words "with intent to commit," etc., the offence of incitement, with the onus of proving the intent lying on the Government. As the Solicitor General said:

It is clear that under this Bill it is for the prosecution to prove intent to commit the crime of incitement.

Mere possession by itself is not sufficient. There has to be evidence on which the court or jury, if a man chooses to be tried by jury, must be satisfied, beyond any reasonable doubt, that not only was the accused person in possession of the documents, but that possession was with a criminal intent, namely, that he attempted to use them for the purposes of incitement.

The provision in the Act relating to search and seizure of the instruments of the offence of disaffection was as follows:

If a judge of the High Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may, on an application made by an officer of the police of a rank not lower than that of Inspector, grant a search warrant authorizing any such officer as aforesaid named in the warrant to enter . . .

Here too may be noted how stiff are the safeguards introduced against any possible abuse of the power. The search warrant contemplated in this provision is nothing like the general warrant in the famous judgment of Lord Camden in the Wilkes case. The Solicitor General said:

The onus would be placed on the police officer of satisfying the court that he had reasonable ground for suspecting that the document which he took was evidence of the offence, and, quite plainly, that ruled out altogether the generality of a warrant which entitles a policeman to put everything in a portmanteau, take it off, and rummage through it to see if he can find anything which the Government of the day might think useful.

In the original Bill the power of issuing a search warrant was proposed to be given to two justices of the peace, but in the Bill as passed the power was given to a judge of the High Court because it was thought that the conditions justifying the issue of a warrant should be "considered by the trained mind of a Judge of the High Court rather than by lay magistrates." Again, it should be noted that the right of search is conferred by the provision only in cases where it is reasonably believed that an offence has been committed and not in cases where it is suspected the offence is likely to be committed. The Attorney General said (April 16, 1934,) that insertion of the words "is likely to be committed" would be "unreasonable."

This is a good type of a measure designed for the purpose of preventing the commission of a crime rather than of punishing those who have committed it; in this case prevention of the distribution of a mass of seditious literature, with a view to seducing the troops from the performance of their duty. In order to achieve the object new powers were taken, but those powers were capable of

being exercised only under all the normal constitutional safeguards. [We have selected this particular law for comparison because sec. 6 in the bill relating to the training of Class Z reservists, dealt with in the succeeding article, makes it topical.] The "preventive detention treatment," to use the words of a Judge of one of the High Courts, administered under our Preventive Detention Act is, however, of quite a different sort. A person is suspected by a district magistrate (one of the numerous officials up and down the country) to be contemplating "prejudicial" acts; he is immediately apprehended and thrown into prison. The district magistrate wields the power of what is called "subjective discretion." The law courts have no authority to consider whether the person is subjected to false imprisonment and to give relief in proper cases. And the power to detain without trial is given in time of peace. Nor is it put under restraints such as those which were thought necessary in England even in war-time. This kind of preventive action is wholly unjustifiable.

"MALICIOUSLY AND ADVISEDLY"

As part of the programme of rearmament in England provision has to be made for the training of what are called Z Reservists, and for this purpose a bill has been introduced in Parliament entitled the Reserve and Auxiliary Forces (Training) Bill which, in penalising attempts to incite persons called up under the scheme of rearmament to non-performance of their duties, contained one provision which, attracted much notice. Section 6 (1) in the Bill makes it an offence to endeavour to incite reservists to what would amount to disobedience. This is already an offence punishable with penal servitude for life under the Incitement to Mutiny Act which was passed as a permanent measure as long ago as 1797 and which still is occasionally enforced. It is also an offence under the more recent Incitement to Disaffection Act of 1934. The provision reads :

If any person *maliciously and advisedly* endeavours to seduce any member of His Majesty's forces from his duty or allegiance to His Majesty, he shall be guilty of an offence under this Act.

The italicised words in the above quotation, "maliciously and advisedly", were taken from the Mutiny Act, and they are words to which very great importance is attached as implying that before anyone could be convicted, it had to be proved to the satisfaction of the court that he had endeavoured to seduce a soldier or a sailor from his allegiance or duty maliciously and advisedly, and in the case of *Rex v. Fuller* (decided in the same year as the Mutiny Act was adopted) it was held that "advisedly" meant "knowingly." Thus, deliberate intention to seduce was made an essential ingredient of the offence.

But these crucial words did not appear in the Bill as originally moved. Sec. 6(1) read :

If any person endeavours to incite persons called up or liable to be called up under this part of this Act to

failure in the performance, or to evasion, of any duties or liabilities under this part of this Act which they are, or may become, liable to perform or discharge, or to incite such persons to perform or discharge any such duties or liabilities otherwise than to the best of their ability, he shall be guilty of an offence . . .

The omission of the words "maliciously and advisedly" created a furore in Parliament, particularly because these words figured in the old Mutiny Act and also in the Incitement to Disaffection Act of 1934, and it appeared as if the Bill was designed to leave out of account the intent of the offender. The Attorney General, Sir Hartley Shawcross, agreed to insert the words, saying that the words were omitted in the first draft because "we thought that it was quite clear in the clause as drafted that the offence was one which could only be committed intentionally. To endeavour to incite means to do something with intention." Anyhow, the words have now been included.

Then sec. 6(2) of the Bill, like sec. 2(1) of the 1934 Act, makes it an offence to have possession or control of any document of such a nature that the dissemination of copies of it among persons liable to be called up would constitute an offence under sec. 6(1). The corresponding section in the 1934 Act, which is sec. 2(1), has been quoted in the preceding article on "Preventive Action" in this issue. The words therein "with intent to commit," etc., should be noted. On this point the Attorney General said :

Mere possession of documents is not enough. The prosecution has to prove in these cases—and it is a very heavy onus to discharge when dealing with the possession of documents—that the defendant had them in his possession with the specific intention of aiding and abetting the commission of an offence, either by others or by himself, under sec. 6(1).

Then the Bill contains a provision in sec. 6(3) relating to the issue of warrants to search premises for evidence that an offence under sec. 6(1) has been committed. The power to search which arises under the section is only exercisable on the warrant of a High Court judge, as in the 1934 Act. Speaking of this, the Attorney General said : "My experience of the matter is that High Court judges are usually very averse to granting warrants and they only have the power to do so on a sworn information, which sets out the grounds upon which there is reasonable cause for supposing that evidence, or documents, or whatever it may be, are to be found on the premises which it is proposed to search."

While on the subject of search warrants we may refer to the history of a proposal to insert a section relating to the issue of search warrants in the Criminal Justice Act of 1925. The law on this subject is not uniform in England, various statutes giving the power to different authorities in different conditions. It was thought desirable, when the general criminal law was amended, to have

one law governing this matter. It was therefore proposed in the Criminal Justice Bill to authorize issue of a warrant in the case of all indictable offences under specified conditions (a police officer having the power to enter when a felony is about to be committed). The proposal was made on the recommendation of a committee presided over by Mr. Justice Talbot to the effect that "there should be under proper conditions a power of search in all cases in which the commission or intended commission of an indictable offence is reasonably suspected." Adopting this recommendation, the following section was inserted in the Criminal Justice Bill.

