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RAJAJI'S RATIONALE OF A FREE PRESS

1

"CURRENT OFFICIAL OPINION MUST BE RESPECTED"

In commenting on the Preventive Detention Bill, we said that even more dangerous than the bill itself was the philosophy put forward by the Home Minister, Mr. Rajagopalachari, in its support, viz., that whenever any person even in peace-time commits or is likely to commit a prejudicial act, he merits incarceration without trial in the interest of the State. Similarly, we have to say that Rajaji's general attitude to freedom of speech and the press is even more dangerous than the limitations to this right that have been introduced in the Constitution or the restrictions that may be imposed on this right in the legislation which is to follow. What is called the Holmes-Brandeis rationale in the United States on this subject is that the right to freedom of expression must not be curtailed unless there is a clear and present danger of a substantive evil being brought about, a rationale which, as Mr. Frank Anthony declared while speaking on the Constitution Amendment Bill in Parliament, was followed in every democratic country though not under that name. The Rajaji rationale, however, as he propounded it in speaking on the Bill, is just the opposite. It is that all utterances deserve to be punished which preach anything like disobedience to what a legislature has ordained in any law and which thus tends to undermine respect for authority. He said: If a legislature decided that certain things were bad for society and commission of offences in respect of them should be punished, freedom of speech should not cover such offences. Once a decision was taken that a certain thing was a crime, which was a matter of policy, encouragement should not be given to that sort of thing. If a Minister had the right to take a decision on public matters, everyone should respect his authority. If he was wrong, the people would have in their hands the remedy of dismissing him in the elections. But encouragement of disobedience to authority could not be tolerated. Everyone in the country wanted prohibition; could they then allow, under the guise of freedom of speech, people saying that the prohibition law should be broken, or (to take even a less controversial

question) could they allow people preaching that food levies or procurement should not be made? It was said freedom of speech was a natural right; yes, but it must be subject to such natural restrictions.

The Home Minister's reasoning really amounts to this: all political orthodoxy, as laid down by Authority, must be rigorously enforced, and the Government must have power under the Constitution to suppress all speech or publication which is calculated to shake people's faith in it. Only thus, he feels, can a government be run. He is welcome to his political philosophy; the only trouble is that this philosophy is in flat contradiction to the cardinal tenets of Freedom of Expression guaranteed in our Constitution at least till it was recently amended. Prohibition may be good; compulsory levy of foodgrains may be very necessary. The legislature may declare that it has decided to secure these ends. Even so, it must be open to anyone to preach that these ends are not politically expedient or even morally right. Liberty of speech guaranteed by the Constitution of any country implies that nothing in the world is beyond the pale of discussion; that every opinion, however widely and influentially accepted, must still be open to dispute, if any one chooses to contest it; that social utility is promoted by all received opinions being occasionally challenged and a claim to infallibility in the legislature and the executive being denied. Liberty of speech will cease to have any meaning if this freedom is not allowed.

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Claim to Infallibility

One hundred years ago John Stuart Mill in his "Essay on Liberty" thus summarised the reasons why speech must remain free:

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the

remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be and actually is vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct; the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction from reason or personal experience.

These are the words of a great philosopher, but they are in danger of being dismissed by practical politicians as too abstract to suit this workaday world. Nevertheless, it should be remembered that the First Amendment to the U. S. Constitution was founded on this very credo, and it has often found expression in the opinions of eminent judges. To take the most recent example. In deciding the appeal of the eleven Communist leaders, the late Mr. Learned Hand, a judge of exceptionally high calibre, delivering the judgment of the Court of Appeals, said (*United States v. Dennis, et al.*, [1950] 183 F. 2d 201) :

Although the interest which the (First) Amendment was designed to protect — especially as regards matters political — does not presuppose that utterances divergent from current official opinion are more likely to be true than that opinion, it does presuppose that official opinion may be wrong, and that one way — and perhaps the best way — to correct or supplement it, is complete freedom of discussion and protest. This may inconvenience the officials themselves, and in any event it may rouse up a body of contrary opinion to which they will yield or which will displace them. Thus the interest rests upon a skepticism as to all political orthodoxy, upon a belief that there are no impregnable political absolutes, and that a flux of tentative doctrines is preferable to any authoritative creed.

Justice Jackson, in a concurring opinion in *Thomas v. Collins* (1945) 323 U. S. 516, said :

But it cannot be the duty, because it is not the right, of the State to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. . . .

This liberty was not protected because the forefathers expected its use would always be agreeable to those in authority or that its exercise always would be

wise, temperate, or useful to society. As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy.

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Disobedience and Free Speech

The most surprising part of the Home Minister's speech was that in which he said that penalties must attach to advocacy in the press of defying a law that was held to be bad. This of course follows from his general thesis that implicit deference must be paid to every law that a legislature may choose to pass. But this statement naturally caused the greatest surprise because the Congress has all the time believed not only that it is the most sacred duty of a citizen to disobey an immoral law, but that it would be good policy to disobey even a neutral law like the law imposing a salt tax which was not inherently bad if such disobedience would subserve other good purposes, e. g., displacing an oppressive government. It is on this principle of civil disobedience that the Congress attained power; and Mr. Rajagopalachari was one of its most earnest advocates. Now he says, however, that advocacy of violation of laws must be prohibited! But he should know that such advocacy is held to come within the bounds of freedom of speech as defined in the U. S. Constitution. Justices Brandeis and Holmes, in their celebrated concurring opinion in the "criminal syndicalism" case of *Whitney v. California* (1927) 274 U. S. 357, said :

Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach increases that probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on.

This indeed is regarded as a primary source of the concept of freedom of speech and has now been firmly established in the constitutional law of the United States. Our Home Minister's concept of free speech is entirely different: current official opinion must be respected.

2

GROUP LIBEL LEGISLATION

One particular statement made by the Home Minister in his speech deserves special notice because of the likelihood that a provision based thereon will be part of the "comprehensive" Press Act which is going to be soon enacted. He referred to cl. 10 of art. 4 in chap. 7 of the

Swedish Act of 1949 relating to Freedom of the Press, which makes it a crime to utter "in print" "threats, calumnies or libel against groups of people because of their origin or religion," and said, "We want this kind of thing to be debarred here also.

We wish to deal with this matter at some length here because of the novel character of the subject. In the United States of America the state of New Jersey passed just such a law in 1939: it punished as a misdemeanour advocacy of "hatred, abuse, violence or hostility" against racial and religious groups, but only two years thereafter it was held unconstitutional by the state's Supreme Court in *State v. Klapprott*. Chief Justice Brogan, speaking for the Court, said:

To denounce one's fellows or advocate hostility to them, or to a group, because their origin began in a north country or a south country or because of creed or colour is as revolting to any fair-minded man as it is absurd and unjust to the mind of a thoughtful man. But, nevertheless, to make the speaker amenable to the criminal law for his utterances they must be such as to create a "clear and present danger that will bring about substantive evils" to society . . . that the state has the right to prevent. The utterances must be such as constitute a danger to the state.

One cannot go through any free speech or free press case in the United States without coming up against this Holmes-Brandeis rule of "clear and present danger," which our Home Minister and Law Minister are determined to disregard as something exotic to our soil.

While this doctrine will not appeal to them, some of the other reasons which Chief Justice Brogan adduced for upsetting the law are reasons which our Ministers will have to admit are weighty. He pointed out as an objection to any criminal law, which above all must be specific, the indefiniteness of the words "hatred," "abuse," "hostility." When does ill-will become hatred? When do untrue statements become abuse? The statute left the jury (in our country it would be the judge) free to decide when one of these emotions was aroused in the mind of a listener as a result of the language in question. The Chief Justice declared:

Nothing in our criminal law can be invoked to justify so wide a discretion. The criminal code must be definite and informative so that there may be no doubt in the mind of the citizenry that the interdicted act or conduct is illicit.

