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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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As last year, there will be no publication of the Bulletin in June this year, and for the same reason. The present number therefore goes out as a May-June number.

The non-publication of the Bulletin next month is deeply regretted, for that will involve deferring editorial comments on the Bill for the Alteration of the Constitution till July.

The provisions of the Bill became available just as we were about to go to press, which makes it impossible for us to discuss the Bill in this issue. Nor shall we be able to discuss next month the final form which the Bill will take. This is a great pity.

However, we have tried to give in this issue a good deal of material which we hope will be useful in understanding and assessing the proposed changes in the limitations embodied in art. 19(2) on the right of Free Speech and Free Press. More we regret we cannot do at this stage.

But the material here presented is, we believe, valuable; at any rate it is such as will not be readily available to the general reader. We give for instance the current United States constitutional law on the subject of free speech. We also give a summary of the discussions that took place in the United Nations on the proposal made therein to impose restrictions on freedom of expression in the interest of (i) "public order" and (ii) "friendly relations between the States" which will give considerable help to our readers in forming an informed opinion on similar restrictions proposed to be newly imposed in India.

BOUNDARY LINE OF THE FIRST AMENDMENT

The principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperilled and not, as most men believe, when it is barely conceivable that it may be slightly affected.

The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion. . . . Nevertheless, there are other purposes of government, such as order, . . . protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.—Professor Zechariah Chafee Jr. in "Free Speech in the United States."

ARTICLES

"PUBLIC ORDER" AND "SECURITY OF THE STATE"

The Constitution of India, unlike that of the United States of America, specifies the qualifications to which alone exercise of the right of free speech or press and other fundamental rights can be subjected. Any restrictions which are not so covered by the specified qualifications are unconstitutional. The qualifications relating to the right to freedom of speech and expression, guaranteed by art. 19 (1)(a), are very tightly drawn. While the right to peaceable assembly and the right to form associations or unions, guaranteed by art. 19 (1)(b) and (c), can be interfered with if such interference becomes necessary for the maintenance of "public order," the right to freedom of speech and expression can be interfered with only if such interference becomes necessary for the preservation of the "security of the State." That these different words are used in the same article in defining the qualifications to which the right of free speech and the press is made subject on the one hand and those to which two other rights are made subject on the other, shows that the Constitution-makers intended the scope of the protected freedom in the case of the first right to be wider than in the case of the other two rights. This will become clear from the following words used in the judgment of a full bench of the Supreme Court in *R. Thappar v. State of Madras* (26th May, 1950), from which Mr. Justice Fazl Ali alone dissented:

The Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in art. 19(1) has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgment of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly [sub-cl. (b)] and the right of association [(sub-cl. (c))] may be restricted under cls. (3) and (4) of art. 19 in

the interests of "public order" which in those clauses includes the security of the State. This differentiation is also noticeable in Entry No. 3 of List III (Concurrent List) of the Seventh Schedule, which refers to the "security of a State" and "maintenance of public order" as distinct subjects of legislation. The Constitution thus requires a line to be drawn in the field of public order or tranquillity, marking off, more or less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree as if they were differences in kind.

... Deletion of the word "sedition" from the draft art. 13 (2) [which in the Constitution as finally adopted has become art. 19 (2)], therefore, shows that criticism of Government, exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State. It is also significant that the corresponding Irish formula of "undermining the public order or the authority of the State" [art. 40(6) (i) of the Constitution of Eire, 1937] did not apparently find favour with the framers of the Indian Constitution.* Thus very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression, and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was "the leading spirit in the preparation of the First Amendment of the Federal Constitution," that "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits."

We are, therefore, of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under cl. (2) of art. 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order.

This decision of the Supreme Court led a majority of a special bench of the Patna High Court (Mr. Justice Sarjoo Prasad and Mr. Justice Ramaswami), in *re* Bharati Press (13th October, 1950), to conclude that even a pamphlet

* This is dealt with in a Comment in this issue, "Free Speech in the Irish Constitution."

which "encourages violent revolution and overthrow of the existing social and political order by bloodshed and destruction" comes within the sphere of lawful publications, as defined by the Constitution. Mr. Justice Sarjoo Prasad said:

I am compelled to observe that from the above discussions of the Supreme Court judgments (in the cases of *R. Thappar v. State of Madras* and *Brij Bhushan v. State of Delhi*), it follows logically that if a person were to go on inciting murder or other cognizable offences either through the press or by word of mouth, he would be free to do so with impunity inasmuch as he would claim the privilege of exercising his fundamental right of freedom of speech and expression. Any legislation which seeks or would seek to curb this right of the person concerned would not be saved under art. 19(2) of the Constitution and would have to be declared void. This would be so because such speech or expression on the part of the individual would fall neither under libel, ... nor under any matter which undermines the security of or tends to overthrow the State.

This of course would be a monstrous state of law if the above interpretation of the qualification mentioned in art. 19(2) comes to be finally upheld, and Mr. Justice Sarjoo Prasad himself, disturbed by his own interpretation of it, invited a ruling of the Supreme Court on the subject, which, however, is not yet forthcoming.

We are quite free to admit, as we have already said before, that Governments must be in a position to punish direct incitements to violence, and if our Constitution is found by the highest judicial authority to contain any lacuna in this respect, we have no doubt that it must be filled. But to make the right to freedom of speech and expression also subject to qualifications required for the maintenance of "public order," as are the rights to peaceable assembly and freedom of association, is to deprive freedom of speech or the press of a very valuable safeguard. When a threat to public order on account of words used rises to the magnitude of a threat to the security of the State, the words should certainly be liable to punishment. This criterion which the Constitution as it stands at present prescribes must be maintained; only the form in which it finds expression may be changed. But to go beyond this and deliberately to lower the standard of protection of this essential right is to take a reactionary step which would rob the right of a necessary part of its protection. If in India, as in the United States, were applied the "clear and present danger" rule, along with the "preferred status" rule, mentioned in a later article entitled "U. S. Constitutional Law on Freedom of Speech," there would be no possibility of a minor breach of the peace being allowed to interfere with freedom of speech and expression as the substitution of the words "public order" for "security of the State" would.

**"PUBLIC ORDER" RESERVATION : TOO BROAD
U. K. Opposes the Phrase in U. N.**

It is proposed to introduce the phrase "public order" into art. 19 (2) of the Indian Constitution either in substitution of or in addition to the phrase "security of the State." If this is done, the qualifications of the right to free speech and press would be so broadened as to sweep in a wide variety of conduct into the exceptions, from a grave threat to safety and security to a trifling danger of a breach of the peace, all lending equal justification to any interference with the right. This would render the guarantee of free speech almost wholly nugatory.

The truth of this will be borne in upon any one who follows the strong criticism which the United Kingdom delegation made in the United Nations in connection with art. 14 in the draft Covenant on Human Rights relating to freedom of information. Paragraph 3 of this article (which has not yet been finalised) runs as follows :

Everyone shall have the right to freedom of expression.

The right... carries with it special duties and responsibilities and may therefore be subject to certain... restrictions, but these shall be such only as are... necessary for the protection of—

national security,
public order,
safety,
health or morals, or

of the rights, freedoms or reputations of others.

The United Kingdom delegation pointed out that the introduction of the phrase "public order" into the Covenant as justifying the limitation of the enjoyment of human rights "might well constitute a basis for far-reaching derogations from the rights granted."

Specifically referring to art. 14(3) as well as arts. 13, 15 and 16, in which the term "public order" appears, Lord Macdonald, the representative of the United Kingdom, said in the Third Committee of the fifth session of the General Assembly (18th October, 1950) :

The stipulated limitations were inadequate (for the protection of the rights), for they were so broad and vague that they could be construed as *permitting the imposition of almost any restriction on the rights* to which they referred and, in fact, *completely nullified* the effect of the articles to which they applied. (Emphasis supplied.)

The representative of Lebanon had correctly stated at the fifth session of the Commission on Human Rights that no dictator would have the slightest compunction in acceding to a Covenant drafted in such terms, nor, when he had acceded, would he find that it in any way inhibited his repressive activities; he could invoke the exception in the interest of "public order," embodied in arts. 13, 14, 15 and 16.

Innumerable atrocities had already been committed for the protection of the State against subversive activities under that pretext. The United Kingdom representative in the Commission on Human Rights had consistently argued against the use of that phrase on such grounds.

Thus the United Kingdom is on record that it considers "that in view of the recorded expression of opinion by the (Human Rights) Commission as to the wide meaning to be given to the term 'public order' used in para. 3 of art. 14, the article, with the limitations allowed by para. 3, *affords no guarantee* of the freedoms which are its subject." (Emphasis supplied.) The delegation of Lebanon said in the Third Committee that in spite of some doubts, it had accepted the "public order" reservation in the declaration (which had no binding force), but it thought that the expression would be out of place in the Covenant (which was legally binding).

It may be noted that, in submitting India's comments on the draft Covenant on 21st February, the Minister for External Affairs, who is no other than Mr. Nehru, stated that it was necessary to have the phrase "public order" in para. 3 of art. 14. The United Kingdom on the other hand stated that it stood by the remarks of Lord Macdonald quoted above.