If a Justice is satisfied by information on oath that there is reasonable ground for suspecting that an indictable offence has been or is being committed, he may issue a search warrant authorizing any constable or other person named in the warrant at any time or times to enter . . .

This was clause 31. It was bitterly opposed by several members. The Home Secretary (Sir W. Joynson-Hicks) defended the clause thus. He said: "I ask the House to remember that the warrant can only be granted when the magistrate is satisfied. It seemed to be suggested that because a policeman applied to a magistrate for a warrant the magistrate was therefore bound to grant him one. Nothing of the kind. There must be an information made upon oath and the magistrate must be satisfied that a crime is about to be committed before he can grant the search warrant." The Home Secretary then offered to make two amendments in the clause, viz., (1) that a warrant should not be issued on the application of a police constable, but only on the sworn statement of a police officer of a rank of Inspector or above that; and (2) that there should be no power to search the person. In the end, however, the whole clause was deleted in deference to the opposition in Parliament.

PROHIBITION OF MEETINGS AND PROCESSIONS Restrictions on the Press

Speaking on the Home Ministry estimates in Parliament, a member referred to the complaint that "sec. 145, Cr. P. C., had become a permanent feature of the administration in Delhi." He urged that the restrictions should be relaxed so that meetings could be held in a normal manner. The Home Minister's reply did less than justice to the importance of the subject. He concentrated on the undesirability of Parliament in session being disturbed "by processions all round and slogans and all that." But, surely, the business of Parliament does not require that meetings and demonstrations should be tabooed throughout the many square miles that India's capital covers. And, however much one may dislike demonstrations, there is a recognised place for them in the democratic process of mobilising public opinion and making it vocal. It is an excessive simplification to say that "de-

monstrations were nothing more than one group of people trying to force their will on another group." Where expression of opinion or sentiment deteriorates into coercion the forces of law and order need not hesitate to step in and should indeed have little difficulty in doing so. . . . But Parliament's right to discuss things freely, coolly and calmly may be easily safeguarded by merely preventing demonstrators from entering the grounds and by keeping them moving on by the simple enforcement of the traffic rules.

It is, however, difficult to agree that demonstrations have become outmoded. The argument put forward is that "in the old days when newspaper publication or propaganda was not possible, it was necessary personally to push things. But at the present time, when there was plenty of liberty to influence one another in reasonable ways there was no use of demonstrations and so on." No responsible man would suggest that these restrictive orders—which incidentally are operative more or less continuously not only in Delhi but in many other big cities including Madras—have a political purpose or that they might be utilised to prevent free elections. . . . But the continuance of these orders may nevertheless have the effect of hampering competitive efforts by rival parties to secure the ear of the electorate. Newspapers even in ideal conditions would be hardly able to cope by themselves with the task of presenting political issues to millions of illiterate people who for the first time will be called upon to exercise the franchise. If it is undesirable to govern by newspaper opinion, as the Home Minister points out, it is impossible to carry on an election fight only through the newspapers. In its task of educating a mass electorate the Indian Press labours under special handicaps. Apart from the scarcity of newsprint there are as many legal disabilities and restrictions of one sort or other as in the bad old days of the British bureaucracy. The very moderate recommendations of the Press Laws Advisory Committee have been mostly turned down. The Government refuse to exempt the Press even from the application of sec. 144, Cr. P. C., and the authority of the district officer. They think it quite sufficient to tell State Governments to impress on these officers "to use this power against the Press with extreme caution"! This is the more surprising since many of these draconian provisions are totally repugnant to the constitution. Thus, the Madras High Court has just declared void the power to demand securities of newspapers (vide infra). But the process of judicial review is tedious and costly and the Press may have to go on groaning under a load of inhibitions and prohibitions which are hardly calculated to enhance its utility as a medium of free debate.

All the more necessary is it that none of the long-established and familiar methods of securing publicity for a view-point, including even such primitive forms as processions, slogan-shoutings and street corner meetings, should be tabooed except where there is imminent danger to the public peace. Authority everywhere and at all

times tends to take the easiest way out of any difficulty. If section 144 has had to be resorted to in an emergency, its operation is automatically and indefinitely extended, though the emergency may have long since passed. Thus, Mr. Rajagopalachari himself agreed that the orders restricting civil liberties in Ajmer might have been removed immediately the situation improved. Unless perpetual vigilance is exercised by the democratic leaders at the top, officialdom, which by instinct prefers putting the lid on popular discontent, will not bestir itself to raise it. —The "Hindu," 7th April.

AMENDING BILL OF RIGHTS

Circulate the Amendments for Eliciting Public Opinion

The "Statesmen" (11th April) makes a plea as follows for the circulation of the proposed amendments in the Fundamental Rights Part of the Constitution so that public opinion on the amendments may be ascertained.

Forecasts, published over the week-end, of the Government of India's proposals for amending the constitution must be treated with reserve. Unless, however, the scope and intentions of these plans have been greatly misrepresented, it will be felt that, if ever there was a case for circulating a legislative project "to elicit public opinion" this is one. All that is apparently contemplated, however, is circulation to Chief Ministers of State Governments, which are "interested parties" in the sense that their executive actions are largely in question. This is unsatisfactory, as would be any attempt, such as is now adumbrated, to rush a Bill of this character through Parliament before it adjourns, after an exhausting session, in May. To summary a method is hardly suited to a constitution over whose formative stages some of India's best brains laboured long and arduously.

It is no disrespect to Parliament to repeat that these constitutional amendments should have been left to the legislature chosen at the coming election. A mandate could have been sought on the questions raised, and, if it proved favourable, new minds could have applied themselves to the draftsmen's work, and the provisions of article 368 could have been complied with. To act, as is now seemingly proposed after the constitution has been in force for little over a year, inevitably raises doubts about the sanctity of all fundamental rights. Admittedly some judicial decisions have inconvenienced the executive. That, however, is a disadvantage inherent in all written constitutions, and one to which Governments must get used, especially when, as now, the whole tendency is constantly to multiply the State's already extensive powers over the citizen. Moreover, though Governments plaintively describe the reasons which have compelled them to seek amendment of the constitution, their consciences may not always be so clear as they suggest. In interpreting the limits of the State's and the citizen's respective rights, the courts have in recent years drawn attention to serious abuse of executive authority.