A law such as that of New Jersey comes close to England's law of seditious libel in which a seditious intention is defined to include an intention "to promote feelings of ill-will and hostility between different classes of His Majesty's subjects" (Halsbury's "Laws of England"). But this law became obsolete in England a hundred years ago, and, as Professor Chafee has stated, even before it became obsolete in England, "the framers of the First

Amendment (to the U. S. Constitution) detested" it. That even the framers of our Constitution detested it is amply proved by their deletion of the word "sedition" as a basis of restricting freedom of expression from the original draft of art. 19 (2), though the amendment of the Constitution recently passed revives sections in the Indian Penal Code and the Press Act of 1931 relating thereto. (We may again point out the opinion expressed by Mr. Leo Kohn about art. 9 in the Constitution of the Irish Free State relating to "the right of free expression of opinion" that the article implies restriction of the scope of "seditious libel" and that under it "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.")

* * *

Commission on Freedom of the Press

The Commission on Freedom of the Press that was unofficially appointed in the United States considered this matter fully and unanimously opposed the enactment of group libel legislation in that country. The main arguments on which this conclusion was based were as follows:

(1) Group libel laws will discourage open discussion. As Justice Wallace said: "It is wiser to bear with this sort of scandal-mongering rather than to extend the criminal law so that in the future it might become an instrument of oppression. We must suffer the demagogue and the charlatan in order to make certain that we do not limit or restrain the honest commentator on public affairs."

(2) They will work badly. Here Chief Justice Brogan's criticism about their necessarily indefinite nature is pertinent.

(3) They will increase dissension between groups. Professor Chafee says: "There will be a centralization of prejudice, whereas the safeguard is in its dissipation. For example, the New Jersey law was applied in one town against Jehova's Witnesses for their attacks on Catholics. Whereas previously no Catholic issue had arisen in the community, now the town became divided into pro-Catholics and anti-Catholics just because of this law. In general, the more you bring group prejudices into the arena of legal controversy, the more you raise the issues you are trying to allay."

(4) Group vilification is a symptom of evils which group libel laws cannot reach. On this Mr. Chafee says: "So long as we have bitter underlying antagonisms between races and creeds and economic classes, it is useless to stamp out the public expression of those antagonisms. (It only leads to subterranean comment, which group libel laws cannot touch. The suppressing officials are accused

of partisanship.) The idea will be quietly passed from man to man: 'If those so-and-sos won't let us show them up in print, we'll find some other way of doing them in!' Group vilification is superseded by group violence."

Speaking for the Commission, Mr. Chafee says there should be no hush-hush about such matters in the press. "The remedy for bad discussion is not punishment but plenty of good discussion."

We hope the Government will pay close attention to these arguments and desist from incorporating in our Press Act, as the Home Minister is apparently contemplating, a provision on the lines of the Swedish Act penalizing group libel.

FRIENDLY FOREIGN RELATIONS

Art. 19 (2) of the Constitution, as amended, enables the legislatures to restrict freedom of speech and of the press in the interest of preserving friendly relations with foreign States. In course of the debate on this subject, it was stated by both the Prime Minister and the Law Minister that this new reservation was being inserted in the article only for the purpose of penalising defamatory attacks on heads of foreign States. But if that was the limited objective of the reservation, that could have been secured, as was pointed out by Pandit H. N. Kunzru in Parliament, by extending the scope of the Foreign Relations Act of 1932, under which defamatory attacks on the rulers of Indian States are made liable to penalties of simple imprisonment for two years and a fine. In that case at any rate only one type of an act, viz., defamation, would have come under the ban, though even such a reservation is without a precedent in the Constitution or even the laws of any country. But as the reservation stands in the Constitution, it bans, in the words used by Dr. Syama Prasad Mookerjee in his dissenting minute, "any acts or expression of free opinion adversely affecting foreign States, friendly and unfriendly." That is to say, it might stop all criticism on foreign policy which the Government may choose to regard as likely to harm friendly foreign relations.

It was pointed out in the U. N. Committee on Freedom of Information that there is no country in which legislation outlawing criticism of foreign States exists, and for proof reference was made to a volume of laws in the various countries published by the United Nations in connection with the draft Convention on Freedom of Information. But the Law Minister, who is nothing if not dogmatic on any point, made the astounding remark that there was no country in the world but had such legislation! His statement was challenged in Parliament by several members, but he kept on repeating his remark. Finally, when asked to give some instances, he referred to a law of the United States Government which he said subjected an offender to a penalty of ten years' imprisonment and a fine of \$5,000.

We begged the Law Minister to refer us to this particular law, but not being favoured with a reply, we ransacked the United States Code and did find in it this law! But notice how misleading the Law Minister's reference was. Title 22 of the U. S. Code which relates to "Foreign Relations and Intercourse" has 11 chapters, only one of which, viz., chapter 5, has any relevance to our amendment of art. 19 (2). It deals with "Preservation of Friendly Foreign Relations." The first section of this chapter, which is numbered sec. 231, is the law which the Law Minister cited. It runs as follows:

Whoever in relation to any dispute or controversy between a foreign government and the United States shall wilfully and knowingly make any untrue statement either orally or in writing, under oath before any person authorised and empowered to administer oaths, which the affiant has knowledge or reason to believe will or may be used to influence the conduct of any foreign government or of any officer or agent of any foreign government to the injury of the United States or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof to the injury of the United States, shall be punished by imprisonment for not more than 10 years and may, in the discretion of the court, be fined not more than \$5,000.

The section penalises making false statements, wilfully and knowingly, to influence the conduct of a foreign government towards the United States. It is hardly necessary to point out that this section bears quite a different complexion from that of our amendment which has a wide-sweeping range. The succeeding sections of this chapter have provisions dealing with wrongful assumption of the character of a diplomatic officer, conspiracy to injure property of a foreign government, wearing without authority a uniform of a friendly nation, and commercial use of the coat of arms of the Swiss Confederation. There was one section in this chapter which has now been transferred to another chapter and is numbered 409: it punishes export of war materials to a country under the United States jurisdiction which is in a state of domestic violence.

On such a slender basis as that offered by sec. 231 in the U. S. Code, title 22, the Law Minister relies for imposing this new restriction on Freedom of Expression, a restriction the like of which was strongly opposed in the U. N. by the United States and the United Kingdom and was supported by Soviet Russia and its satellite, Yugoslavia (see p. 263 of the BULLETIN)! The restriction has been imposed apparently for the purpose of preventing unfriendly relations developing between India and Pakistan. Both countries, equally anxious to maintain friendly relations with each other, united in sponsoring a similar proposal in the U. N. Committee on the draft Convention on Freedom of Information, which, however, the Committee rejected. Now we suppose Pakistan will follow India's example in banning criticism of

India, and when this happens, Indo-Pakistani relations will be made safe by suppressing freedom of speech and the press in both countries! This is how smooth international relations are to be maintained! Let the democratic

world learn a lesson as to how to conduct foreign affairs! The U. S. and the U. K. are woefully ignorant of this: only the U. S. S. R and Yugoslavia, with India and Pakistan thrown in, know the secret!