The same phrase "for the protection of public order" recurred in the earlier draft of art. 2 of the Convention on Freedom of Information, and it was stoutly opposed in the Committee by the delegations of many countries as giving too wide a discretion to Governments in suppressing freedom of expression. For instance, the representative of Lebanon said (16th January, 1951) that such terms as "public order"... "could cover the most arbitrary restrictions. It was the Committee's duty to go into great detail and define each term, in order to forestall abuses and to prevent would-be dictators from taking shelter behind a Convention prepared under the auspices of the United Nations." The representative of France said that such general limitations as the interests of public order "were so broad as to enable Governments to use them as an excuse for all their policies and activities, however injurious to freedom of information."

Eventually, the phrase "for the protection of public order" was changed into what corresponds to the prevention of public disorder, the exact terms adopted being: "The exercise of the freedoms may be subject to limitations necessary with regard to expressions which promote disorder," it being felt, as the United States representative said, "prevention of disorder" was better than "(protection of) public order." Even so it should not be supposed that the change was acceptable to all countries. The Cuban delegate in fact moved deletion of the phrase "expressions which promote disorder," because he thought that retention of the phrase "would open the way to Governments to

impose all types of restrictions on the pretext that disorder might be provoked," but the amendment was rejected (31st January).

It should also be remembered that almost all the pro-

gressive countries are thoroughly dissatisfied with the draft Convention, the United Kingdom representative going so far as to say that "it was better to have no Convention at all than a bad one."

U. S. CONSTITUTIONAL LAW ON FREEDOM OF SPEECH

I

LIMITS OF FREE SPEECH

The First Amendment of the United States Constitution declares that Congress shall make no law abridging the freedom of speech or of the press. And the Fourteenth Amendment, which declares that no state shall deprive any person of liberty without due process of law, has rendered the legislatures of the states as incompetent as Congress to enact such laws, it being determined that the fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment.

This constitutional inhibition of legislation on the subject of free speech or free press appears from the wording of the First Amendment to be without any limitation, and the rights of the freedom of speech and the press appear to be absolute. But it is recognised that restrictions can legitimately be imposed upon speeches and publications for the protection of the public safety. Only the restrictions are implied and their precise scope has to be inferred from the pronouncements of the highest judicial authority. The limiting conditions not being expressed in the Constitution, there was no occasion for differentiating between "public order" and the "security of the State" as in several clauses of art. 19 the Indian Constitution does. Nevertheless, it is possible to form a fairly accurate idea of the limits within which, according to the Constitution as interpreted, these basic rights are protected.

For one thing, it is clear that the rights are subject to the elemental need for order, without which the guarantees of civil rights to others would be a mockery. *United States Public Workers v. Mitchell* (1947) 330 U. S. 75. In the nature of things, exercise of such rights must remain subject to regulation for the protection of society. In *Reynolds v. United States* 98 U. S. 145, the conclusion, unavoidable from a practical point of view, was reached that the prohibition contained in the First Amendment did not prevent Congress from penalizing commission of acts which are socially or politically disturbing. Similarly, the state legislatures are held competent to exercise the police power which belongs to the states of curtailing the rights guaranteed by the First Amendment in the interest of maintaining the public peace. But, in the final analysis, it is the Supreme Court which determines whether any particular statute curtailing the freedom of speech or the press was justified and whether in any particular situation the threat to order and peace was such as to justify use of the power conferred by the statute

in curtailing the freedom. In this determination it may even commit mistakes. But that is the location of the final authority. It may perhaps appear strange that not only the constitutionality of statutes but also the justifiability of executive action taken under the statutes in law and order situations should be determined by the judiciary. But that is the essence of the constitutional law of the U. S. As Circuit Judge Learned Hand declared (1st August, 1950) in the case of the 11 Communist leaders in the Court of Appeals: "In application of such a standard courts may strike a wrong balance. They may tolerate 'incitement' which they should forbid; they may repress utterances they should allow. But that is a responsibility that they cannot avoid." In *Cantwell v. Connecticut* (1940) 310 U. S. 296, for instance, the Court said:

The fundamental law declares the interest of the United States that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the state's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly within the state's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact [i. e., by the federal Constitution].

The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views under the guise of conserving desirable conditions.

Thus legislation may be passed and executive action may be taken for safeguarding "the peace, good order and comfort of the community" even if it involves restriction of the freedom of speech or the press, without, however, unconstitutionally invading the liberties

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FREEDOM OF EXPRESSION WRITTEN OFF

“AMENDMENT ONLY AN ENABLING MEASURE”: ITS REAL SIGNIFICANCE

It was freely admitted by the Government spokesmen (the Prime Minister, the Law Minister and the Home Minister) that all the additional reservations which the amendment to art. 19(2) introduces in the matter of exercise of the right to freedom of speech and expression, viz., “friendly relations with foreign States,” “public order,” and “incitement to an offence,” were imprecise and inexact. Such an admission should really be fatal to a Charter of Freedom, which is not intended to be a mere declaration of pious wishes like the Directive Principles of State Policy embodied in Part IV but is intended to be a legally binding instrument as the whole of Part III relating to Fundamental Rights is. If the rights conferred by this latter Part are to be justiciable, it follows that there must not be any uncertainty about the binding legal obligations the rights impose on the State. This means that any exceptions that may be allowed in the case of any of the rights must be expressed in clear language so that the precise scope of the rights would not be left in any doubt. But if the exceptions are couched in words which are admittedly overbroad and elastic, they would result in such a whittling away of the rights as to amount even to their destruction.

In this particular case, however, the Government spokesmen maintained that since the amendment of art. 19(2) was only an enabling provision, the vagueness of the words used would not much matter. The amendment by itself, they argued, would not affect the right to freedom of expression at all. It is only when legislation is passed in pursuance thereof, that the change in the Constitution would begin to operate on individuals. The time, therefore, for scrutinizing the reservations was not when merely power was taken, by altering the Constitution, to make freedom of expression subject to these new reservations but when restrictions are embodied in a statute for the purpose of making them effective. When such legislation is introduced in Parliament or the local legislatures, let the restrictions be thoroughly scrutinized, they said, and a form of words adopted which will properly limit their scope. If at that time too wide a scope is left for the restrictions, there will be legitimate cause for

complaint, but there can be no ground for any such complaint when what is done is nothing more than to confer power upon the legislatures in necessarily general terms to impose restrictions.

This argument was again and again put forward by the Ministers in charge of the Constitution Amendment Bill. Mr. Nehru who only indulges in generalities without going to the root of any matter might perhaps be excused for adopting this kind of reasoning, though even he as the founder of the first Civil Liberties Union in India might have been expected to show a greater knowledge of the fundamentals of civil liberty. But that Dr. Ambedkar and Mr. Rajagopalachari who ought to be well acquainted with the governing principles of a Bill of Rights should use such an argument cannot but be a matter of profound grief. For the argument is really destructive of the basic idea underlying the setting apart of some rights as Fundamental Rights.

What is this basic idea? It is that certain rights selected as Fundamental Rights should enjoy the special protection given by the Constitution to such rights so that it would be beyond the power of even the legislatures to take them away or to diminish them. What would, however, be the situation if the restrictions that could be imposed on any fundamental right are expressed in very general and therefore necessarily too broad terms in the Constitution, as they admittedly are in this particular instance, and an attempt is made when passing legislation on the subject to give to the restrictions a limited scope. If this attempt to keep the restrictions within proper limits fails, obviously it would be useless to invoke the Constitution against the statute which the legislatures may pass. For, ex hypothesi, the Constitution permits of broader restrictions than are necessary, and the statute too does not choose sufficiently to restrict their scope. There can thus be no guarantee that freedom of expression will be protected from legislative infringement of the right. But to afford such protection is the very purpose of giving any right the sacred character of a Fundamental Right.

One can understand if the Constitution-makers want the people of India to enjoy the right to

Thus the conclusion that emerges from this discussion, which is reinforced by the statement below of the U. S. constitutional law on Freedom of Speech (based on an article in vol. 93 of the Lawyers' Edition of the Supreme Court's decisions), is that, by abolishing the twin doctrines of "bad tendency" and "presumptive intent," the Supreme Court has evolved a definition of the true scope of these rights so as to reconcile the interests of the community in peace, good order and security with those of the individual in speaking out his thoughts. Our Constitution, both in the phrasing of the limiting conditions as regards freedom of speech or the press and in the judicial interpretation of these conditions, must approximate to the Constitution of the United States if our guarantees of these basic freedoms are to be inviolate.

2

STANDARD SET BY THE SUPREME COURT

The Constitution of the United States places on the Supreme Court the duty to say where the individual's freedom ends and the state's power begins. *Thomas v. Collins* (1945) 323 U. S. 516. Where the constitutional guarantee of free speech and press is in conflict with a state's interest in the preservation and protection of peace and good order within its borders, the Supreme Court must determine whether the alleged protection of the state's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly within the state's discretion, has been pressed to a point where it has come into fatal collision with the overriding interests protected by the federal Constitution. *Cantwell v. Connecticut* (1940) 310 U. S. 296.