Amendment must not become an excuse for so whittling away fundamental rights as to permit the sort of high-handedness castigated by the courts. Changes affecting article 14 (equality before the law) need careful watching. The theory, now advanced, that "equality does not preclude classifying citizens in reasonable ways" could make this basic article a dead letter. Outside zamindars' ranks, there will be little opposition to constitutional safeguards for laws abolishing zamindari, on proper terms, but in protecting the broad scheme of abolition, politicians will tread treacherous terrain if they render legally "reasonable" provisions that the courts, after impartial inquiry, have held not to be based on rational grounds.

Clarification of the article on freedom of speech so as to deter incitement to crime would be justifiable if confined to that specific purpose. Doubts arise, however, when with this proposal is said to be coupled another authorizing the State "to see that no section of the Press prejudices India's relations with foreign Powers." Though voluntary restrictions might be (and have been) agreed to in certain cases and perhaps could be enforced statutorily for limited periods if urgency were great, the provisions seem much too sweeping and might rule out all discussions of foreign policy. Memory recalls the arguments used by Congress critics of the pre-war Indian States (Protection) Bill: that it would be impossible for newspapers to expose maladministration and worse in Princely territories. A constitutional amendment such as is now foreshadowed might be used to suppress information about ill-treatment of Indian nationals abroad or of a whole class of persons, like the Jews in Nazi Germany.

Some other reported proposals seem sound in principle. There may be differences of opinion about nationalization or whether cases involving the constitution should begin in High Courts or be confined to the Supreme Court. Such disagreement is capable of adjustment. But the public should at least have an opportunity of indicating to legislators the chaff and the corn. It cannot do so unless allowed time to study the text of the amendments. This is not a matter that should be confined to confidential communications between Secretariats. It needs to be openly discussed before it ever reaches Parliament, and thus given the mature and deliberate consideration which respect for the constitution enjoins.

The "Hindu's" Criticism

Like the "Statesman" above, the "Hindu" too has lodged a strong protest against undertaking any amendments in the Bill of Rights Part of the Constitution before the general election takes place at the end of the year and without giving an opportunity to public opinion in general, as distinct from the opinion of the Chief Ministers in the States, to express itself fully. It says (14th April) in part:

We advisedly say that the changes are of paramount importance, since many of them aim at a drastic modification of the fundamental law in the direction of curtailment of the rights of the individual as against the State. It is barely a year since the constitution came into opera-

tion. Some of the finest legal brains in the country worked upon it continually and the written constitutions of many of the most democratic countries in the world were examined for light on particular problems. It was after considerable debate that it was decided that fundamental rights should be incorporated in the constitution itself. The general opinion in the country was that these rights were defined, if anything, too narrowly and with too many restrictive qualifications. If in spite of all this caution it is found that much controversial legislation adopted by the Central and State legislatures is vitiated by incompatibility with the rights of the citizen as laid down in the constitution it must not be too lightly assumed that the fault lies in the constitution. An explanation that would be far nearer the truth is that the Government in exercising the power of legislation has been so obsessed by its sense of urgency of social objectives that it has paid too little attention to what is due to the individual.

If the party in power to-day can bring itself to change in important respects a constitution which is so largely of its own making and which has not been in existence long enough to show whether it is seaworthy or not, what is there to prevent other parties which may come into power to-morrow from scrapping other parts of it or even the whole of it? In fact both the Communists and the Socialists have been going about threatening to do just this if and when they have the power.

A Parliament which came into existence in extraordinary circumstances and for a very different purpose and a Government which has had no opportunity so far of ascertaining through the recognised method of a general election the measure of popular support behind its policies would be singularly ill-advised to restrict the rights of the citizen in the name of the people, especially after the Supreme Court, which is vested with the sole right to interpret the constitution, has upheld the individual's rights. The proper time for considering an amendment of the constitution would be after the general elections in which a mandate may be legitimately sought on the major policies on which the proposals for amendment hinge. The fact that some of these policies have long figured in Congress manifestoes does not lessen the need for securing such a mandate in the very different conditions prevailing today. The Congress Party itself is by no means so united as it was in the days before the transfer of power when it first put these planks on its platform. And in the actual trial some of these policies, for example, prohibition, have been found so difficult in the working and so meagre in the results that to-day there is a considerable cooling of ardour in the Congress camp itself.

SPECIAL ARTICLE

NATIONAL SECURITY AND INDIVIDUAL FREEDOM

The President of the United States has established a Commission on Internal Security and Individual Rights on a non-partisan basis, under the chairmanship of Fleet Admiral Nimitz, to study the problem of how best to strike a balance between these two supreme interests and to recommend what changes, if any, should be adopted in the Federal and state laws, practices and procedures concerning the protection of the nation against treason, espionage, sabotage and other subversive activities, taking care at the same time not to encroach upon the basic rights and freedoms common to all humanity. The question which for the United States has been entrusted to the Nimitz Commission is indeed a world-wide question. The growth of internal and external subversion in most countries has imparted to the perennial question of Authority vs. Liberty an urgency of the very highest priority, and the crisis that has resulted from this growth has made the problem full of complications and difficulties which cannot be easily resolved. There are in every country McCarthies and McCarrans who would safeguard the nation's security from subversive elements without minding how in the process the freedom and rights of individuals are narrowly circumscribed or even totally abolished. On the other hand, there are those who would give such primacy to individual freedom as blithely to subordinate the claims of national security to those of the other equally important interest. But such extremists of either variety will bring both national security and individual freedom to naught. The problem is how to reconcile both.

That is the light in which President Truman envisages the problem. He says of the Commission :

It will consider these matters from the standpoint of protecting both the internal security of our nation and the rights of individuals, and will seek the wisest balance that can be struck between security and freedom. . . . [Our laws must be adequate for the purpose of coping with treason and sabotage.] At the same time, we are concerned lest the measures taken to protect us from these dangers infringe the liberties guaranteed by our constitution and stifle the atmosphere of freedom in which we have so long expressed our thoughts and carried on our daily affairs.

The "New York Times" in commenting upon the appointment of the Commission emphasizes this statement of President Truman and says :

They (security and liberty) are really two aspects of the same question, for the suppression of liberty within our borders would be as dangerous to internal security as would outright subversion.

Fundamental to this approach is the belief that defence of the United States from the Communist

menace not merely rests with negative laws against treason and espionage—although such laws are, of course, essential—but also requires the positive and constant reaffirmation of faith in freedom, which includes the right of expression of unpopular and unorthodox points of view. If this freedom be stifled—and there is disquieting evidence on every hand of a tendency to stifle it—democracy as we know it and as we want to defend it is endangered.

We do not have to choose between sedition or treason on the one hand and a sterile conformity on the other. We do not have to endure either; and it is the weighty task of the President's Commission to study—with reasoned reflection and without thought of political sensation—the best means of retaining both our freedom and our security.