A SEARCHLIGHT ON THE BLACK AMENDMENT

The press in India was unanimous in opposing the recent amendment to art. 19 (2) which almost destroys the liberty of the press. And what is far more heartening is that the criticism in all the leading journals was most cogent. But we derive particular satisfaction from the fact that comments in the monthly "Review" edited by the leader of the Anglo-Indian community, Mr. Frank Anthony, M. P., are more detailed and incisive than those in any other periodical. "The Review" takes up every argument adduced by the Government's spokesmen and shows how they were all futile and in some cases even disingenuous. For illustration, we shall quote its comments on a few points.

An Enabling Provision. — "The Review" says:

The Prime Minister enquired why there was so much indignation when the measure was only enabling and Government had not yet introduced any legislation under the amendment. He admitted that the amendment can lead to abuse. This admission in itself is a damning indictment of the blanket character of these amendments. We have no doubt that the Prime Minister himself would not abuse the unfettered discretion which the new words "public order" can give to a legislature. Unfortunately, the Prime Minister will not always be with us. A Constitution which is open to abuse will almost certainly, in the hands of lesser men, be abused.

The editor then goes to point out that it is not correct either to say that the amendment enacts no restrictive law, for it revives all laws declared invalid by the courts on account of their restrictive character like the Press Act and the sedition law by virtue of a provision which gives retro-active effect to the amendment. This provision says that no law now in force "shall be deemed to be void, or EVER TO TO HAVE BECOME VOID, on the ground only that, being a law which takes away or abridges the right (to freedom of expression), its operation was not saved" by art. 19 (2) "AS ORIGINALLY ENACTED." Referring to this provision in the amended article, "The Review" says:

Another utterly odious feature of the amendment is that legislation which has already been declared void has been revived and sanctified. The Prime Minister's contention that the measure is merely enabling is completely untenable. The fact that the amendment restores the laws already declared void by courts means, in fact, that the amendment not only enables legislation to be brought in future but has concomitantly put on the statute book all those

measures which our judiciary have already found void, as having been repugnant to the original art. 19 (2).

The whole range of restrictive press laws which were in operation during the British regime, and against which our Prime Minister himself led a bitter fight because of their allegedly satanic and oppressive character, will now be revived.

"Reasonable" Restrictions. — On this point the comments of "The Review" are very luminous. It says:

The introduction of the word "reasonable" was claimed by Government circles as a reassuring concession. By changing the phraseology, in respect of security and introducing the expression "public order," the whole connotation of the original article has been changed and widened. The addition of the word "reasonable" cannot by itself restrict the legislative authority, which is now being given under a different and wider phraseology. Government's contention is analogous to arguing that where formerly the punishment of whipping was prescribed, an amendment changing the punishment to cutting by a sword makes no difference provided such cutting by a sword is "reasonable." The instruments, the powers and the edge of the new amendments are so different from the original article that the use of the word "reasonable" by itself cannot conceivably equate the connotation of the amended to the original article.

Friendly Foreign Relations. — "The Review" says: "The amendment enabling the restriction of freedom of speech with regard to friendly relations with foreign States is without precedent in any other democratic country or constitution," and then it points out how 22 U. S. Code 231, which the Law Minister cited, does not lend any justification for making this an additional ground for restricting freedom of the press. It observes:

The vast difference between the amendment which is now a part of our fundamental rights and this special law in the United States is obvious to the meanest intelligence. Under the phraseology of the amendment any criticism of any friendly foreign power can be penalised. According to international law, India is friendly with every country with which it maintains diplomatic relations. This means that although, at some future date, the majority of the people of India feel that we are playing the Communist game or that our foreign policy is endangering India's safety, we will not be permitted to express this majority opinion because it will, in terms of this amendment, affect our

relations with Communist States with whom we are "friendly" because we have diplomatic relations with them.

No one, however patriotic or sincere his motives, will be free from the danger of being clapped into jail because his comment may be construed as endangering our relations with a friendly State, though India's safety in fact depends on defending ourselves against such a State or even, if necessary, on going to war with such a country. However wrong Government's foreign policy may be and however strongly public opinion may feel against it, such public opinion can be completely stifled from making Government responsive to the feelings and desires of the people in respect of our foreign relations.

Incitement to an Offence.—This reservation was added to those already contained in art. 19 (2) because in the Bharati case the Patna High Court decided by a majority that a pamphlet which incites to murder comes within the sphere of lawful publication. Making this an excuse for amending the article, the Government has given too wide powers to prevent incitement to offences. "The Review" says on this point:

We are almost certain that if this case had been referred to the Supreme Court the conclusion of the Patna bench would not have been endorsed. But the principle that arises is whether because of some stray judgment of a High Court, Government should rush about amending the Fundamental Rights, instead of at least waiting until the Supreme Court has given a final decision in such a matter. In our opinion a pamphlet which encourages violent revolution and overthrow of the existing political and social order by bloodshed and destruction would certainly be punishable or preventable under the doctrine accepted by the Supreme Court that freedom of speech does not cover that which undermines the security of or tends to overthrow the State. Every encouragement or incitement to violence, however, is not necessarily illegal unless it constitutes a real and present danger to the security of the State. For instance, the incitement to violence by a cripple to other cripples who have not the capacity to implement the violence would not, in our opinion, be illegal.

Security of the State.—This reservation was provided by the original art. 19 (2), and it is a necessary reservation. But in its amended form it has been considerably weakened. "The Review" makes this clear in the following comment:

In the original article only that which undermines the security of or tends to overthrow the State can be legislated against, (which means that) only that which constitutes "a clear and present danger to the security of the State" can be restricted and penalised. This has been scrapped by the amended article, and in its place we find substituted the much wider

expression, "in the interests of the security of the State." While formerly only that which undermined or tended to overthrow the State could be legislated against, now in the name of "the interests of the security of the State" all manner of restrictions will be possible.

The Law Minister.—We have had occasion to remark that the law which the Law Minister ladled out to Parliament in his speech on the amendment to art. 19(2) was what appeared from the summary of his speech reported in the papers to be bad and misleading law. It is interesting to find that "The Review" agrees with this remark, and its support is of particular weight because the editor, being a member of Parliament who actively participated in the debate, obviously bases his criticism on the speech of the Law Minister as actually delivered and not, like us, on a mere press summary of it. Besides, he is a barrister at law and is thus competent to assess legal arguments. "The Review" says:

As a member of the Government, the Law Minister was bound to attempt to make out a case. It is not unknown for lawyers to attempt to bolster up even the weakest of cases. But we were more than disappointed with the performance of Dr. Ambedkar. His arguments, to say the least, can only be characterised as disingenuous. That Parliament consists, with all due respect to its Members, of some illiterates, a not inconsiderable section who are semi-illiterate and a fair number of lawyers few of whom are conversant with Constitutional Law, can be no justification for the perversion of facts and of law with which Dr. Ambedkar sought to support an amendment which could find no defence in democratic principle or precedent.

As illustrations, reference is made to the doctrine of the police powers, to the citation of 22 U. S. Code 231 and to Dr. Ambedkar's assertion that the Supreme Court of India "had held that even incitement to violence could not be penalised under the original art. 19 (2)." "The Review" says, with regard to the last point, that this assertion was apparently based upon the Supreme Court's decision in the Thappar case, but remarks that the decision does not at all lend itself to the interpretation which the Law Minister put upon it. "Any lawyer," it says, "reading that judgment will realise its complete validity."

"Emergency".—Finally, in disposing of the plea often advanced, viz., that we are living in dangerous times which call for special measures of precaution, "The Review" says:

It is no argument to maintain that the difficult period through which India is passing necessitates deliberate curtailment of our fundamental rights in the larger interests of the country. As their name implies, Fundamental Rights are either fundamental or they are not. Such rights cannot be conditioned or qualified by the outlook of a crisis or an emergency.