The only general standard emerging from the decisions of the Supreme Court by which to test the validity of any rule or regulation curtailing the right of free speech and press is embodied in the "clear and present danger" rule.

It is now commonplace [*West Virginia State Board of Education v. Barnette* (1943) 319 U. S. 624] that the printed or spoken word may not be the subject of previous restraint or subsequent punishment unless, but may be so curtailed where, it creates a clear and present danger of bringing about a substantial evil which the state (or Congress) has power to prevent.

The clear and present danger rule has been invoked by the Court in nearly every situation within the scope of the First Amendment to test the validity of a rule or regulation curtailing the right of free speech or press, as where the right was exercised for the purpose of inciting to crime, such as a breach of the peace, or the overthrow of the Government by unlawful means.

Where curtailment of the constitutional right of freedom of speech and press is specifically sanctioned by a legislative declaration of state policy, such an expression of legislative preferences or beliefs cannot transform minor matters of public convenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression [*Bridges v. California* (1941) 314 U. S. 252] and that the rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice, since the right of free speech and press rests on firmer foundation [*Thomas v. Collins* (1945) 323 U. S. 516]. Indeed, in numerous cases* it has been stated or intimated that in measuring the constitutionality of a statute, freedom of the press and freedom of speech are in a preferred position, which gives these liberties a sanctity and a sanction not permitting dubious intrusions. It has also been stated that the power of a state to abridge freedom of speech and of assembly is the exception rather than the rule. *Herndon v. Lowry* (1937) 301 U. S. 242.

* * *

INCITEMENT TO CRIME

As a matter of principle, it has been recognised by the Supreme Court that utterances tending to incite to crime may be punished without infringing upon constitutional rights, and that united and joint action to accomplish desired political ends by the advocacy and use of criminal and unlawful methods involves even greater danger to the public peace and security than isolated utterances and acts of individuals.

It has been suggested by Justice Holmes and Justice Brandeis that there is a wide difference between advocacy of and incitement to crime. *Whitney v. California* (1927) 274 U. S. 357. While recognising that every denunciation of existing law tends in some measure to increase the probability that there will be violation of it, these Justices have taken the view in this case that even a advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is no clear and present danger that the advocacy would be immediately acted upon.

BREACH OF THE PEACE

While the Supreme Court, as a matter of principle, has recognised that the right of free speech does not render immune utterances tending to incite an immediate breach of the peace or riot, nevertheless attacks of this kind have been held protected by the right of free speech in the absence of a showing that they produced a clear and present danger "to a substantial interest of the state"

* *Murdock v. Pennsylvania* (1943) 319 U. S. 105; *Prince v. Massachusetts* (1944) 321 U. S. 158; *Follet v. McCormick* (1944) 321 U. S. 573; *Thomas v. Collins* (1945) 323 U. S. 516; *Marsh v. Alabama* (1946) 326 U. S. 501; *Sala v. New York* (1948) 334 U. S. 558; *Kovacs v. Cooper* (1949) 336 U. S. 77.

[*Cantwell v. Connecticut* (1940) 310 U. S. 296], or of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest, it being not sufficient, at least in the opinion of a majority of the Court, that the utterances result in disturbances of public order by an angry and turbulent crowd which the police is unable to prevent [*Terminiello v. Chicago* (1949) 337 U. S. 1].

OVERTHROW OF THE GOVERNMENT

As a matter of principle the Supreme Court has always recognised that the right of free speech does not prohibit the punishment of utterances which threaten the overthrow of the Government by unlawful means. However, the crucial issue is whether utterances which, in fact, constitute such an incitement present, by their very nature, a sufficient danger of substantive evil to bring them outside the scope of the constitutional protection, or whether they are so protected as long as there exists no clear and present danger of the overthrow of the Government, or, at least, actual attempts to accomplish this end.

Justices Holmes and Brandeis have taken the position that the clear and present danger rule applies even to utterances advocating the overthrow of the Government by force or violence. In their opinion assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action at some date necessarily far in the future, is a right within the protection of the Fourteenth Amendment. *Whitney v. California* (1927) U. S. 357.

Federal Criminal Code

In order to round out the above discussion some sections of the Federal Criminal Code are quoted below. Levying war against the United States (sec. 1) is treason punishable with death, and recruiting or enlisting for armed hostility against the United States (sec. 7) is a serious crime. Conduct short of insurrection is penalised in the following sections :

CONSPIRACY TO OVERTHROW THE GOVERNMENT

Sec. 6.—“If two or more persons . . . conspire to overthrow, put down or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof or by force to prevent, hinder or defy the execution of any law by the United States,” they are each liable to punishment.

Sec. 88.—“If two or more persons conspire either to commit any offence against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy,” they are each liable to punishment.

INCITING INSURRECTION

Sec. 4.—“Whoever incites, sets on foot, assists or engages in any rebellion or insurrection] against the

authority of the United States or the laws thereof, or gives aid or comfort thereto,” is liable to punishment.

“FRIENDLY RELATIONS WITH FOREIGN STATES”

AS A BASIS FOR LIMITING FREEDOM OF EXPRESSION

Discussed at Lake Success

In addition to the phrase “public order,” the phrase “friendly relations with foreign States” is proposed to be introduced in art. 19 (2) as a basis for the limitation of the right to freedom of speech and expression.

The first thing to note about this additional restriction that is proposed to be imposed on the right to free speech and press is its entire novelty: nothing like this can be found in the Constitution or even the statutes of any country.

How then did India think of it at all? The genesis of the proposal is to be found, we believe, in the discussions that took place in the Committee on the Draft Convention on Freedom of Information in January and February last at Lake Success. We refer to these discussions in some detail below, because, besides explaining the origin of the Government of India's proposed amendment, they will show how utterly reactionary such a restriction is in the judgment of freedom-loving countries.

In the original draft of art. 2 that was placed before the Committee was included sub-paragraph (j) of the Geneva Conference text of the draft Convention which would have permitted restrictions on freedom of information in so far as the information to be communicated affected international relations. This sub-paragraph was violently attacked by the United Kingdom and on its motion was deleted in the Committee by 7 votes to 6, among the majority being the U. K. and the U. S. and among the minority being (besides India) U. S. S. R. and Yugoslavia. This mention of the countries which voted for and against the sub-paragraph is in itself sufficient to show how unworthy of support this proposal was. And yet, in its final comments, the Indian delegation stated in the Committee that “it deplored the deletion of sub-paragraph (j),” and that “it considered the latter provision vital to a ‘good neighbour policy’ and the promotion of international understanding”!

After the defeat of this proposal, however, Saudi Arabia and Egypt proposed that the deleted sub-paragraph be replaced by another viz., “THE DIFFUSION OF REPORTS LIKELY TO UNDERMINE FRIENDLY RELATIONS BETWEEN PEOPLES OR STATES,” that is to say, in the interest of friendly relations between States, the free flow of news and views may legitimately be arrested by Governments. This proposal was decisively rejected by 8 votes to 5, the five nations voting in its favour being Saudi Arabia, Egypt, India, U. S. S. R. and Yugoslavia and among the eight nations which voted against it being the U. K., U. S., France, Netherlands and Lebanon.

The proposal came in for severe attack on all sides. Lebanon pointed out that it was not even limited to the

prohibition of "deliberately false or distorted" information; the United Kingdom pointed out that, even if diffusion of such information alone was aimed at, the proposal would still leave Governments free to decide what constituted false or distorted information and would thus be objectionable. The Philippines pointed out that the proposal would in effect permit imposition of censorship. The delegate of that country said:

The function of the free press in democratic States was to supply the public with all available news and to complement this news with opinions, by means of editorials or commentaries, as a means of assuring a better understanding of the problem to the general public. It was then up to the readers themselves to weigh the sincerity of the information and opinions transmitted to them and pass judgment correspondingly. This was the way in which free reporting fulfilled its duty in a democracy of free enterprise. It could never be said that lack of good will in reporting caused Governments to impose censorship or that privately owned media of information were guilty of upsetting delicate relations between peoples or States or of promoting tension and war.

Mexico pointed out that the proposal was "dangerous" since it would prevent publication of information "essential to the formation of public opinion." The United States expressed the view that "Governments must not be allowed to become the judges of what information was useful or harmful. The sensibilities of others should be given careful consideration, but education rather than legislation was the answer to that problem." The Mexican representative drew attention to the important fact that while all other sub-paragraphs were to be found in the legislation of most countries, this particular sub-paragraph or any other variant of it was not.