We believe India and every other country which swears by democracy will profit from the conclusions that will emerge from the report of this Commission. The United States has ever been the lodestar to all such countries guiding their path to individual freedom. When this freedom is now beset by common difficulties, it naturally becomes again the rôle of the United States to show the way out of these difficulties to all other countries which look to it for inspiration in preserving fundamental human freedoms. This world-wide aspect of the problem is recognised by President Truman. He betrays no undue national pride when he speaks of the world leadership to which the United States has attained in this respect. He says :

I consider the task of this Commission to be of extraordinary importance. The world is in the midst of a struggle between freedom and tyranny. The United States is one of the leaders of the free world—not just because we are powerful in material things, but because we have preserved and expanded the freedom of our people. We have built our society in the faith and in the practice of freedom—freedom of worship, freedom of speech, freedom of association and political belief.

We in this country have always been ready to protect our freedom—to protect it against external or internal enemies and to protect it against unwarranted restrictions by government. From time to time in our history we have faced the need to protect our freedom from these different kinds of encroachment.

Each of these occasions has presented our nation with new and often conflicting considerations. To reconcile these considerations, and to find the proper national policy, is always difficult, and is especially so at times like the present, when our freedom is severely threatened abroad and at home.

It is earnestly to be hoped that the "proper national policy" that the United States will ultimately evolve will afford us some guide-lines as to how to maintain national security and yet preserve individual liberty. At the

present time our Government seems to be thinking only of the former and giving no thought whatever to the latter. This policy requires to be radically changed and the United States Commission's report will, we confidently expect, enable our Government to effect the change if it has a mind to profit by the example of a country from which we have imbibed the ideal of Fundamental Rights.

COMMENTS

Detention Laws in India and the U. S. A.

Mr. Herbert Monte Levy, who is staff counsel of the American Civil Liberties Union, while writing about Mr. Vaze's presidential speech at the Bombay Civil Liberties Conference in February last on the Freedom of the Person, disavows any desire to comment on the Indian Detention Law (officers of ACLU are debarred by its constitution from offering any criticism of measures of other countries), adding :

I imagine you know by now that the Internal Security Act of 1950 permits detention in this country, in times of war, invasion, or insurrection in aid of a foreign enemy, of those as to whom there is reasonable ground to believe (that they are) likely to engage in espionage or sabotage. We are opposed to this provision.

We may here point out the differences in the detention provisions of the U. S. law and our Preventive Detention Act. In the first place, the U. S. law permits of detention only in an emergency of the most exacting kind, viz., a declaration of war by Congress, an invasion, or an insurrection to help a foreign enemy. An emergency of this character is everywhere recognised as sufficient justification for exercise of this power under proper conditions. In the second place, this law provides for the following safeguards: (i) preliminary hearings given to the detainees within forty-eight hours; (ii) subsequent scrutiny by trial examiners; and (iii) examination of each case by "a Detention Review Board" of nine members. And in the third place, the U. S. law does not deny the right of a habeas corpus writ. As we wrote in the October 1950 number of the BULLETIN (p. 160): "Even the (Detention Review) 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." Thus, the U. S. law does not in fact provide for preventive detention in the sense of suspension of the writ of habeas corpus.

To Avert War with Pakistan

"Propaganda against Pakistan might involve India in war with that country, and therefore the Government of India must have power to detain without trial those persons who might indulge in such propaganda." In words to this effect the Home Minister opposed an amendment for giving up power to detain for reasons connected with

"the relations of India with foreign Powers" in para. (1) of sec. 3(1)(a) of the Preventive Detention Act. If such power is necessary and has to be used, one wonders against whom it could justifiably be used.

The Pakistan Government recently protested to the Indian Government "because senior Indian officials had addressed a Pushtu 'jirga' in Delhi" seeking to promote the creation of Pukhtunistan, i. e., a Pathan province as an appendage to Afghanistan. In the propaganda campaign which Afghanistan has been carrying on against Pakistan, it is being said that the official machinery of the Indian Government is not playing the proper role of restraining the malcontents on the soil of India. Sir George Cunningham, the former distinguished Governor of the N. W. F. P., says in the "Manchester Guardian Weekly" of 8th February: "It is tragic that the flame should be fanned unnecessarily in capitals other than Kabul; the ludicrous—but sinister—'Pukhtunistan jirga' in Delhi, just reported, could surely have been discouraged by the authorities there." On these facts it does not seem that the power of detention which the Government of India insists upon retaining is likely to be used in cases which the Government perhaps had in mind.

On 30th March, the Governor of the Frontier Province, Mr. Chundrigar, was approached by Sayed Qaim Shah, leader of the Opposition in the recently dissolved Assembly, for removal of the ban on the Red Shirt Party and release of persons belonging to that Party who have been held in detention so that they might be enabled to take part in the general election in the province. Explaining the Government's policy in the matter, Mr. Chundrigar stated that he would be prepared to consider the question of releasing Khan Abdul Gaffur Khan, Dr. Khan Sahib and other Red Shirt leaders, if they clarified their Party's position vis a vis Pakistan and pledged loyalty to the State. On the face of it at any rate the policy of the Frontier Government appears more liberal on the question of civil liberty than that of the Nehru Government.

Detention for Profiteering

Mainly at Mr. Nehru's instigation, the Preventive Detention Act is now being vigorously applied in States to detain persons for alleged black-marketing and other anti-social activities. According to a statement laid on the table of Parliament, 168 persons were detained under the Act up to the middle of February last: 50 in Bihar (excluding 19 absconders), 26 in Hyderabad, 24 in Uttar Pradesh, 15 in Pepsu, 13 each in the Punjab and Travancore-Cochin, 10 in Mysore, 9 in Madhya Pradesh, 3 in Assam, 2 in Vindhya Pradesh and 1 each in Bombay, Madras and Orissa. The offences suspected related mostly to black-marketing in foodstuffs and cloth. The most remarkable thing in this statement is that no person was

detained in West Bengal, where perhaps the evil of such malpractices is most rampant.

The only justification that was offered by Mr. Rajagopalachari for retaining in the Act a provision authorizing detention without trial for such offences was that public opinion supported drastic measures being taken against blackmarketers, far more than against those who subverted public order, and that the constitution itself contemplated employment of this power as well against those who indulged in profiteering as against those who sought to overthrow the Government by violent means. Why not make use of the power then? he argued. He did not contend, as in fact he could not have done, that the existing penal measures and possibly any others that could be devised under the ordinary law were found by the States to be inadequate, if properly enforced, to cope with the evil of black-marketing, which is undoubtedly widespread. If he could put forward such a contention, there might conceivably have some sort of justification for resorting to preventive detention in such cases. All that he did and could say was in effect: Entry 3 in the Concurrent Legislative List in the new constitution empowers both the Union and State Governments to pass legislation of preventive detention for the purpose of suppressing activities of this nature. This is an Indian-made constitution, which, as the preamble of the constitution proudly declares, the people have given to themselves. The former constitution, which the British rulers made for us and forced on us, had no such article. The foresight of the founding fathers of the Indian Republic has placed this new weapon at our disposal. We are certainly going to make use of it, "whatever the jurists may say" about the unsuitability of such a provision.