If conditions in India are regarded as amounting to an emergency, then the obvious thing to do is for the President, under art. 352, to proclaim an emergency. When such a proclamation is made the Constitution is suspended. This is certainly the more appropriate and the more honest way to deal with special or emergency conditions.

These amendments appear to have been initiated by a one-party complex—the tendency to equate a Party to the Country. When such a complex supervenes, the dominant party thinks in terms of its party needs. This again is a dangerous precedent. If another and a more dictatorial party should come into power it

will use the very instruments, forged by the present party in power, to crush all parties and all semblance of democracy. Speaking for ourselves, we were not only disappointed but grieved by this ill-conceived measure. . . . If it is contended that democracy is unsuited to India and that a dictatorship is its only hope, then such a measure can be appreciated. But to talk of democracy and to attempt to justify this amendment by democratic concepts is akin to Satan quoting scripture in order to justify evil.

The whole of this article deserves close study by those who desire to understand the far-reaching implications of the Black Amendment.

CIVIL LIBERTY AS AN ELECTION ISSUE

The Secretary of the All-India Civil Liberties Council issued the following statement on 1st August :

When the general election engrosses the attention of the public, we may consider whether the civil liberty movement cannot do something worthwhile about it. A general election is the best means of educating the public in a practical way in public affairs and there is no reason why we should neglect this opportunity of educating the public in civil liberty matters.

A Civil Liberties Union as an organization can have no connection with elections. It is above all politics and embraces within its membership persons of all shades of political opinion and carries on its work in a strictly non-partisan way. And yet the All-India Civil Liberties Council and all unions affiliated with it can take advantage of the election to conduct an educational propaganda for the preservation of the fundamental personal rights which must be assured to all citizens in order to make democracy of which the election is an outward symbol fully effective.

Moreover, it so happens that the civil liberties issue, which is of permanent interest, has, because of the current attacks on the two most precious rights of Freedom of the Person and Freedom of Speech, become very topical and urgent, fit to be made a vital election plank in their platform by those candidates who would carry on an implacable fight for the application of civil rights in their integrity to all.

It would therefore seem very appropriate that members of the All-India Civil Liberties Council and its affiliates who themselves intend to contest the elections should give to the question of civil liberties that high place in their election manifestoes which it deserves. But they might further try and persuade the political parties to which they may belong to issue a directive to the would-be candidates of their parties to do the same. If this is done, civil liberties will become an exceedingly important electoral issue, as we would very much like it to be.

The issue must, however, be elaborated in some detail if it is to serve the purpose of distinguishing those who would maintain civil liberties in their fulness and those

who would, on account of their overzeal for preserving the public peace, deny or curtail them on even a slight provocation. For there is no one who will not be willing to pay lip service to civil liberty in a general sort of way. We must therefore prepare the electorate to apply practical tests for marking off people who stand genuinely for civil liberties as an essential of democratic freedom from people who are not prepared to run any risks for the sake of maintaining such liberties. The civil liberties movement is conscious that liberty can only exist within a framework of order, and it presses for the maintenance of the fullest freedom only to the extent that it is compatible with the security of the nation. The whole question resolves itself in the final analysis to accommodating Freedom and Authority in such a manner as to preserve the benefits of each. But there are those who, in striking this balance, lean so heavily on the side of Authority as necessarily to circumscribe Freedom to an alarming degree, and it would be the business of those who wish to make civil liberties a test issue to draw up their campaign programme in such a way as to isolate such people.

Art. 22 of the Constitution which permits of detention without trial in conditions which do not partake of an emergency within the meaning of art. 352 (1) and the amended art. 19 (2) which in effect extinguishes the right to freedom of expression as a fundamental right afford concrete tests of distinguishing those who stand for Freedom from those who stand for Repression. The candidates who offer themselves for election might well ask the electors to apply these tests. They should pledge themselves to delete art. 22 from the Constitution and to re-amend art. 19 (2) in such a way as to permit the fullest possible expression of views, by speech or publication, on public questions, prohibiting only a direct incitement to violence, which constitutes a serious and present danger that must be prevented. It may be noted that the All-India Newspaper Editors' Conference resolved at a special session in June last to urge on the electorate "to demand from every candidate standing for election to Parliament and State legi-

slatures a pledge to work for and to secure, repeal of the amendment to art. 19 (2) of the Constitution and restoration of freedom of expression." The press, perhaps naturally, feels concerned with freedom of the press alone, but a general civil liberty movement must go further and take all possible steps to protect freedom of person also, on which every other freedom depends.

This desired amendment of the Constitution may perhaps appear to be a far-off event. Even so, every attempt ought to be made to fill the legislatures, central and local, to the largest extent possible, with members wedded to the restoration of these two freedoms. For even

if it be found that it is not possible to amend the Constitution immediately, the freedoms can still be maintained, though on a temporary basis, if the legislatures consist of a majority of members who will not allow legislation to be passed providing for detention without trial and suppression of the fullest freedom of discussion.

For these reasons it appears to be eminently desirable that Freedom of Person and Freedom of Expression be made test issues in the forthcoming general election and the electorate be urged to vote for those candidates alone who will pledge themselves to work wholeheartedly for the restoration of these basic freedoms.

INDIA'S REACTIONARY ROLE IN WHITTILING AWAY CIVIL RIGHTS IN U. N.

We have referred before, as occasion arose, to the reactionary role played by India in the United Nations bodies in whittling away the Rights to Freedom of Person and Freedom of Expression. But it would be useful to bring together here in one place the observations made previously on this subject, giving a documented account of how India cast her influence and vote on the side of abridging these essential rights and how she earned an unenviable distinction by opposing all the democratic nations represented in the United Nations.

1

FREEDOM OF PERSON

The drafting committee of the Human Rights Commission had proposed in para. 1 of the article relating to this right (which was then art. 9) the provision that "no one shall be subjected to arbitrary arrest or detention," and had followed it up by saying in para. 2 that "no person shall be deprived of his liberty save in the case of..."—giving exceptions in which an individual could justly be deprived of his liberty. These exceptions were such that no objection could be taken to any of them; e. g., "the lawful detention of a person sentenced after conviction to deprivation of liberty." Many countries like the United Kingdom pointed out that if the article was to be implemented it must give a full list of cases in which alone arrest and detention could be held to be not arbitrary. The representative of Denmark emphasised this aspect and said (20th May 1949):

The list of exceptions in para. 2 constituted a guarantee against an abuse of legislative power. Para. 1 forbade arbitrary arrest, in other words arrest contrary to the law; but nothing would prevent a government from promulgating new laws imposing certain penalties which could be called arbitrary although they were apparently legal. The list of exceptions foresaw that possibility and indicated the precise limits within which national legislations

should remain if they were to be faithful to the spirit of the Covenant (E/CN.4/SR.95).

Lebanon, represented by Mr. Charles Malik, agreed with this point of view that the article must "prevent any abuse by the legislature," and showed how "the article was the most important one in the whole Covenant." Mr. Malik said:

Liberty became a mere word, and other human rights lost all their meaning, if there were no sufficient guarantees against arbitrary arrest and detention. Art. 9 was the crucial point of the draft Covenant, the one that would give it its entire value (E/CN.4/SR.95).

India, however, took up the position, in opposition to all these countries, that if any exceptions were to be mentioned in para. 2 they should be considered as illustrative and not exhaustive, thus extending indefinitely the scope of the exceptions. But the actual amendment put forward by India deleted all the exceptions and substituted for para. 2 mentioning the exceptions a blanket provision to the following effect (E/CN.4/188):

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

The amendment, "being the farthest removed from the original text" proposed by the drafting committee, was put to the vote by the Chairman of the Commission, Mrs. Roosevelt, on 23rd May 1949, and was carried by 10 votes to 6 (E/CN.4/SR.96). Among the nations which supported India were Soviet Russia, Yugoslavia and the Ukraine, while the United Kingdom, Australia, Belgium, Denmark and France were among the nations which opposed her.