Thus, the limitations that were approved by the Committee did not include any sought to be imposed in the interest of relations between States, but the bloc of nations represented by India, Saudi Arabia, Egypt and Pakistan was so insistent on having this additional restriction introduced in the Convention that, as if to console them, a resolution was passed to the effect that legal experts be consulted on the subject of adding the following limitations which had been rejected: "false or distorted reports which undermine friendly relations between peoples and States" and "matters likely to injure the feelings of the nationals of a State." The resolution stated that

The amendments raised a serious problem which deserved thorough study in the interest of good international relations, but realizing nevertheless that the excessively general and flexible drafting of the amendments failed to provide the solid legal basis which would have made it possible to insert them in the Convention without opening the door to possible abuse, the Committee requested the Secretary General to prepare, in consultation with experts in international law, a report on the legal problems raised by the two

amendments with a view to working out drafts compatible with the form and spirit of the Convention and submit it to Unesco.

This resolution (which is called Resolution "A") was probably adopted with no other object than to save the face of the reactionary bloc of nations, among which unfortunately India has to be included, but it has excited the suspicions of many forward-looking nations. If an already weak Convention should be still further weakened as a result of what purports to be a study of legal problems connected with the maintenance of friendly relations between States. The representative of the United Kingdom, for instance, stated that

This resolution cast a shadow over art. 2 and tended to hide a basic difference of view on a point of vital importance. No Government could give a view of art. 2 without first knowing what decisions would result from the Committee's Resolution "A". That was not a matter of legal science but went to the very heart of the problem of protecting freedom of information.

Now consider the circumstances in which power is being taken in India to curb the freedom of speech and the press in the interest of "friendly relations between States." India was among the nations which sponsored a similar proposal in an important body of the United Nations. That body has emphatically rejected the proposal, the only two countries to support it, besides the sponsors themselves, being Soviet Russia and its satellite, Yugoslavia. The proposal is to be given further study by legal experts in order to find out whether it is at all possible to put the proposed restriction into a form which will not result in an undue abridgment of a vital freedom. The least that anyone in such conditions would expect India to do is to await the result of this study that is going to be undertaken under U. N. auspices and to see what reaction it produces in democratic countries with which naturally one would like India to go in the matter of civil liberties. But, instead of doing this, India is rushing this measure in a one-party legislature which confessedly is only provisional when only after six months' interval we are going to have a duly reconstituted Parliament elected on the system of universal franchise. There is obviously no danger of international relations being so embroiled by a wicked press during this brief interval that a muzzle should immediately be put on it. The only necessity for such indecent haste that one can think of arises from the possibility that the next Parliament might not be so willing to curtail civil liberties as the present one is. But cannot the Nehru Government take this risk where it is a question of tampering with human freedoms?

COMPULSORY ACQUISITION OF PROPERTY

Change Proposed in Art. 31

In the following excerpts from an article published in "Chittaranjan," Mr. P. R. Das deals with the proposed

change in article 31 of the Constitution relating to compulsory acquisition of property. He points out how wrong it would be to introduce the change without giving an opportunity to the general public to express its views thereon.

The press note dated April 8 states that the Government of India are examining a number of amendments to the Constitution. The Prime Minister had already declared that these amendments will be introduced as an amending bill to the Constitution and that they are expected to be passed before Parliament adjourns towards the end of May. No time will be given to the public to form an opinion as to whether the Constitution ought to be amended till after the next general election. The plea of the Prime Minister is that he must give effect to "the will of the people." It is necessary to examine this plea in order to show that there is no basis for it.

The present State legislatures were elected on a basis of representation which gives them no right to regard themselves as representatives of the people. I do not believe that they represent more than 15 per cent. of the people. The voice of the people is not heard in the legislatures as they represent not more than 15 per cent. of the people. The members of Parliament were elected by the members of different State legislatures. It is, therefore, impossible to regard Parliament as representing the people.

It is clear that the will of the people has not been expressed in the different Zamindari Acts that have been passed by the different legislatures.

There is another point of view. The Congress manifesto promised abolition of zamindaris on payment of compensation. If the people of India have expressed any "will" in regard to this matter, it is that the zamindaris should be abolished on payment of compensation. As everyone knows, or ought to know, the term "compensation" means the exact equivalent in rupees, annas and pies. The different Zamindari Acts passed by the different legislatures do not propose to pay compensation. They propose to pay something, which they call compensation, but which in fact is not compensation. For instance, the Maharajahdiraja of Darbhanga, apart from his ancestral zamindari, has spent nearly a crore of rupees in acquiring zamindaris since Permanent Settlement. His zamindari, having a gross income of nearly fifty lakhs of rupees, is proposed to be acquired for eight lakhs of rupees. This is not compensation; this is what the late Sardar Vallabhbai Patel said on a famous occasion "a legalised dacoity."

Now, mark how the Constitution itself proposed to act fraudulently in the matter. At the date of the Constitution the Bihar legislature had already passed an Act which provided that the State would be entitled to manage all zamindaris. This Act was challenged as ultra vires. It had also introduced an Act for abolition of zamindaris in which it did not propose to pay compensation in the real sense of the term. The Government knew that this Act would also be challenged on the ground that it is un-

constitutional. How did the Constituent Assembly meet this situation? In article 31 clause (2) it is provided that

No property, movable or immovable, . . . shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

Clause (2), as it stands, effectively protects private property and was enacted in pursuance of the Congress manifesto. If there was nothing else in article 31, there was no doubt that both these Acts would be held to be ultra vires. The Bihar Government knew it; and so it induced Parliament to add two clauses to article 31 to make a complete nullity of clause (2) which, as it stands, certainly protects private property. Clause (4) of article 31 provides that

If any Bill pending at the commencement of this Constitution in the legislature of a State (the Bihar Zamindari Act was undoubtedly pending at the commencement of the Constitution) has, after it has been passed by such legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

Clause (6) of article 61 provides that

Any law of the State enacted not more than eighteen months before the commencement of this Constitution (and the Bihar Management of Estates Act had certainly been enacted not more than eighteen months before the commencement of this Constitution) may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of subsection (2) of section 299 of the Government of India Act, 1935.

Clause (6) was definitely enacted so as to safeguard the Bihar State Management of Estates and Tenures Act just as clause (4) was enacted to safeguard the Bihar Abolition of Zamindari Act and other Acts which were then pending in the various State legislatures. There can be little doubt that both clauses (4) and (6) have the effect of making a nullity of clause (2) altogether, and, therefore, constitute a fraud on the people of India who were not asked to vote, and did not vote, for confiscation of zamindari properties. Article 31 appears in that part of the Constitution which deals with Fundamental Rights. Article 31, clause (2), was enacted to recognise the

Fundamental Right of property owners that they shall not be expropriated except for a public purpose and on payment of compensation. It is a strange phenomenon that clauses (4) and (6) which have the effect of making a nullity of clause (2) should appear in a chapter dealing with Fundamental Rights. Future Constitution-writers will no doubt have something to say about clauses (4) and (6) of article 31.

Notwithstanding clauses (4) and (6), both the Bihar Acts were challenged in the Patna High Court, and the Patna High Court held that both the Acts were ultra vires. They were, of course, bound by clauses (4) and (6), and so they held that they were debarred from going into the question whether the compensation provided in this Act was compensation within the meaning of law. They held, however, that both the Acts were ultra vires, but not on the ground that they contravened clause (2) of article 31.

I stop here to point out that if the people of India had at all expressed a "will", they had expressed the will that zamindaris shall not be abolished except for a public purpose and on payment of consideration. The Constituent Assembly deliberately nullified the will of the people by enacting clauses (4) and (6) of article 31. Its attempt failed; and so the Prime Minister now wishes to amend the Constitution with a view to give effect "to the will of the people".

I humbly ask, how has Pandit Jawaharlal Nehru ascertained the "will of the people"? The people of India never authorized confiscation of property. Yet the two Bihar Acts substantially provided, not for expropriation upon payment of compensation, but for confiscation of property. Both the Bihar Acts have been declared to be invalid. I submit, therefore, that the contention that the will of the people has to be carried out by so amending the Constitution as to allow the Governments to confiscate zamindaris is an idle one.

It is, therefore, necessary to enquire whether there is any justification for the decision of the Prime Minister that the Constitution must be amended forthwith. He has not consulted the people as to whether they will authorize the State legislatures to confiscate zamindari properties without payment of compensation. The people have not yet authorized such legislation. The Prime Minister has no intention to consult the people in regard to this question. Yet he insists that these amendments are necessary, because he has to give effect to the will of the people!

"FREEDOM FOR THOSE WHO WOULD DESTROY FREEDOM"

In justifying the enactment of the Detention Law directed chiefly against the Communists, Home Minister Rajagopalachari relied mainly on the argument that freedom could not be allowed to those persons whose one aim was to destroy the freedom of others when they had a chance. Are we to adhere

scrupulously, he asked, to the principles of liberty only to find at the end of it all that such adherence leads to no better result than this, that the liberty of all of us is gravely imperilled? Are we to carry our love of freedom to that length? Should we not instead curb the liberty of a handful of such subversives so that the generality of the law-abiding people may enjoy freedom to live their own lives? He said:

The freedom that the Communists who were engaged in subversive activities and their fellow-travellers preached is a freedom which they want for destroying freedom. Their whole technique is camouflaged and concealed on the assumption that we shall stick to our principles blindfold and be deceived even though expediency demands practical measures of the kind now proposed. (Let us present a united front to these promoters of subversion) and not divide ourselves to furnish greater scope for the activities of those whose single aim is to destroy freedom.