Detention without trial in peace-time is unknown to any democratic constitution, as Mr. Justice Das has said. Even if we are to keep art. 22 which permits detention in non-emergency situations, can we not at least reserve that power for being invoked only when security of the State is threatened by restricting the scope of entry 3 in the Concurrent Legislative List? To use detention for preventing evil practices like profiteering is as unnecessary as it is unjustifiable. Constitutional amendments are in the offing. Can we not at least introduce this small one?

Just as Bad as under British Rule

Dr. Ambedkar, though an important member of the Nehru Cabinet, made, surprisingly enough, a public statement recently to the effect that the untouchable classes were under the Republic being given the same step-motherly treatment that was meted out to them under the British régime. Whatever the truth of this statement, a similar statement can certainly be made with utter truthfulness about civil liberty, viz., that it has not met with a better fate because foreign rule has ceased. In this issue itself we have published the opinion of the "Hindu" that the legal disabilities and restrictions of the Press are as severe

"as in the bad old days of the British bureaucracy." This applies just as well to all other forms of civil liberty. Indeed, Personal Liberty suffers at present as it never did under British rule. The fact of the matter is that the British by their tradition displayed even in governing a subject race far greater concern for fundamental freedoms than our Republican Government ever feels for its own nationals.

Public Safety Act of Orissa

A bill to amend the Orissa Maintenance of Public Order Act of 1950 was passed by the Orissa Legislative Assembly on 4th April, extending the life of the old Act by a year. It empowers the executive for the first time to adopt preventive measures (e. g., measures to restrict free movement of the general public in areas inhabited by scheduled tribes) "for the protection of the interests of the scheduled tribes" in accordance with art. 19 (5) of the constitution. In the context of the next general elections, this particular provision, it is feared, may do more harm than good to the tribes concerned. If the State Government so decided to use this power under the Act, which it is quite likely to do, political education by different political parties of the tribesmen, who will be called upon to exercise their right of franchise, might become impossible. It may be recalled here that the Orissa State Civil Liberties Conference held in December 1949 strongly condemned the policy of the Orissa Government in banning all kinds of political activity among the tribals. Against this background, the new provision may look to many as smacking of political motive.

The amending bill introduces a provision in the Act, which was deleted last year, for the communication of the grounds on which movements of persons are restricted and also for a reference of all such cases to an advisory board. This provision was perhaps necessitated by Ismail's case decided by the Orissa High Court on 11th September, 1950. In that case the High Court declared sec. 2 (1) (a) of the Orissa Public Safety Act void, inasmuch as restrictions authorized by it were not reasonable restrictions. The Act of 1950 did not make it mandatory on the part of the executive to furnish the persons concerned with the grounds of restrictions imposed upon them, nor did it give an opportunity to them to make a representation against the order. Further, there was absolutely no provision for referring such cases to an impartial tribunal such as an Advisory Council. (The Act of 1948, which was replaced by that of 1950, contained such provisions in case of restrictions imposed for a longer period than six months.) All this was viewed by the High Court as unreasonable in the case referred to above.

New York's Loyalty Law

The American Civil Liberties Union has protested against a law passed by the New York legislature by large majorities in both houses in the middle of March. It gives power to the civil service commission to shut out men of

"doubtful trust and reliability" from employment in "sensitive" defence jobs, such jobs being determined by the commission subject, however, to court review. Furthermore, it gives power to the appointing authority to remove any such untrustworthy person already in service from the job he holds or to transfer him from that job to another job where he would be unable to do any damage. A person so removed or transferred has a right to appeal to the commission or persons appointed by it, but no court appeal. And if a dismissed employee succeeds in the appeal, he will be entitled to back pay from the suspension date.

This is an emergency measure due to the emergency declared by the President in view of the nation's mobilization scheme and is limited in duration up to 30th June, 1952. The employees who will be mainly affected by the statute will be policemen, civil defence employees and other employees connected with the defence effort. While it is recognized that in an emergency some such power may be necessary, it is feared that the drastic power the law gives may work injustice to some persons who in fact may be good security risks, and hence the protest that the law has evoked.

If the New York law is objectionable, how much more objectionable is the practice of the Bombay Government to dismiss those of its employees who at one time belonged to the R.S.S. and to exclude such persons from employment as teachers not only in its own schools and local board schools but also from aided schools run by private agencies? The R.S.S. was at one time under a ban, but it may be presumed that since the Government itself has removed the ban, it no longer considers the organization to be dangerous in the context of the existing political situation. But even so the Government is continuing the ban on employment.

Freedom of Information Convention

The draft convention on Freedom of Information prepared for submission to the Economic and Social Council of the United Nations was opposed in the drafting Committee by U. S. and U. K. delegates as restricting rather than expanding the freedom of the press. Mr. Binder, the U. S. delegate on the drafting committee, declared on 18th March that a powerful group of restrictions was threatening to strike a successful blow at the freedom of information in the name of the United Nations. A bloc of countries (among which has to be included India), was responsible for this result. If this group (he said) had its way American magazines would no longer be permitted to mention "King Farouk's love life" and the press would be prevented from reporting "the concentration of troops on the border of Yugoslavia, the creation of armed forces in East Germany or the existence of 175 Soviet divisions on active service."

HABEAS CORPUS PETITIONS

Mahasabha Leaders' Detention Upheld

TWO JUDGES DISSENT

By a majority decision Their Lordships of the Supreme Court, Mehr Chand Mahajan and Vivian Bose JJ. dissenting, the Supreme Court dismissed (6th April) the petitions of Professor Ram Singh, Mr. Ramnath Kalia and Mr. Balraj Khanna, President, Vice-President and General Secretary respectively of the Delhi Hindu Mahasabha, for writs of habeas corpus.

The petitioners were arrested on August 22, 1950, by an order of the District Magistrate, Delhi. The grounds of detention communicated to the petitioners were to the effect that the detention was occasioned by the fact of their making speeches in August 1950 at public meetings in Delhi, which speeches were prejudicial to public safety as they allegedly tended to excite disaffection between Hindus and Muslims.

The petitioners' application to the High Court at Simla under article 226 of the constitution having been rejected, this Court was moved under article 32.

In the majority judgment, Mr. Justice Patanjali Sasri held that, wherever an order of detention was based upon speeches made by the person sought to be detained, the detaining authority should communicate to the person the offending passages, or at least the gist of such passages, on pain of having the order quashed, was not a sound proposition and therefore the contention that the grounds did not reveal the passages that allegedly sought to create the disaffection aforesaid could not hold water.