The paragraph (which, it may be noted, corresponds very closely to what came subsequently to be adopted as art. 21 of the Indian Constitution, forbidding deprivation of personal liberty "except according to procedure established by law"), remains in the Covenant in this form today; only what was art. 9 then has been renumbered as

art. 6 now. The countries which opposed it in the Commission continued to oppose it in the Economic and Social Council and the General Assembly, on the ground that it left to the national legislatures untrammelled discretion to legalise arrest and detention which by all standards must be held to be "arbitrary." The opposition of the United Kingdom was the strongest. Lord Macdonald said in the General Assembly on 18th October 1950 that the word "arbitrary" used in para. 1 could be interpreted to mean simply not "in accordance with the law" (as provided in para. 2) and pointed out the implications of it as follows :

If a State were accused of having "arbitrarily" deprived a person of his liberty and defended its action before the proposed Human Rights Committee (to be appointed to inquire into the violations of the Covenant) on the grounds that the act had been performed in accordance with the law and was not therefore arbitrary, the Committee might very well hold that that State had not been guilty of a violation of art. 6 of the Covenant. If that interpretation were placed on the article in question, that particular human right would hardly be safeguarded.

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 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. Art. 6, as it stood, was, therefore, wholly inadequate (A/C.3/SR.288).

Several other countries voiced the same sentiment in the General Assembly. For instance, the representative of Lebanon agreed with the criticisms by the U. K. of the word "arbitrary." The term, he said, might be appropriate in the Declaration, but would introduce an element of dangerous uncertainty into the Covenant (A/C.3/SR.289). The representative of New Zealand thought that

The term "arbitrary arrest or detention" was too vague and uncertain in meaning to be used in defining the fundamental right of personal freedom. The limitation "except on such grounds and in accordance with such procedure as are established by law" might be open to abuse. It would seem necessary (he said), in order to make the article effective, that the various cases in which an individual might be deprived of his liberty should be specified (A/C.3/SR.290).

In the same document is recorded a similar objection on the part of Yemen in the following words :

The word "arbitrary" used in art. 6 seemed to be inexact ; as the adjective merely meant contrary to

the law, an act would cease to be arbitrary solely because the State promulgated a law justifying it. As it was worded, art. 6, para. 4, seemed to imply that preventive detention was in fact the rule.

In the Economic and Social Council also such criticism found expression in the speeches of some countries, e. g., the United Kingdom and Canada (E/AC.7/SR.148).

It may be noted here that at its meeting at Lake Success in December 1950 the International Group of Experts on the Prevention of Crime and the Treatment of Offenders suggested that the expression "arbitrary arrest" should be more clearly defined as follows :

Any arrest made without judicial authority except in cases of *flagrante delicto* shall be considered as arbitrary (E/CN.4/523).

On this subject the All-India Civil Liberties Council on 24th December 1949 passed the following resolution :

The All-India Civil Liberties Council notes with profound grief that article 9 on Personal Freedom in the draft International Covenant on Human Rights, as it stands at present, affords no guarantee against abuse of legislative power when acceding States resort to arbitrary arrest and detention. The form of words used in this article, viz., that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law," was the result of accepting an amendment moved by India's delegate to the U. N. Commission on Human Rights. If this form of words be finally adopted, the Covenant will place personal freedom as much at the mercy of the legislatures of the acceding States as in the Indian Constitution which employs the same phraseology it has been placed entirely at the mercy of the legislatures in India. India's delegate, in putting forward this amendment, thoroughly misrepresented the sentiments of the Indian people and had no moral right to weaken and in fact to nullify this most basic of all human rights in the proposed Covenant. The All-India Civil Liberties Council regards it as a matter of the deepest humiliation that India should have been responsible for this tragic error internationally as well as domestically.

2

FREEDOM OF EXPRESSION

In regard to Freedom of Expression which, as the Cuban representative said in the Committee which considered this subject, is "the corner-stone of all other freedoms and human rights," reference is made here to only two limitations, viz., those imposed in the interest of (i) public order and (ii) maintenance of friendly foreign relations, which India either supported or herself sponsored in the United Nations and on which in any case she insisted with great urgency.

Public Order

Art. 14 of the draft Covenant purports to guarantee the right of free expression. Para. 2 lays down that

Everyone shall have the right to Freedom of Expression, and then proceeds to say in para. 3 that

The right to seek, receive and impart information and ideas carries with it special duties and responsibilities and may therefore be subject to certain penalties, liabilities and restrictions, but these shall be such only as are provided by law and are necessary for the protection of national security, public order, safety, health or morals, or of the rights, freedoms or reputations of others.

The limitation of "public order" was opposed in all units of the United Nations by many countries, but India was among the countries that supported it. When, because of the serious dissatisfaction created by such limitations of indefinite scope in this and other articles, the Member States were asked to convey their final views to the Human Rights Commission to which the first eighteen articles were again referred with a mandate that it should redraft them in such a way as to stiffen the obligations of governments, India informed the United Nations that this limitation could not be done away with but must be retained. Mr. Jawaharlal Nehru as Minister for External Affairs stated on 21st February 1951 :

It is felt that the principles on freedom of information set out in art. 14 are in order and should not be altered. *The existence of the phrase "public order" in paragraph 3 of article 14 is also necessary (E/CN.4/515/Add.14).*

This attitude is wholly opposed to that taken up by other democratic countries in the Human Rights Commission, the Economic and Social Council and the General Assembly. The United Kingdom was again the strongest opponent of this and such other limitations. Lord Macdonald as its representative said of them in the General Assembly :

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. 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. The United Kingdom delegation agreed that the introduction of

that phrase into the Covenant might well constitute a basis for far-reaching derogations from the rights granted. Any phrase capable of such wide interpretation could not possibly be regarded as adequate for the protection of human rights (A/C.3/SR.288).

The representative of Lebanon followed by declaring that while the "public order" reservation might perhaps be admissible in the Declaration which concerns itself merely with general principles (it is included in para. 2 of art. 29 of the Declaration), "the expression would be out of place in the Covenant," which is intended to impose legally enforceable obligations on governments. He added that "in his country it would be intolerable for the government to use such a wide reservation as a pretext for evading its moral obligations" (A/C.3/SR.289). New Zealand agreed with the United Kingdom (A/C.3/SR.290). In its final opinion communicated to the Commission on 5th March 1951 the Government stated: "The limitations in para. 3 are so wide that it is doubtful whether the article (viz., art. 14) could afford any guarantee of the freedom to which it refers" (E/CN.4/515/Add.12).

In the Council the United Kingdom expressed the opinion that "unless the term 'public order' were more closely defined, it would allow a state to reject all recognition of the right to freedom of expression" (E/AC.7/SR.148), and the representative of Belgium said: "There were many examples in history of flagrant abuses sanctioned by the use of such a vocabulary" (E/AC.7/SR.147). In the Freedom of Information Committee the representative of France said that the limitation of "public order" was "so broad as to enable governments to use it as an excuse for all their policies and activities, however injurious to freedom of information" and opinion (A/AC.42/SR.3). The representative of Lebanon said in the Committee that the reservation could "cover the most arbitrary restrictions" (A/AC.42/SR.2). In the draft Convention on Freedom of Information this reservation was included, but it was eventually deleted because of the united opposition of the United Kingdom and other freedom-loving countries.