That totalitarians, of the right and left, often use the shibboleth of civil liberty only to obtain freedom for themselves so that they may be enabled thereby to deprive all others of civil liberty is unfortunately only too true. It is also true that genuine lovers of freedom when they help these totalitarians in obtaining freedom for them seem often to make fools of themselves, the totalitarians laughing all the time in their sleeves at the simplicity and naivety of the lovers of freedom. This is a hard dilemma for the latter. If they keep quiet and do not go to the defence of the totalitarians when these are unjustly attacked they are obviously untrue to the faith in them. If however they do their duty by the totalitarians ignoring for the moment the objective of those whose battles they appear to fight, they often find that they are only instrumental in putting into power a set of men who would deprive all of their civil liberty. This was very forcibly expressed by the U. S. Supreme Court Judge, Mr. Jackson, in a free speech case [Terminiello v. Chicago (1948) 337 U. S. 1] as follows:

There are many appeals these days to liberty, often by those who are working for an opportunity to taunt democracy with stupidity in furnishing them the weapons to destroy it as did Goebbels when he said: "When democracy granted democratic methods for us in times of opposition, this [Nazi seizure of power] was bound to happen in a democratic system. However, we National Socialists never asserted that we represented a democratic point of view, but we have declared openly that we used democratic methods only in order to gain power and that, after assuming the power, we would deny to adversaries without any consideration the means which were granted to us in times of [our] opposition.

Invocation of constitutional liberties as part of the strategy for overthrowing them presents a dilemma to a free people which may not be soluble by constitutional logic alone.

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The dilemma may not be soluble by constitutional logic alone, but we know that the civil liberty movement in no country has ever departed from constitutional logic and helped in suppressing the totalitarians by extra-constitutional means. They have always stuck to democratic methods and defended the civil liberties even of those who do not believe in democracy. Mr. Justice Jackson himself, after stating the dilemma, went on to say :

But I would not be understood as suggesting that the United States can or should meet this dilemma by suppression of free, open and public speaking on the part of any group or ideology. Suppression has never been a successful permanent policy ; any surface serenity that it creates is a false security, while conspiratorial forces go underground. My confidence in American institutions and in the sound sense of the American people is such that if with a stroke of the pen I could silence every Fascist or Communist speaker, I would not do it.

Mr. Osmond K. Fraenkel of the American Civil Liberties Union particularly raises in his book "Our Civil Liberties" this question : " Shall civil liberties be denied to those who reject them ? " and answers it in the only way in which lovers of freedom can answer it. He says :

The proposition that those who aim to destroy democracy should be denied its privileges has a potent emotional basis. A good deal of force lies in the argument that it is hypocrisy for such persons or groups to claim the right to civil liberties. Yet that attitude, wide in its appeal, ignores the fundamental fact that democracy's privileges are conferred on individuals not primarily for their own benefit, but for the benefit of the whole community. We do not tolerate free speech for particular groups or individuals, because we care about giving them, as such, any rights at all, but because we know that free discussion of public issues is essential to a free people. It is from the latter point of view that the problem of anti-democratic groups must be considered.

It is agreed that subversive activities must be stopped but the proper way of doing so is not to deny civil liberty with all the limitations that are implicit therein, to those who would indulge in such activities or to suppress the subversives themselves. As Charles Evans Hughes, who later became Chief Justice of the United States Supreme Court, said in connection with the expulsion of five Communists from the New York Assembly :

I understand that it is said that the Socialists (i. e., Communists) constitute a combination to overthrow the Government. The answer is plain. If public officers or private citizens have any evidence that any individuals, or group of individuals, are plotting revolution and seeking by violent measures to change our Government, let the evidence be laid before the proper authorities and swift action be taken for the protection of the community. Let every resource of

inquiry, of pursuit, of prosecution be employed to, ferret out and punish the guilty according to our laws.

It is often said of most of the civil liberty unions these days that they are found spending most of their energies in defence of Communists, with whom ideologically they are wholly out of sympathy. If they spend their energies in this way it is only because Communists are the people who are at present being most attacked. This is being said of the American Civil Liberties Union. The answer is what the organ of the Californian chapter of that Union, the " Open Forum " of Los Angeles, gave, viz. :

The truth is that the ACLU has never defended a Communist. It has never defended a man, a group or an " ism ! " It has always concerned itself with the defence of the principles of the Bill of Rights. Whether these principles are being assaulted in the case of Communists or Fascists or of the Los Angeles Times is never our concern. We defend the Constitution for all, knowing full well that *if its safeguards are denied to the most despised they may soon be ineffective for all of us.*

The italics are ours. These italicised words go to the heart of the problem. Civil liberty is indivisible ; if it suffers in one part it suffers in all, and therefore it must be protected in the case of all persons. Recently, a case involving injustice to Communists, arose in Los Angeles, in which the ACLU appeared amicus curiae, and the court which heard the case agreed with the ACLU contention that injustice had been done to them. The " Open Forum " truly remarks : " If the ACLU was thus 'defending the Communists,' so were the three judges ! The truth is that the ACLU and the court were defending no one and nothing, except the provisions of our Constitution." The same applies to the unions in India ; they do not defend Communists. They defend the Constitution.

COMMENTS

Nehru's Betrayal

The fact that Mr. Jawaharlal Nehru, Prime Minister, has chosen himself to move the Constitution Amendment Bill in Parliament will disabuse many minds of the belief, firmly held, that the policy of severe repression of fundamental liberties which the Government of India has been pursuing was one to which at heart he was opposed.

When a thoroughly illusory article, viz., art. 21, relating to personal freedom was incorporated in the Constitution and when later by art. 22 suppression of personal freedom was itself provided as a Fundamental Right, it was felt that this was done under the pressure of the reactionary elements in the Government, Mr. Nehru being unable to overcome the pressure. Again, when a detention law was enacted, it was believed that the measure was due to the influence of the late Sardar Vallabhbhai Patel, who, though a fervent nationalist, was never known to care

overmuch for democratic freedoms. Similarly, when one State after another banned the Communist Party, the feeling was that Mr. Nehru was powerless to resist the demand of the State Governments. In all these instances a charitable assumption was made that Mr. Nehru was never the originator of the repressive policy but just a passive spectator thereof, the circumstances being overpowering for the effort which he must have made behind the scenes to turn down the policy.

But the part he is now playing in connection with the Constitution Amendment Bill (obviously because he is convinced that unless his personal influence, which is indeed very great, is brought to bear on the members the measure will be defeated even in a Congress-dominated Parliament), shows that the assumption is ill-founded. The inference is irresistible that Mr. Nehru himself is in wholehearted sympathy with repression. This is a great blow to all those (and their number is vast) who had believed all the time that, whatever tergiversations he may be compelled to practise in other spheres, he would never be guilty of backsliding on the question of civil liberty, for which before assumption of power he showed such keenness as to found the first Civil Liberties Union in India. But when he himself proceeds to abridge Freedom of Speech and Expression in the way he proposes to do, what would otherwise be regarded as wholly unbelievable has perforce to be believed, much to the regret of wide sections of the population, viz., that Mr. Nehru has betrayed civil liberty.

Right of Free Speech in the Irish Constitution

In the Supreme Court's opinion in *R. Thappar v. State of Madras*, quoted in the first article appearing in this issue of the BULLETIN, reference is made to the formula of "undermining the public order or the authority of the State" in art. 46 (6) (i) of the Constitution of Eire, 1937, for the purpose of showing that the qualification of the right to freedom of speech and expression adopted in the Constitution of India is narrower than that which finds mention in the Constitution of Eire. In this connection it may be pointed out that the only qualification to which "the right of free expression" in art. 9. was subject in the Constitution of the Irish Free State, 1922, which later was amended and became the Constitution of Eire was that the right should be exercised "for purposes not opposed to morality." And this only meant that the guarantee of free expression would not "affect the law of slander and personal libel, which is designed to protect the personal honour of the individual against attack by his fellows." The article contains no qualification in the matter of preserving public peace, which meant that the limitations on the right of free speech and press were left to judicial interpretation, as in the U. S. Constitution. And it should be noted that this article was not qualified by any proviso allowing of restriction of the right of free speech and press "in accordance with law," as was the case with art. 6 relating to personal liberty. This latter article said that

"no person shall be deprived of his liberty except in accordance with law," which made what purported to be a fundamental right of personal liberty into only a statutory right capable of being taken away by Parliament, as is precisely the case in India. But the guarantee of free speech and press in the Irish Free State's Constitution was completely effective, without any qualification.