In his dissenting judgment, Mr. Justice Mahajan was of the view that the phrase "excite disaffection amongst Hindus and Muslims" was of a very general nature and such inference could easily have been wrong on materials which would not warrant such an influence. His Lordship observed to the effect that materials supplied in cases of preventive detention where a person could not appear and defend himself in an open trial but depended mainly on written representations should always be specific.

Mr. Justice Bose, who agreed with Mr. Justice Mahajan, held: "On the facts and circumstances of the present cases, the grounds supplied were insufficient and the gist of the offending passages should have been supplied. The omission to do so invalidates the detention and each of the detenus is entitled to immediate release."

Continuation of Old Detentions under New Act

THEIR VALIDITY UPHOLD

Mr. Justice Shearer and Mr. Justice Januar of the Patna High Court on 11th April dismissed the habeas corpus petitions of Mr. Manzar Rezvi and fourteen others who were previously detained under the 1950 Preventive Detention Act but whose detention was

continued under sec. 12 of the 1951 Act. This section declares that every detention order in force at the commencement of the amending Act "shall continue in force and shall have effect as if it had been made under the Act." The petitioners had challenged the validity of this section and of the Act itself. Their Lordships held that the Act was valid. (The question has also been raised in the Supreme Court on other petitions.)

Their Lordships pointed out in the judgment that the only restriction imposed by the constitution on the power of the provincial Government in the matter was that the case of a person ordered to be further detained must be referred to and reviewed by an Advisory Board within three months of the coming into operation of the new Act. It could not possibly have been intended that whenever a temporary Preventive Detention Act expired, every person detained under it should be released and should not be liable to be detained again unless and until he was guilty of conduct justifying his being taken back into custody. The reason is that the word "law" in article 22 (4) of the constitution must include not merely a law authorizing the detention of persons who prior to making of an order against them have been at large but also a law authorizing the further detention of persons who are already under detention.

If an order under the new Act has to be made against every person already under detention when it came into force there would necessarily have been an interval of possibly several days between the making of such an order and the order reaching the keeper of the jail in which the person named in the order was confined.

It could therefore have been contended with some show of plausibility that during this interval the keeper of the jail was not in possession of a valid warrant authorizing him to keep the person concerned in confinement.

The new Act authorises detention with effect from 22nd February 1951 and by providing that a warrant, which is an authority on the keeper of the jail to the person in detention, shall be deemed to be a warrant made under the new Act, merely absolves the Provincial Government from the necessity of making a fresh order of detention.

Their Lordships after an elaborate discussion of the facts and circumstances leading to the amending Act held that the Act was valid and accordingly dismissed the applications.

Exclusive Discretion of Detaining Authority

In the Pepsu High Court Mr. Justice Girdhari Lal Chopra on 10th April dismissed the habeas corpus petition filed by Sant Indar Singh Jandsar against his continued detention under the Preventive Detention Act.

Sant Indar Singh was ordered and detained by the Deputy Commissioner of Patiala on April 5, 1950, and was released by the High Court on July 21 last as the grounds of detention were communicated to him after much delay, i. e., a delay of 41 days (vide p. 149 of the BULLETIN). He

was, however, re-arrested the same day under the Arms Act. At the same time, an order under the Preventive Detention Act was served on him, detaining him for a period of six months. On expiry of the detention period, he was released from jail and was again arrested under the Preventive Detention Act on the same day and further detained for a period of six months.

The allegations against him were of harbouring certain notorious dacoits and supplying them arms and ammunition.

His Lordship observed that powers of the courts were limited to the extent that they had only to find out whether the detaining authority had in fact considered the case and was really satisfied that the detention was necessary.

Four Months' Delay in Stating Grounds

Two detenus from the Punjab, Messrs. Waryam Singh and Prem Singh, were ordered to be released by the Supreme Court on 6th April, as the argument of Mr. H. J. Umrigar, who appeared *amicus curie* for them, to the effect that the grounds of detention supplied to the petitioners were too vague for representations to be made on them and that further particulars relating to the said grounds supplied four and a half months later could not be looked at by the court in view of their recent decisions in re Jagjit Singh and Ujagar Singh (vide p. 236 of the BULLETIN) because the delay of four and a half months could not possibly be within the meaning of "as soon as may be" occurring in article 22(5) of the constitution was accepted.

KUMARAMANGALAM CASE

Supreme Court Orders Release

Next to Mr. A. K. Gopalan, Mr. Surendra Mohan Kumaramangalam may be said to have made history in the matter of detention. The Madras Government had set its heart on detaining him, but as he was residing since 1943 in Bombay that Government's arms, long as they were, could not reach him. It therefore caused the pliable Bombay Government first to detain him for a few days in Bombay, though this Government had nothing to allege against him, and then have him transferred to its own territory so that it could exercise its power over him and lodge him safely in a Madras prison. This it contrived to do successfully, but the Madras High Court ordered his release on a habeas corpus petition (vide p. 165 and p. 193 of the BULLETIN). However, the Madras Government was not to be balked of its prize in this way. Before Mr. Kumaramangalam came out of jail, it had him arrested and served a fresh order of detention on him. Against this order Mr. Kumaramangalam filed a habeas corpus petition with the Supreme Court, and the Supreme Court ordered his release on 5th April, holding that the Madras Government, having illegally brought him over to Madras, had no power to detain him.

In the course of the arguments the Chief Justice could not suppress his moral indignation at the conduct of the Madras Government and, addressing the Advocate-General of Madras, asked: "Is this the way in which you deal with citizens?" He said:

We are a civilised country, I hope. I underline the word "civilised." No such order of detention as this can validly be supported. The Government cannot say: "I admit that I have no jurisdiction to arrest a man in Bombay. But I have arrested this man and forcibly brought him here. Having done that, I exercise my jurisdiction within the State to serve an order of detention on him."

If the order of detention of July 14 was void, then the continued detention which resulted in the detenu's presence in Madras State even on October 4 was tainted with the same illegality. And if his presence on October 4 could not be supported except on the admission that the exercise of the jurisdiction to detain him was based on the illegal act of bringing him here without jurisdiction, then his presence on October 4 was on the same footing as on July 14.

The Court's order was on the lines of these observations. It ran:

On the facts, it is conceded that the habeas corpus rule was argued before the Bombay High Court on July 12, 1950. The petitioner should be deemed to be in Bombay as the Preventive Detention Act (Act IV of 1950) did not permit one State Government to arrest someone who was in another State. It is therefore, admitted that the presence of the petitioner in Madras Presidency was illegal and he could not therefore be detained under the orders of the Madras Government until that illegality was cured. The petitioner had asked to be released at Bombay. That order was not passed by the Madras High Court in its judgment of October 4, 1950 releasing him. The petitioner, under the circumstances, is directed to be released and the rule is made absolute.