Friendly Relations between States

Art. 14 of the Covenant contains no reservation on account of friendly international relations. Only Egypt proposed that "the General Assembly should recommend to the Commission to add to the safeguards expressed in art. 14, para. 3, of the Covenant a safeguard of the maintenance of peace and friendly relations between States" (A/C.3/L.75/Rev.1). This matter came up in the Committee on the draft Convention on Freedom of Information. Like para. 2 of art. 14 of the Covenant, art. 1 (a) of this Convention guarantees freedom of information and opinion, and like para. 3 of art. 14 of the Covenant, art. 2 specifies limitations on the freedom. Among these limitations, one for the maintenance of friendly foreign relations does not figure; it was proposed in the Committee in

sub-para. (j) but was rejected. The proposal took various forms, all of them being initiated by some or all of the four nations: India, Egypt, Saudi Arabia and Pakistan. The variants in regard to this proposal were: that limitations be imposed in regard to

(i) The diffusion of reports likely to undermine friendly relations between peoples or States;

(ii) Matters likely to injure the feelings of the nationals of the State;

(iii) The protection of the national dignity of peoples.

But all such proposals were uniformly rejected by a heavy vote. The only countries which supported them were, besides the sponsoring nations of which India was one, U. S. S. R. and Yugoslavia, all the democratic countries like the U. K., U. S. A., France, Netherlands being ranged solidly against the proposals. The main objection which the latter countries took was, as was pointed out by the U. K., that the proposal in each case would leave States free to determine what constituted matter which came within the exception, and Mexico and the Philippines pointed out that the proposals appeared to imply the existence of a censorship (A/AC.42/SR.19). The U. S. expressed the view that "Governments must not be allowed to become the judges of what information (or opinion) was useful or harmful." Lebanon pointed out, with reference to the amendments presented jointly by Saudi Arabia, Egypt, India and Pakistan and a Yugoslav proposal, that "they would give the State de facto authority to interpret the Convention and misuse its power" (A/AC.42/SR.26).

But, as if to console the reactionary bloc of nations which sought to introduce, in one form or another, limitations on freedom of expression so far as the foreign policies of governments were concerned, a proposition was passed in the Committee to the following effect:

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.

The passing of this resolution, called Resolution "A," has, however, created serious misgivings in all freedom-loving countries that by this backdoor all sorts of unjustifiable restrictions would be imposed on the vital right of freedom of opinion. The U. S. A. representative declared that "he was opposed to the attempt to re-introduce amendments which the Committee had already rejected as unacceptable," and that it was "a

question of education and not of legislation." He said: "During the last two years the United States had already asked its experts in international law to consider the problem, and had reached the conclusion that it was impossible to settle it in the future Convention" (A/AC.42/SR.25). This sentiment also found emphatic expression in the final remarks the U. K. representative made in the Committee. He said:

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.

The United States has indeed decided, even before the decision of this Committee was known, to reject the Convention on the ground that it "would not aid in correcting certain existing abuses (of the freedom of expression) and could easily be utilised to sanction and and legitimise these and other abuses."

SPECIAL ARTICLE

GUILT IS PERSONAL

Effect of CP being declared "an Illegal Conspiracy"

After the affirmation by the Supreme Court of the conviction of eleven leaders of the American Communist Party, the Justice Department obtained indictments against 21 Communists in the "second echelon" and is probably contemplating similar action against a number of other Communists. In order to find out how far this process will go, a representative of the "Newsweek" interviewed the Attorney General, Mr. J. Howard McGrath, and asked him whether in his opinion all members of the Communist Party laid themselves open to prosecution even if they only attended Communist meetings and paid party dues. The Attorney General replied:

Not necessarily. The Supreme Court decision establishes that the Communist Party is an illegal conspiracy. But, under our law, GUILT IS PERSONAL. In each case, conviction must turn on proof of the individual's knowledge of the illegal objective of the conspiracy and the extent of his participation in activities to achieve that objective.

A person might be a member of the Communist Party without full realization of its ultimate purposes—although this is hardly conceivable since the Supreme Court decision and its attendant widespread publicity. However, proof of mere membership and paying of dues in the Communist Party is not the touchstone of liability.

The Attorney General was further asked about the liability of fellow-travellers like those who sign the

Communist Party's peace appeal or attend a Communist rally, and his reply was :

Here, again, the question is one of intent and degree of activity. Proof of active participation with intent to further the party's illegal ends may suffice for conviction without formal membership. . . .

In the past many people undoubtedly have signed Communist petitions (like the Stockholm Peace Appeal) or attended Communist rallies or joined fronts without being aware of the ultimate purposes of the Communist conspiracy or even that these particular activities were Communist-inspired. The Communist Party often associates itself with or takes advantage of causes and agitations which commend themselves to loyal American citizens and have no obvious connection with its ultimate objective.

An individual would not be subject to prosecution under the Smith Act merely for signing the Stockholm Appeal or for isolated acts of that sort. However, in view of the publicity given to so many enterprises of the Communist Party, as well as to its objectives as confirmed by the courts, there no longer is much excuse for loyal and intelligent American citizens to be duped.

Then a question was asked as to whether the Communist Party's official organ, the "Daily Worker" could not be suppressed under the Smith Act "as a key part of the conspiracy." Mr. McGrath's answer was :

So far as the directing heads of the "Daily Worker" are part of the conspiracy and have used the paper as a means of effectuating its objectives, they are subject to prosecution. . . . But, as with members generally, employment and writing may or may not prove personal guilt. It is a factual question. Neither the Smith Act nor the Supreme Court decision could be used to suppress the "Worker" as such.

In India, however, the position is entirely different. Here the Communist Party remains banned in some states although two High Courts have voided the Act under which this action was taken as embodying the principle of guilt by association which is repugnant to the Constitution. Similarly, the Government has recently taken power to suppress newspapers under various pretexts.

COMMENTS ON FREEDOM OF PRESS

India's "Free Press Gag"

Under this caption the Bulletin of the International League for the Rights of Man, in its June number, thus gives the news about the recent amendment of art. 19 (2) of our Constitution :

The All-India Civil Liberties Council (which is an affiliate of the League) recently protested to members

of the Indian Parliament against the adoption of a constitutional amendment backed by Prime Minister Nehru which would have severely curtailed freedom of the press. The Prime Minister, aroused by attacks allegedly made by Communist newspapers, advocated a press censorship which would have given complete power to administrative officials. Indian publishers and editors protested, as did the All-India Civil Liberties Council. The amendment was modified to include the same powers, but to require judicial procedure for their exercise.

We have given our own estimate of the relief that can be obtained by virtue of the restrictions permitted by the Constitution being made justiciable.

"No Need for Alarm"!

ASSURES MR. DEVADAS GANDHI

Speaking at a luncheon in London on 19th July, Mr. Devadas Gandhi, managing editor of the "Hindustan Times," discussed the merits of the amended article in the Constitution relating to the freedom of the press. He affirmed his opposition to the amendment, on the ground among others that the Indian press was not consulted before the Government adopted the change in the Constitution. "But apart from the question of consultation," he said, "the amendment is bad because it can conceivably lead to the enactment of measures which might be used to stifle legitimate criticism. In that sense the amendment goes too far." In spite of this, however, he added: "There is no immediate menace to the full liberty that the press enjoys in India and it cannot possibly be safer than in the hands of Mr. Nehru."