The opinion of the Supreme Court in the Thappar case also refers to the deletion by the Constituent Assembly of the word "sedition" in what stands now as art. 19 (2) from the draft Constitution of India, which has the effect of practically abolishing the law of sedition. Art. 9 in the Irish Free State's Constitution ("The right of free expression of opinion is guaranteed for purposes not opposed to public morality") has also been interpreted as having the same effect. Mr. Leo Kohn says in "The Constitution of the Irish Free State" (p. 169):

Nor can the guarantee of the liberty of expression be regarded as extending immunity to any direct incitement to a breach of the law. It affords legal protection to free criticism of the organs of the State, but it cannot be held to exempt from legal responsibility utterances directly inciting to physical violence against the latter, which are as illegal as similar incitements against private citizens. On the other hand the article would seem to imply a restriction of the scope of "seditious libel." In the light of its emphatic assertion of the freedom of expression of opinion an attempt "to bring into hatred or contempt or to excite disaffection" against the Government, or "to promote feelings of ill-will and hostility between different classes of citizens," can hardly be held to be unlawful—as long as, in the opinion of a jury, it was not designed to produce actual violence.

Personal Liberty

It is now universally agreed that art. 21 in our Constitution relating to Freedom of Person does nothing whatever to assure that that right shall not be interfered with without cause. The article runs:

No person shall be deprived of his personal liberty except according to procedure established by law. And "law" here means, according to the highest judicial authority, no more than "enacted law." It follows that the article is by no means effective in protecting the right from legislative violation.

Although this much is clear, it would be interesting if we drew the reader's attention to the criticism made by the United Kingdom representative of the corresponding article in the draft Covenant on Human Rights. This article runs very much on the lines of art. 21 in the Indian Constitution, and in fact, as we have pointed out on p. 30 of the BULLETIN in the December 1950 issue, it owes its pre-

sent form very largely to the influence of the Indian delegate at the Human Rights Commission. The article stands now as follows:

No one shall be subjected to arbitrary arrest or detention.

No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.

Now listen to the criticism levelled at the article by the U. K. delegate in the Third Committee of the fifth session of the General Assembly. Referring to the exceedingly vague word "arbitrary," he said:

The danger of using it in the Covenant (which was to be an enforceable legal instrument) lay in the fact that it could not be maintained at all confidently that it means more than simply "(except) in accordance with the law." If a State were accused of having "arbitrarily" deprived a person of his liberty and defended its action before the proposed Human Rights Committee on the ground that the act had been performed in accordance with the law and was not, therefore, arbitrary, that Committee might very well hold that the State had not been guilty of a violation of the article in the Covenant. If that interpretation were placed on the article in question, that particular human right would hardly be safeguarded.

Our Supreme Court has placed this self-same interpretation on our article, and consequently the right of personal liberty remains altogether unprotected, the legislature being competent at its discretion to allow of infringement of the right.

About the second paragraph of the article in the Covenant, the U. K. delegate further said:

It provided a very poor safeguard against deprivation of liberty. When the Nazi and Fascist Governments before and during the war had consistently trampled on human rights, they had done so by means of laws which had been held valid according to their national constitutions. If the final version of the Covenant contained an article drafted in such terms, all that some future Hitler would require in order to avoid violating that article would be to pass a law making membership of a particular racial or religious group, for example, punishable by imprisonment. The article, as it stood, was, therefore, wholly inadequate.

So is our article 21. It is thoroughly useless and might well be removed from the Constitution without detriment to anyone.

Two Thousand and a Half Detentions

In answer to an interpellation in Parliament, the Home Minister stated that a total of 2,512 persons were under detention on 11th March in the whole of the country excluding Rajasthan, Saurashtra and Tripura. Of these

2,444 owed their detention for political reasons: 1,209 in Hyderabad, 318 in West Bengal, 292 in Madras, 200 in Assam, 83 in the Punjab, 82 in Orissa and a similar number in Bombay, 57 in Bihar, 34 in Pepsu, 23 in Madhya Pradesh, 21 in Travancore-Cochin, 16 in Vindhya Pradesh, 13 in Uttar Pradesh, 4 in Mysore, 3 each in Delhi and Madhya Bharat, 2 in Bhopal and 1 in Manipur. The remaining 66 owed their detention to blackmarketing and profiteering.

Telangana Communists Reprieved

In response to a petition for mercy, President Rajendra Prasad reprieved the twelve Communist prisoners sentenced to death for murder in Telangana and commuted their sentences to life imprisonment. This is a good end to these cases, for, as we pointed out at p. 232 of the BULLETIN, legal technicalities had deprived them of an opportunity to make an appeal against their sentences to two courts beyond the Hyderabad High Court: they could not go to the State's Judicial Committee, because while their application for leave to go in appeal to this body was pending before the High Court, such appeals were abolished by the Indian Constitution on 26th January, 1950, when the State became Indian territory; and when they went to the Supreme Court, the Court held that since Hyderabad was not Indian territory when the offences were committed it had no jurisdiction to hear their appeals. In this predicament, the only way to do the prisoners justice was to do what has been done, and naturally there is general relief at their reprieve.

Australian Elections

In the general election held on 28th April Prime Minister Menzies' coalition of Liberal and Country Parties was victorious, being returned in a majority in both Houses of Parliament and will thus continue to hold the reins of office. The election was held now, before the normal life of Parliament had expired, in order to break a deadlock between the two houses which was a regular feature of Parliament after the election of 1949. In this election 18 Senators elected in 1946 were not constitutionally obliged to contest their seats, and 15 of these belonged to the Labour Party, with the result that though the coalition was in a majority in the lower House it was in a minority in the upper and the Government was unable to put through the more important of the measures on which it had set its heart. For this reason the present election was held after a double dissolution, the whole of the Senate being elected by a system of proportional representation, on the basis of each of the six states returning ten Senators.

In the House of Representatives the coalition is in a reduced majority: whereas in the 1949 election it commanded a majority of 27 (74 against 47), in the present election it is in a majority of 17 (69 against 52), Labour having won 5 seats from it and having in addition polled a larger number of votes in several constituencies. Labour is thus in a stronger position in the lower House.

It is no longer in a controlling position in the upper House but it is yet strong enough to offer a serious challenge to the Government, the number of seats won by the coalition being 31 and that won by Labour being 29. The previously existing deadlock cannot thus be said to have been completely resolved, and it remains doubtful whether measures like the anti-red law of the Menzies Government (with which alone we are concerned) can be successfully enacted. But it is not enough that the Act should be passed in both Houses. It is further necessary, in order to get round the judicial invalidation of the Government's former Act, to alter the Constitution giving the Commonwealth Government the power which is now lacking, and such alteration will be possible only if the Menzies Government is also successful in the referendum which is required if the Constitution is to be changed.

Denial of Right of Habeas Corpus

Denial of the right of habeas corpus and detention of persons in prison on mere suspicion has become such a common affair in the Republic of India that it passes almost unnoticed. But the practice of arresting people without a normal warrant and keeping them in detention without trial for a few months, even if it be in an occupied country under British control, is so contrary to British traditions as to provoke widespread criticism.

In the British zone of Germany persons suspected of espionage or other activity directed against the British forces of occupation can be summarily arrested and held in a detention centre until the authorities have prepared cases against them, the persons so detained having no right of habeas corpus in the meantime. The only safeguard they have is that their cases are reviewed within fifteen days after detention.

A German, suspected of such offences, was placed on trial three months after his arrest before the British Control Commission High Court on 6th April. The Judge, Sir Owen Corrie, found the accused guilty and sentenced him to two years' imprisonment. The man was eventually dealt with by due process of law, but only after three months' interval required for preparing the case against him. This practice of lodging persons in prison without trial for months together became the subject of strong animadversion on the Judge's part. Sir Owen declared that such a practice was something quite new to him "in thirty years' experience on the Bench" and said that he learnt "with astonishment and dismay that such a state of affairs could exist on this side of the Iron Curtain under British administration."

On which side of the Iron Curtain stands India?

Immunity from Self-Incrimination

Like the registration provisions in the McCarran Act, the provisions in an ordinance of California requiring registration of Communists were recently declared unconstitutional in a unanimous judgment by the Appellate

Department of the Los Angeles Superior Court, on the ground that they involved violation of the Fifth Amendment: "No person shall be compelled, in any criminal case, to be a witness against himself." The court held that violation was involved in the case because "the defendant's registration would serve to furnish an important link in the prosecution (that would be started against him). Compliance with the ordinance would amount to a virtual confession that the registrant had violated the so-called Criminal Syndicalism Act." Of the prohibition against self-incrimination, the court said that it means that

No person shall be compelled to make any statement, orally or in writing, anywhere or at any time which may be made use of against him in any criminal prosecution then pending or which might thereafter be brought against him. . . . The protection intended applies even before the commencement of a criminal case and secures one who may reasonably be expected to be a defendant from furnishing ammunition to be used against him. It is sufficient if there is law creating the offence under which the witness may be prosecuted.

Any person, whether a party or a stranger to the litigation, either in a civil action or in a criminal prosecution, may, if he sees fit, refuse to answer any question the answer to which, if true, will render him punishable for crime, or which, in any degree, may tend to establish a public offence with which he might be charged. . . . One cannot be required to speak if by so doing he might furnish a link in the chain by which a conviction might hang. . . .