MALGUZARI ABOLITION LAW HELD VALID

Nagpur High Court's Decision

A full bench of the Nagpur High Court consisting of the Chief Justice, B. P. Sinha, Mr. Justice K. T. Mangalmurti and Mr. Justice J. R. Mudholkar on 9th April held the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, *intra vires* of the constitution and dismissed 11 petitions challenging its validity. Their Lordships said:

The impugned Act cannot be challenged on any ground bearing on the question of compensation, its fairness, its adequacy or equality of treatment between class and class and person and person. That being so, notwithstanding our finding that the Act introduces inequality between the different component

parts of the State and between persons constituting the same class, we think that the constitutionality of the Act cannot be questioned on that ground.

(The Act) is certainly meant for democratizing village administration, thus laying the foundation for a democratic superstructure. How far it will succeed in its objective is not for us to consider. Hence, assuming that the question is at large, on a consideration of the provisions of the statute in question, we have come to the conclusion that it is definitely for a public purpose.

Dealing at length with the scope of art. 14 read together with art. 31 (4) of the constitution, in the light of the Patna High Court's recent judgment (vide p. 235 of the BULLETIN). Their Lordships said :

It is clear enough that clause (4) of article 31 makes provision of a transitory character with special reference to only certain Bills which were on the anvil of the respective legislatures of certain States at the time the constitution came into force. (Madhya Pradesh is one of them.)

The Constituent Assembly must be deemed to have enacted clause (4) of article 31 with full realization of the fact that they had already laid down the fundamental rules as regards equality in the eye of the law and even then they were providing to save from challenge in any court the provisions of those projected legislations.

Further, they observed, article 31 (4) was as much a part of Part III relating to fundamental rights as article 14 itself and "an attempt must be made to reconcile the different provisions of the fundamental rights in Part III putting them side by side and reading them all together." In regard to "inconsistency" between the provisions of article 14 and certain other articles and provisions of article 31 (4), Their Lordships said :

In our opinion those inconsistencies have to be resolved and they can be resolved in the way indicated by us. The impugned Act when it was on the anvil of the State legislature was one of the laws sought to be saved by article 31 (4). Hence, there cannot be the least doubt that there is a very strong presumption in favour of the constitutionality of the Act and it is for those who challenge its validity to show beyond reasonable doubt and clearly that the impugned Act is unconstitutional.

RESERVATION IN THE SERVICES

Madras Government's Order Held Invalid

A full bench of the Supreme Court consisting of seven judges declared unanimously on 9th April that the Madras Government's order fixing the representation in the services on the basis of communities commonly known as "Communal G. O." was repugnant to the provisions of

article 16 of the constitution, which provides for equality of opportunity in matters of public employment, and that as such it was void and illegal.

The Court directed the State Government of Madras and the State Public Service Commission to consider and dispose of the petitioner's application for the post after taking it on the file on its merits and without applying the rule of communal relations.

As the petition was filed after most of the selected candidates had taken charge of the posts to which they were appointed, the Court did not direct the Madras Public Service Commission to cancel the selections already made. The Court, however, held that the clause expressly permitted the State to make provision for the reservation in favour of any backward class of citizens which, in the opinion of the State, was not adequately represented in the services of the State. Reservation of posts, therefore, in favour of any backward class of the State was not to be regarded as unconstitutional.

The facts of the case briefly are that the Madras Public Service Commission invited applications for 83 posts of district munsiffs in the Madras Subordinate Civil Judicial Service. It was notified that the selections would be in pursuance of the rules prescribed in what were known as "Communal G. O. s."

In April and May, 1950, the Madras Public Service Commission interviewed the candidates including the petitioner, Mr. B. Venkataraman, and it was admitted that the marks secured by him would entitle him to be selected if the provisions in the communal G. O. were disregarded.

Mr. Venkataraman filed the present petition on October 21, 1950, praying for an order declaring that the rule of the communal relations in pursuance of which the selections to the posts were made was repugnant to the provisions of the constitution and, therefore, void; for directing the Madras Public Service Commission to cancel the selections already made, prohibiting the State of Madras from filling up the posts from out of the candidates selected in pursuance of the notification dated December 16, 1949, and for directing the disposal of the petitioner's application for the said post after taking it on the file on its merits and without applying the rule of communal relations.

Admission Into Colleges

The Court also delivered judgment on the Madras High Court allowing the applications of Srimathi Champakdorairajan and Mr. C. R. Srinivasan. The applicants had complained of infringement of their fundamental rights in respect of admission into the Madras Medical College and the Government Engineering College. According to the decision of the Supreme Court, the appeals of the Madras Government stand dismissed.—The "Times of India."

PREVENTION OF CRIMES ACT

" A Piece of Legislative Despotism "

" NAKED AND ARBITRARY DISCRIMINATION "

Allowing revision applications by certain persons (Bans Gopal and others) detained under the U. P. Prevention of Crimes (Special Powers) (Temporary) Act of 1949, a division bench of the Allahabad High Court consisting of Dayal and Desai JJ. held (17th March) that the provisions of sec. 3 (1) (a) (i) and 3 (b) and 3 (c) were unconstitutional inasmuch as they contravened the provisions of art. 14 of the constitution, which says : " the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. "

Breach of the clause for equal protection that is implicit in the section declared void by the Court arises in this way. Certain habitual offenders are liable to be proceeded against under sec. 110, Cr. P. C., which provides for security for good behaviour being taken from habitual offenders. But if in addition they have acquired reputation of bad character, they are liable to be proceeded against under the U. P. Act. Mr. Justice Desai said in his judgment:

The Act discriminated between habitual criminals who had acquired a bad reputation and others who had not, and the difference in treatment meted out to them had no intelligible connection with the acquisition or non-acquisition of a reputation as bad characters. There was no reason why habitual criminals who had not acquired a bad reputation should be dealt with under sec. 110, while those who had acquired a bad reputation might be dealt with under the Act. Even within the class of habitual criminals who had acquired a bad reputation the Act made an unconstitutional discrimination between some and others. This discrimination was obvious on the face of the Act itself and no proof was required. The discrimination lay in the fact that some were left to be prosecuted under sec. 110 of the Code while others were prosecuted under the Act. A notorious habitual criminal was liable to be run in under the Code or under the Act; whether he was run in under the one or the other had been left by the Act to the fancy or whim of the magistrate and the police who might have him.