This is just the kind of thing which Congress newspapers go on repeating. Their faith in Mr. Nehru's integrity on civil liberty matters is unbounded. They do not trouble to ask why he took these additional powers of restraining the press if he was not going to use them. But anyhow, even if this faith of theirs is justified, it is clear that the amendment must be repealed because the powers it confers will very likely be abused by Mr. Nehru's successors, and Mr. Nehru cannot, humanly speaking, be expected to stay as Prime Minister for all time. But this will pose a new question for Mr. Devadas Gandhi and other editors of the Congress persuasion at the time of the forthcoming elections. Will they work for displacement of Mr. Nehru and his Congress Government so that the Constitution be re-amended in the proper way and freedom of the press be placed beyond the reach of reactionary Governments in the future, as the Editors' Conference bade them do, or will they rather fix their gaze on the immediate present and work for keeping Mr. Nehru in power, so that the conceivably bad effects of the present amendment will not show themselves in administration? We think they will elect to follow the latter course, though they have a mandate not to rest till the Constitution is fully restored to a form which will bar undue restrictions on the press

for all time. By the way it is worthy of note that the "Hindustan Times" never disfigured its pages by printing the caption on the top of its editorials, as the Editors' Conference directed all newspapers to do, viz., "Freedom of Expression is our birthright, and we shall not rest until it is fully guaranteed by the Constitution".

Free Criticism in Foreign Affairs

If Mr. Nehru wishes to know how much freedom of criticism liberal opinion expects to be permitted even in foreign affairs, he may well ponder over the comments in the "New Statesman" of 23rd June in the sensational affair of Mrs. Monica Felton. This woman went as a member of a women's investigating commission to North Korea and formed the impression, which she communicated in a recorded talk broadcast from Moscow, that the American and British troops committed many atrocities on North Koreans like burning people alive, and on her return to her native country she delivered herself of the opinion that "we as British people are ashamed that Britain should have played any part at all in the Korean situation."

After she came back from the scene of war she was dismissed from the chairmanship of a development board (which incidentally brought her £1,500 a year), but avowedly for the technical offence that she absented herself without leave from her job and neglected her duty. Thereafter the papers in regard to her activities were handed over to the Director of Public Prosecutions for a report; but for want of evidence no action was taken against her. In non-official die-hard circles, however, the affair created a furore which was reflected in speeches made in an adjournment motion in the House of Commons on 14th June. One member suggested that she must be severely dealt with as she "has consorted with the enemy abroad and has spread enemy propaganda at home," and another said that she "has been guilty of high treason." There were of course other members also who took the opposite side. One member said: "I would not defend the statements made by Dr. Felton in the 'Daily Worker' and elsewhere; but my own attitude was, on the broad principle of liberty, the attitude which the British have always taken—the attitude of Voltaire when he said 'I do not agree with what he is saying, but I would defend to the death his right to say it.'"

The "New Statesman" has taken up the same attitude. It does not believe that Mrs. Felton's was an impartial report; on the contrary, it thinks that she committed a folly in going about the way she did. "By suggesting that all the atrocities are committed on one side, by apparently confusing the ghastly effect of napalm bombing with the cold-blooded burning to death of prisoners and by presenting the whole war in a broadcast from Moscow in the simple terms of Communist propaganda," she nearly ruined whatever case she might have had. But to treat this folly as treason is something

which the British people have never tolerated. The paper says:

There are some who are so forgetful of British traditions that they even regard it as treachery for an English man or woman to support the cause of those who may be fighting against us. Mr. Gladstone was "disloyal": he said that Egyptian rebels against British arms "were rightly struggling to be free." Anyone who, like Emily Hobhouse in the Boer War gave an unfavourable report of British use of concentration camps would be, on the basis of this argument, a traitor. We are not in this matter comparing Mrs. Felton's report with that of Emily Hobhouse. We are merely asserting that a British subject has the right to criticise the conduct of British and Allied troops in the field, and, if given a chance to visit the terrain, report on what he or she sees.

It is true that Mrs. Felton was foolish, but the paper says: "We must make the sharpest distinction between the folly of her actual conduct and the question whether she had the right to commit this folly." This is no doubt "a bad case on which to fight the cause of civil liberty," but the cause must still be fought, for, "issues of liberty must always be fought on bad cases. The enemy naturally chooses them to establish precedents," as Mr. Nehru used the instances of some unnamed disreputable Indian newspapers to clamp draconian restrictions on the whole press. What is the civil liberty issue in this case? It is, in the words of the "New Statesman":

that nationalism is not enough, and that in the interests of truth the publication of exaggerations and even falsehoods must be permitted.

New Press Law in Malaya

PUBLICATION OF NEWSPAPERS TO BE BANNED

Under the Printing Press Ordinance of Malaya, enacted for reasons of "emergency," a printing house of an offending newspaper can already be closed. But the Government finds the Ordinance inadequate to its purposes because it gives power to take action against newspapers only after "damage had been done." New regulations have therefore been introduced, effective after 1st August, enabling the Government to take preventive steps. They empower the Colonial Secretary to stop publication of any newspaper at a moment's notice and without reference to a court of law. The right to appeal to a court is refused on the ground, as the Attorney-General put it in the Legislative Council, that the Government "do not want to be hampered by frivolous and vexatious appeals." There is to be no appeal except to another executive body—the Governor in Council. Furthermore, no indication need be given of what constitutes an offence. "The continued existence of Singapore newspapers," as the "Times" reports, "will, in fact, be dependent upon the decision of the Colonial Secretary's office."

It need not be supposed that the regulations have not received the legislature's imprimatur. They were in fact approved by a majority of elected members. This has resulted mainly from the fact that the legislature discusses its business at secret meetings before its public sessions—"a departure admitted to be unconstitutional but defended because of its usefulness." But the feature of the situation that causes the greatest concern to lovers of the liberty of the press is that, as the Singapore correspondent of the "Times" says, the local press "is remarkable for its docility: its columns are largely filled with Government statements and most newspapers have proved to be willing allies of the security forces." Who shall guard its freedom if the press itself is indifferent to it?

The only hope-giving feature about the new regulations is that they will have to be reviewed after three months and it is believed that (being enacted for the purpose of preventing the launching of a magazine by the Communist Society which has long since been banned) they will be allowed to lapse. A similar but less arbitrary ordinance which was introduced in 1939 was allowed to fall into disuse after the war.

The June number of the Bulletin of the International League for the Rights of Man has the following about "Press Control in the Congo":

Our affiliate in the Belgian Congo reports that the press is severely controlled by the Governor-General with advance censorship through officials. If any newspaper writes or reprints an article endangering "colonial authority or public security," it may be prosecuted and the writer or editor deported. No appeal is permitted. The local League is endeavouring under great difficulties to change the situation.

COMMENTS ON DETENTION

Only 1,800 Detenus

The number of persons who were held in detention on 30th June, 1951, was, according to the figures published in a Gazette of India notification, 1,839. The contribution of the states was: Hyderabad 672, West Bengal 259, Madras 202, the Punjab 122, Assam 118, Saurashtra 108, Bombay 97, Orissa 80, Bihar 65, Pepsu 33, Madhya Pradesh 23, Rajasthan 16, Uttar Pradesh 11, Madhya Bharat 10, Bhopal 7, Delhi and Mysore 5 each, Travancore-Cochin 4, and Tripura 2. Of the total number of 1,839 detenus, 1,774 were detained on the ground of "the security of the State or the maintenance of public order," 59 on that of "the maintenance of supplies and services essential to the community," 1 on that of "the defence of India," and 5 are foreigners detained under sec. 3(b). Most of the persons who owed their detention to

reasons connected with "the security of the State" are Communists: they number 666 out of 672 in Hyderabad, 242 out of 259 in West Bengal, 201 out of 202 in Madras, and all the 108 in Saurashtra. On 31st March the total number of detenus was 2,512.