Anti-Communist Oath Invalidated

The Board of Regents of the University of California (U. S. A.) imposed a special anti-communist oath (apart from the regular constitutional oath with a pledge of allegiance to the State) on the members of the university faculty. Some distinguished members of the faculty refused to sign this special oath and were consequently dismissed. The constitutionality of this action was challenged in the courts of law, and the California Court of Appeals on 6th April ruled by a unanimous decision that the Regents had violated the State constitution in imposing the oath as a condition of employment and ordered the dismissed members to be reinstated. The Court held that the constitutional oath was sufficient and that "the exacting of any other test of loyalty would be anti-ethical to our fundamental concept of freedom." It said:

Any other conclusion would be to approve that which from the beginning of our Government has been denounced as the most effective means by which one special brand of political or economic philosophy can entrench and perpetuate itself to the eventual exclusion of all others: the imposition of any more inclusive test would be the forerunner of tyranny and oppression.

While this Court is mindful of the fact that the action of the Regents was at the outset motivated by a desire to protect the university from the influence of subversive elements dedicated to the overthrow of our constitutional Government and the abolition of our civil liberties, we are also keenly aware that equal to the danger of subversion from without by means of force and violence is the danger of subversion from within by the gradual whittling away and the resulting disintegration of the very pillars of our freedom.

NEW DETENTION LAW HELD VALID

Continuation of Old Detentions

A Constitution Bench of the Supreme Court held (7th May) by a majority of 4 to 1 that the Preventive Detention (Amendment) Act, 1951, was a valid statute and that its secs. 9 (2) (a) and 12 did not contravene the Constitution or infringe the fundamental rights conferred by arts. 21 and 22.

The Court, in view of this finding, dismissed the habeas corpus petitions filed on behalf of P. Venkateswaralu, M. L. A., M. R. Venkataraman, Secretary of the Madras Communist party, and 12 other Communist detenus of Madras as well as nine Communist detenus of Assam, challenging the validity of the amended Preventive Detention Act.

The majority judgment was delivered in two separate but concurring judgments. The Chief Justice adopted the view of Mr. Justice Patanjali Sastri and Mr. Justice Das that of Mr. Justice Mahajan. Mr. Justice Bose delivered a dissenting judgment.

Mr. Justice Bose too held that the impugned secs. 9 (2) (a) and 12 were good; he held, however, that sec. 11 (1) of the Act was ultra vires, that the detention of the petitioners was bad, and that they were entitled to immediate release.

The petitioners in all these cases were, at the commencement of the new Act, under detention in pursuance of orders made under sec. (1) (a) (ii) of the old Act [permitting detention for reasons of "the security of the State or the maintenance of public order"]. They would have been entitled to be released, had it not been for the provisions of sec. 12 of the new Act which purported to authorize the continuance of their detention. Defence counsel urged that these provisions contravened article 22 (4) (a) of the Constitution and were, therefore, void under article 13 (2).

The vires of section 9 of the amending Act was challenged on the ground that it authorized detention for a period longer than three months without the opinion of the Advisory Board having been obtained within the said three months from the date of the actual detention although article 22 (4) of the Constitution limited the legislative

power of Parliament and of the State legislatures in respect of preventive detention laws in the matter of duration of the period of detention and provided that no law of preventive detention could authorize the detention of a person for a period longer than three months without the intervention of an Advisory Board.

Section 12 of the new Act was challenged on the score that Parliament under powers in article 22 (7) having prescribed in the old Act a maximum period of one year for detention in certain classes of cases without obtaining the opinion of the Advisory Board, that period of one year became a part of the Fundamental Right conferred under article 22 (4) and could not be extended. It had also been urged that Parliament had no authority to alter the period of one year in the cases of persons detained under the old Act and that, the Constitution not having envisaged detention for an indefinite period, the amending Act was bad as it had failed to provide for a maximum period of detention.

Finally, it had been contended that the provision of the above sections infringed article 21 of the Constitution as detentions were authorized in a manner contrary to the procedure established by law.

Their Lordships held that sections 9 (2) (a) and 12 (1) of the new Act substantially satisfied the requirement of sub-clause (b) of clause (4) of article 22 of the Constitution and could not be declared unconstitutional and void. The combined effect of the sections was to provide in a certain class of cases, namely, where detention orders were in force at the commencement of the new Act, that the persons concerned could be detained for a period longer than three months if an Advisory Board reported that there were sufficient grounds for detention within 10 weeks from the commencement of the new Act, that is to say, without obtaining the opinion of an Advisory Board, before the expiration of the three months from the commencement of the detention as provided in sub-clause (a) of clause (4) of article 22.

Their Lordships observed that in view of Gopalan's case there was no force in the submission that the detentions were not according to procedure established by law.

As to sec. 11 (1), Mr. Justice Patanjali Sastri dealt in his judgment with the argument that the discretionary power given to the appropriate Government under this sub-section to continue the detention "for such period as it thinks fit" authorized preventive detention for an indefinite period which was contrary to the provisions of article 22 (4). He observed that the new Act was to be in force only upto April 1, 1952, and no detention under the Act could continue thereafter and the discretionary power could be exercised only subject to that over-all limit. The objection therefore failed.

MR. JUSTICE BOSE'S DISSENTING JUDGMENT

Mr. Justice Vivian Bose held that sec. 9 was good because it conferred upon the citizen a benefit and a privi-

lege. It gave all detenus the right to go before an Advisory Board for review of their cases. Sec. 12 too was declared *intra vires* by His Lordship. But he held sec. 11 (1) unconstitutional [permitting, in case of an adverse report by an Advisory Board, detention of a person for an indefinite period], because, according to His Lordship, it provided in effect that there need be no general limit to the duration of detentions. He said that the Constitution "confers a fundamental right not to be detained beyond a certain period. The extent of that period can vary, but the maximum period of detention should not exceed certain fixed limits. These limits are: (a) in the first instance three months; if not, (b) the maximum prescribed by Parliament under sub-clause 7 (b) of art. 22." But if sec. 11 (1) was allowed to stand, it would mean that lesser authorities could fix the duration of detention in each individual case. His Lordship asked: "If sec. 11 (1) is upheld, what is there left which is beyond the reach of Parliament?"

Mr. Justice Bose dealt at length in his judgment with the approach one should have in interpreting the provisions of the Constitution. Articles 21 and 22, His Lordship said, conferred a fundamental right and gave a fundamental guarantee. It is our duty to ensure that the fullest scope is given to the guarantee. It is our duty to ensure that the right and the guarantee are not rendered illusory and meaningless. Therefore, where there is scope for difference of opinion in a matter of interpretation in this behalf, the interpretation which favoured the subject must always be used because the right has been conferred upon him; and it is the right which has been made fundamental, not the fetters and limitations with which it may be circumscribed by legislative action. His Lordship said:

Brush aside for a moment the pettifoggery of the law and forget for once all the learned disputations about this and that 'and' or 'may' and 'must'. Look past the mere verbiage and the words and penetrate deep into the heart and spirit of the Constitution. What sort of a State are we intended to be? Have we not here been given a way of life and a right to individual freedoms, the utmost the State can confer in that respect consistent with its own safety? Is not the sanctity of the individual recognised and explained again and again? Is not our Constitution in violent contrast to those of States where the State is everything and the individual but a slave or a serf to serve the will of those who for the time being wield absolute power? I have no doubts on this score. I hold it therefore to be my duty, when there is ambiguity or doubt about the construction of any clause in this chapter on Fundamental Rights, to resolve it in favour of the freedoms which have been solemnly stressed.

After referring to the "magnificent sweep of the preamble to the Constitution," His Lordship said that he felt

the people of India chose for themselves the free way of life and that they entrusted the Parliament which represented their will with the duty of satisfying itself that any limitations hereafter to be placed on freedom conferred were necessary and essential and that these limitations would not exceed such limits as Parliament itself would determine solemnly and deliberately. After anxious scrutiny and care, he could not bring himself to believe, His Lordship said, that the framers of our Constitution intended that the liberties guaranteed should be illusory and meaningless or that they could be toyed with by this person or that. They did not wish to make the people of India a cold, lifeless, inert mass of malleable clay but created a living organism, breathed life into it and endowed it with purpose and vigour so that it could grow healthily and sturdily in the democratic way of life which was the free way. After all, who framed the Constitution and for whose benefit? Not just by those in brief authority, nor only for lawyers and dialecticians, but for the common people of India." His Lordship added:

To my mind, the whole concept of the Constitution is that after years of bitter struggle the citizens of India are assured that certain liberties shall be guaranteed to them and their liberties shall not be curtailed beyond limits which they and all the world can know and which can only be fixed by the highest authority in the land, Parliament itself, directly and specifically, after affording opportunity for due deliberation in that august body.

Mr. Justice Bose did not doubt Parliament's general power of delegation. But in his opinion the power was circumscribed under the Constitution and each case must be judged on its own circumstances. "All I insist on", he said, "is that where there is ambiguity or doubt and it is possible to take either this view or that, then we must come down on the side of liberty." His Lordship would struggle hard against any interpretation which permitted evasion of those important liberties and which permitted those hard-won liberties to be curtailed by some State and which allowed vital delegation of the responsibility for fixing the maximum limits Parliament was empowered to fix. Section 11 not only contravened article 22 (a) but in effect shifted the responsibility for prescribing a maximum to the executive authorities of each State and allowed them to do it *ad hoc* in each case. For this reason this section was void.