Discussing what the equal protection clause connotes, His Lordships observed :

It was absurd to speak of one law for all circumstances; it was a sheer impossibility because there must be different laws to deal with different circumstances. What the equal protection clause meant was simply this, that the same law should govern those similarly circumstanced; it could not and did not prohibit different laws for those differently circumstanced. The legislature had full freedom to classify

people according to circumstances and enact different laws for different classes; but it must treat equally all similarly circumstanced or falling in one class, and the difference in treatment must have some intelligible or rational connection with the difference in circumstances and not arbitrary. Discrimination among persons in one class or similarly circumstanced, where apparent on the face of the statute or resulting in practice, was all that was prohibited under the clause. It was competent for the legislature to leave it to the discretion of an authority to apply different laws to people in different circumstances, but always provided that it laid down a rational standard to guide its discretion or such a standard as could be presumed to exist; it could not leave it to its arbitrary or naked discretion. A statute was presumed to be within the power of the legislature and the onus of showing that it was not lay on the assailant. But a statute enacted before the constitution could not be presumed to be constitutional under it.

Whether a person was dealt with under the Criminal Procedure Code or under the U. P. statute meant much to him. On this point His Lordship remarked :

The difference between the procedures under the Code and under the Act was enormous. A judge proceeding under the Act was not bound by the Evidence Act at all and he could pass his order even on a police report and other information received by him. Before the amendment a person had no right to be even present at the time of the examination of witnesses against him; this meant that he had no right to cross-examine witnesses. He had also no right to be represented by counsel. Further, the hearing of the case was in camera.

Pointing out how in other respects also a man proceeded against under the Act suffered in comparison with another person proceeded against under the Code, Mr. Justice Desai said :

The provisions of the Act were more drastic and more unfavourable to the person proceeded against under them than under those of the Code. Any person would prefer to be proceeded against under the Code rather than under the Act.

In conclusion, His Lordship observed :

The Act had laid down no standard to guide the magistrate's choice of one of the two procedures and no standard could even be imagined by the court. The discretion (if it at all was a discretion) that was conferred upon the magistrate was naked and arbitrary; there was absolutely nothing to guide him. Section 3 (1) (a) (i), (b) and (c) made irrational and arbitrary discrimination and it must be held to be a piece of legislative despotism. His Lordship was, therefore, of the opinion that the section was unconstitutional. When section 3(1)(a) (i), (b) and (c) was unconstitutional, section 3(2) also must be held to be unconstitutional along with it.

SHOWING CAUSE

Government Exceeded Its Jurisdiction

On 21st March Sankar Saran and Agarwala JJ. of the Allahabad High Court quashed the order made by the

Uttar Pradesh Government declaring a taluqdar, Mr. Avadesh Pratap Singh, incapable of managing his estate under sec. 8 (1) (d) of the U. P. Court of Wards Act, 1912. The Government had furnished to the taluqdar a detailed statement of the grounds on which it proposed to disqualify him: it had also given him an opportunity to make a representation against the order it was contemplating. But the Court ruled that that did not fully satisfy the requirements of the statute, which had laid upon the Government the duty of giving to the person against whom a declaration was proposed to be made a further opportunity of showing cause why such declaration should not be made. Mr. Justice Agarwala, who delivered the judgment of the Court, said:

The expression "showing cause" connoted an opportunity of leading evidence in support of one's allegations and in controverting such allegations as were made against one. This was not allowed to be done in the present case.

Sec 8 (12) of the statute made it the duty of the Government to act quasi-judicially. (An inquiry had to be held, and) it might fairly be presumed that the Government had to act in accordance with the result of the inquiry so held, although its final decision, if the procedure was followed, might not be liable to be challenged in a court of law, as provided in sec. 11 of the Act. These requirements were the essence of a judicial approach and therefore the Government was bound to act judicially.

Did sec. 11, then, bar an application to the High Court? His Lordship declared that it did not. He said:

The provisions of sec. 11 did not bar the High Court from issuing a writ, direction or order under art. 256 if it found that the Government had contravened the provisions of the statute which empowered it to act in infringement of the rights of a citizen. In his judgment, the Government failed in this case to follow the procedure laid down by the law and as it failed to follow that procedure, it exceeded its jurisdiction in making the declaration. His Lordship, therefore, allowed the application and quashed the declaration made by the Government on Dec. 10, 1949, and directed the petitioner to be put in possession of his property.

PRESS ACT

Sec. 3(1) Declared Void as Preventive

At the Madras High Court the Chief Justice, Mr. P. V. Rajamannar, and Mr. Justice Somasundaram, on 6th March, quashed an order of the Chief Presidency Magistrate calling upon Mrs. Pattamal Arumugham of Perambur, who wished to declare herself as the keeper of a printing press, to deposit a security of Rs. 1,000.

The petitioner, the owner of the press, filed an application before the Chief Presidency Magistrate who passed an order, under section 3(1) of the Indian Press (Emergency Powers) Act, 1931 (which empowers a magistrate to require a would-be keeper of a press, for reasons to be recorded in writing, to deposit a security of an amount up to Rs. 1,000), calling upon her to deposit a security of Rs. 1,000, on the ground that it was reported that she was a Communist sympathiser and was likely to incite or

encourage the commission of cognisable offences involving violence, or interfere with the maintenance of law by printing objectionable Communist literature in her press.

Their Lordships expressed the opinion that sec. 3(1) of the Act could not be upheld as a preventive provision because article 19(2) would not justify preventive legislation. They further held that sec. 3(1) of the Act was inconsistent with article 19(1)(g) of the constitution which conferred on all citizens the right to practise any profession or to carry on any occupation, trade or business.

C. L. U. NEWS

Punjab C. L. Council

The civil liberty movement in the Punjab is forging ahead. At a general meeting of the Punjab Civil Liberties Council held at Ambala on 25th March an Executive Committee of influential men was elected for the year 1951-52. Mr. Bhim Sen Sachar, M. L. A. (ex-Congress Chief Minister of the Punjab), and Pandit Haradutta Sharma of the Servants of India Society were elected President and Secretary respectively, Sardar Jaswant Singh being the Organizing Secretary of the Council. The Committee includes, among others, Sardar Bachan Singh, M. L. A., and Sardar Jang Bahadur Singh (as Vice-Presidents). Sardar Sajjan Singh Margandhuri, M. L. A., Mr. J. Natarajan, Editor of the "Tribune," Mr. Duni Chand, veteran Congress leader of Ambala, Principal C. L. Anand and the well-known writer Prof. Abdul Majid Khan.

After considering "a large number of instances of violation of the fundamental rights" of the people, the meeting by a resolution demanded that cases of gross abuse of powers by the police in the Punjab State should not go unpunished and decided that a deputation should interview the Home Minister and the Inspector-General of Police in that connection. It further called up in the civil liberty unions and public workers in the Punjab, Pepsu and Delhi States to forward cases of infringement of civil liberties and misuse of executive power in their respective areas to the Secretary of the Punjab Civil Liberties Council. A brief report of the progress of the work done by the Council was also considered at the meeting.

"Engrossing Reading"

Mr. Aubrey Grossnan, National Organizational Secretary, Civil Rights Congress, New York, writes on 8th February:

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