Speech by Mr. N. M. Joshi

Mr. N. M. Joshi, Vice-President of the All-India Civil Liberties Council, took occasion of a visit to Baroda to speak on 13th May on the Constitution Amendment Bill.

U. P. ZAMINDARI ABOLITION ACT

Validity Upheld by High Court

A full bench of the Allahabad High Court consisting of the Chief Justice and Justices B. Malik, Mootham, Agarwal, Chandramani and Bhargava on 10th May dismissed the applications, over 4,000 in number, filed by the zamindars of the Uttar Pradesh challenging the validity of the Zamindari Abolition and Land Reform Act, 1951.

Delivering a concurring judgment, Their Lordships held that the Act did not contravene any of the provisions of the Constitution and was not invalid on that account. Their Lordships also said that it was within the competence of the State legislature to enact the legislation which, they held, was for a public purpose.

Their Lordships found "no substance" in the argument that the enactment of the Act was beyond the competence of the State legislature as the Constitution did not give any absolute power of legislation in respect of matters connected with acquisition and requisition of property. Parliament, they said, had been given the power to legislate for acquisition of property for the purpose of the Union while the State legislatures had been given the power to legislate for the acquisition of property except for the purpose of the Union.

"But both Parliament and the State legislatures," they added, "have the power to lay down the principles on which compensation is to be determined and the manner in which it is to be given."

Their Lordships continued that the safeguard against the confiscatory acquisition of property was to be found in article 31 (2), the effect of which was to ensure that no person could be deprived of his property unless the acquisition was for a public purpose and compensation was given. The provisions of article 31 (2) were "not fetters on legislative competence but were conditions of legislative effectiveness."

If, therefore, the acquisition of property sought to be effected by the impugned Act was for the purpose of implementing one or more of the directive principles of State policy, it would, in Their Lordships' judgment, be for a public purpose.

It was further contended, Their Lordships said, that the reforms which the legislature sought to effect could all have been achieved without abolishing the zamindari system.

"It is not, however, for this Court," they said, "to weigh in the balance the relative merits of schemes designed to achieve a particular end. The legislature in its wisdom has chosen the methods, and unless it can be shown that the judgment of the legislature is absurd or manifestly unreasonable the judgment must be respected."

Their Lordships expressed the opinion that existence of a public purpose for the acquisition of property effected by this Act was not open to question in any court.

Referring to compensation, Their Lordships held that clause (4) protected from challenge on any ground the amount of compensation fixed by the Act, or the principles or the manner in which compensation was to be given. The conclusion must, therefore, be that "compensation" in article 31 (2) meant that equivalent in value of the property taken or acquired.

Upon a careful consideration of the relevant provisions of that Act, Their Lordships were of the opinion that the compensation which the intermediary would receive for the acquisition of his property included the amount if any to which he was entitled as rehabilitation grants.

The Chief Justice, in a separate but concurring judgment, said that he was not prepared to hold that the rehabilitation grant was a part of the compensation. Though the occasion for payment of compensation as well as rehabilitation grants may be the acquisition of property, the reason for the payment of one was entirely different from the reason for the payment of the other. There was no reason why rehabilitation grants should be a multiple of the net assets and not a fixed amount. The legislature, he said, had to find an equitable basis for determining the amount payable to the poor class of intermediaries.

ARBITRARY DISMISSAL OF A CIVIL SERVANT

A Madhya Pradesh Official Obtains Relief

Mr. Justice R. Kaushalendra Rao and Mr. Justice P. P. Deo of the Nagpur High Court in March allowed an application filed by one Hiralal, an Assistant Refugee Officer, praying for a writ of mandamus against his arbitrary dismissal by the State Government and held that the order by virtue of which his services were terminated was void.

Mr. Hiralal was appointed an Assistant Refugee Officer in the tehsildar's grade by an order of the Governor, C. P. and Berar, dated 4th March, 1949, and he was told by the Senior Refugee Officer that his services stood terminated by an order dated 31st October, 1949 (an order, it would appear, that was in fact passed by the Deputy Commissioner, Bilaspur, under the directions of the State Government). Their Lordships say in their judgment:

The question is whether the order terminating the services of the applicant is valid. Under s. 240 (2) of the Government of India Act no person holding a civil post could be dismissed by an authority subordinate to that by which he had been appointed.

In view of the fact that the appointment of the applicant to the post of Assistant Refugee Officer was by an order of the Governor, he could not be removed from service by the Deputy Commissioner. The pro-

vision has been construed by Their Lordships of the Privy Council in Suraj Narain's case (1949 P. C. 112) to be mandatory and not permissive. It is also clear from the decision in Rangachari's case (I.L.R. 1937 Mad. 517 P. C.) which arose under the corresponding provision, s. 96-B (1) of the Government of India Act, 1919, that the authority making the appointment cannot delegate the power of dismissal so as to destroy the protection afforded by the provision. The dismissal of a civil servant by an authority subordinate to that by which he was appointed would be unlawful and inoperative. So the Deputy Commissioner could not validly terminate the services of the applicant even if so authorized by the State Government.

The point still remains for consideration whether the Court should grant the relief which the applicant seeks in a proceeding under art. 226 of the constitution. It is true that no infringement of a fundamental right is involved. But the power of the Court extends to issuing to the Government directions, orders or writs for any other purpose: see M. P. 5 of 1950 (The Firm of Danteshwari Transport Co. v. the R. T. A., Nagpur) decided on 25th August 1950.

The order in question was passed prior to the commencement of the constitution. The question is whether the power under art. 226 should be invoked in respect of an order of that kind. But for the impugned order the applicant would be entitled to hold his office until his services are validly terminated. Though the impugned order was passed prior to the commencement of the constitution, it interferes with a right *in presenti* of the applicant. On the authorities the impugned order is wholly void and inoperative. In the words of Their Lordships of the Federal Court in Tara Chand's case the order is in the eye of law no more than a piece of waste paper. That being so, it is no objection to the exercise of our power under art. 226 that the order was passed before the constitution came into operation. A piece of waste paper cannot be allowed to interfere with the right of the applicant.

The above considerations impel us to give redress to the applicant under art. 226. We accordingly direct the non-applicants not to give any effect to the order dated 30-10-1949 terminating the services of the applicant.

C. L. U. NEWS

A Conference at Vizianagaram

In pursuance of the plan of holding district civil liberties conferences in Madras State (vide p. 241), a Civil Liberties Conference for the districts of Srikakulam and Vishakhapatnam districts was held on 4th May

at Vizianagaram. Mr. L. N. Sahu, a member of the Servants of India Society, opened the Conference and Mr. K. G. Sivaswamy, Organizing Secretary of the All-India Civil Liberties Council, presided over it. Besides protesting against the amended Preventive Detention Act, the Conference passed a number of resolutions in which infringements of civil liberty in the State of Madras were brought to notice. But particular stress was laid upon use of sec. 144, Cr. P. C., and sec. 30 of the Indian Police Act to suppress ventilation of public opinion that is going on for long periods over large parts of the State.

SEC. 144, Cr. P. C.

As if to add point to the Conference's protest against continued use of these two sections, an incident was related which throws a lurid light on the prevailing ways of the executive. Because no public meeting can be held under the operation of sec. 144, Cr. P. C., except with official permission in wide tracts of the State, the secretaries of the Socialist Party at Parvatipur applied for permission to hold a meeting, and the permission being refused, they petitioned the sub-divisional magistrate of the place for cancellation of the order prohibiting the meeting. This petition was dismissed, and the reasons given by the magistrate are characteristic. He says:

Since the petitioners propose public criticism of alleged maladministration and failings of the Congress Raj which is likely to come within the purview of the prohibitions narrated in the order under sec. 144, Cr. P. C., dated 14th August 1950, the order cannot be either rescinded or altered.

A criticism of the Congress Raj cannot be allowed!

Civil Liberties in Pakistan

The National Executive of the Pakistan Civil Liberties Union, which met recently for two days in Lahore, expressed concern at the growing tendency on the part of several Governments in Pakistan to take "punitive and arbitrary actions" against newspapers. The meeting was presided over by the Pir of Manki Sharif and attended by members from East Pakistan, the N. W. F. Province and West Punjab. The Executive said in a resolution:

While public opinion has uniformly been critical of the exercise of powers conferred upon Governments under the Indian Press Emergency Powers Act and the Public Safety legislation and has repeatedly demanded the withdrawal of such legislation, the Governments in Pakistan appear to exercise the extensive powers conferred upon them by these Acts as a matter of routine.

When any one group can be singled out and its liberties violated, the liberties of every one of us is in danger. For that reason the American Civil Liberties Union defends the civil liberties even of those whose anti-democratic opinions it opposes.—Patrick Murphy Malin, ACLU's National Director.