Detention Act and Ordinary Law Run in Double Harness!

Cases where the Preventive Detention Act and the ordinary law of crimes are simultaneously enforced are not very uncommon in this country. The case of Chikkati Mamilla Lahe, a detenu in Hyderabad, provides the latest instance of the kind. In this case, the detenu in his habeas corpus application to the High Court contended that his detention was not proper insofar as a criminal prosecution was pending against him before a criminal court on grounds similar to those in the detention order. The division bench of the High Court which heard the application on 26th July allowed this contention and ordered his release, if at all he was not remanded to jail custody by the criminal court. It may be recalled that in the case of 28 Communists who were detained and prosecuted on identical grounds, the High Court of Bombay had also declared their detention improper (vide BULLETIN, p. 56).

Detenus and the General Election

A PUBLIC MEETING IN CALCUTTA

Several official statements go to show that those who are held in detention without trial will not be set at liberty even for the limited purpose of taking part in the first general elections to be held at the beginning of next year under a universal franchise. This decision, if carried out, will naturally affect the Communists most, because they form a very large proportion of those in detention and a larger number of them have gone underground to prevent being detained. But the Government apparently argue that these people have by their own acts disqualified themselves for election and that they are not responsible if in the legislatures the Communists fail to obtain seats which their numbers warrant.

Against this policy, not as affecting the Communists alone, a protest was lodged at a public meeting held in Calcutta on 4th August under the presidency of Dr. Radha Binode Pal. The meeting, which was called on behalf of various political parties, adopted a resolution demanding removal of disabilities imposed upon certain political parties and organizations, release of detenus and convicted political prisoners, and withdrawal of warrants and political cases. Mr. Hemanta Kumar Bose, moving the resolution, stated that as conditions in India were now peaceful and the general election was near-by, there could be no reason for not releasing the political prisoners. There should be equal opportunity for all political parties in the matter of the election; otherwise the elections would not be fair and just. About ten other speakers sup-

ported the resolution. The president, Dr. Pal, declared as an eminent jurist that to detain without trial was regarded in international law as an offence against humanity. He said the country had not obtained real freedom; only the British Government was succeeded by a "brown variety" of rulers.

Detentions in Kashmir

GROUNDINGS NEED NOT BE DISCLOSED!

It appears that when persons are detained in the State of Jammu and Kashmir under the Security Act of that State, no grounds need be disclosed to the detained person and there need be no kind of inquiry even of a quasi-judicial character into his case. This came to light recently when the detention of a former member of the State Assembly came up in the local High Court. The detenu was not informed of the grounds on which he was detained, nor was he placed before an Advisory Board, as was required by India's Preventive Detention Act. His release was urged for failure to satisfy these requirements of the Act. But the finding of the High Court was that the Act did not apply at all in the case of persons who were detained for reasons of public safety and peace and not for reasons of defence, foreign affairs and the security of India. To such persons Kashmir's Security Act applied, and this Act does not contain provision for the furnishing of the grounds of detention to the detenu or for an inquiry before an Advisory Board!

Burma's Public Safety Act

DETENTION CANCELLED BY SUPREME COURT

In the wake of the recent Karen rising hundreds of persons have been detained in the jails of Burma for long periods on, it would appear, even the slightest suspicion that they took part in the rising. That country's Public Order Preservation Act empowers administrative officers to detain in custody a person reasonably suspected of treasonable and such other offences for a maximum period of two months, so that within this period they may investigate the cases in which the power of detention has been used. But after this interval the person arrested must either be released from custody or charged with an offence and dealt with according to law.

However, in spite of this provision, quite a large number of suspected persons seem to have been detained for an indefinite period, and the Supreme Court of Burma has ordered the release of the detained persons in a number of cases, holding that their continued detention was illegal. Recently, three prominent Karen leaders, kept in custody for nearly two years, were ordered to be released by a full bench of the Supreme Court. The judgment of the Court in this case says:

The practice of directing detention of a person for an indefinite period first and only later of seeking materials in support of the order of detention is not in

accordance with the law and cannot be too highly deprecated. It is clear then that at the time the order of detention was made there was no material evidence before the Deputy Commissioner on which he could be reasonably satisfied of the necessity to take action under section 5A of the Public Order Preservation Act against the applicants.

The general feeling in Burma is that the Act has created a reign of terror in the country: while it has inflicted injustice on many innocent people, it has also driven underground many guilty ones.

OTHER COMMENTS

Covenant on Human Rights

The U. N. Human Rights Commission met at Geneva for five weeks in May-June to complete the drafting of the Covenant. But it was unable to finish the work at this session and will probably meet again in October and submit a finished draft for consideration by the General Assembly which will begin its sittings that month. The Commission spent most of its time in Geneva in drafting economic, social and cultural rights which have been left out from the "First Covenant," but did not find time to suggest a more precise definition, as it was directed to do, of civil and political rights with which the first eighteen articles deal.

The Commission took a decision about implementation of the rights, but it was a wrong decision. It decided by a 7 to 10 vote (with one abstention) that complaints about violations of the rights could be brought before the Human Rights Committee (consisting of experts to be selected by the International Court of Justice) by the governments of signatory States alone, the right of private petition not being granted. If the aggrieved individual cannot complain, nor any unofficial organization on his behalf, it means in effect that the Committee will hardly have any complaints to consider, for it is very unlikely that one government will haul up another government before an international tribunal.

The International League for the Rights of Man has taken up the position that, in the absence of an effective machinery for enforcement, the Covenant will be reduced to the position of the Universal Declaration of Human Rights and that, without the aggrieved individual being allowed access to the Committee, the Covenant "is not worth adopting." We in India are completely at one with the League in this matter. Furthermore, we would say that we cannot but take up the same position in regard to the Covenant if the limitations on the rights enumerated in the first eighteen articles, and arts. 6 and 14 in particular which deal with Freedom of Person and Freedom of Expression respectively, are not restricted and if the limitations are not more precisely defined. It was on this very ground that in the Third Committee of the fifth session of the General Assembly the

representative of New Zealand was compelled to declare on 18th October 1950 that "his delegation would have to oppose any proposal to express general approval of the first eighteen articles in the form in which they stood," for he said he agreed with the United Kingdom that the Covenant in its present form "was more in the nature of a second edition of the Universal Declaration of Human Rights," which confessedly is not legally binding.

Freedom of Movement Abroad

Refusal by the British Government to allow Dr. Burhop, Reader in Physics at London University College, to visit Moscow has created a sensation in England. The traditional policy of England has been to give its citizens almost an unrestrained right to go to any part of the world they liked. A passport is required, but it could be had for the asking. But latterly even passports already given have been impounded, thus denying their holders freedom to travel abroad.

This has happened now in the case of Dr. Burhop, and the only reason the Government has given is that "his journey could not be in the national interest at present." The obvious implication is that the Government suspects that the scientist who had taken part in the war-time research that led to the atom bomb might reveal the secrets of atomic energy to the enemy. The scientists as a body have protested that Dr. Burhop should thus be "arbitrarily deprived of his right to travel abroad," which, they say, "is inconsistent with our principles of individual and scientific liberty," such action being also "harmful to the development of science."

The "Sunday Pictorial" calls the new policy "a nibbling away of our freedom" and the "New Statesman" says that the denial of passport means an attack on the right of a free man, specifically guaranteed in Magna Carta, to travel abroad. "Gradually," says this journal, "first owing to war-time restrictions, and now as a means of preventing espionage, the character of the British passport has changed." It is becoming an exit permit.

HABEAS CORPUS PETITIONS

Gopalan still at Large

A TUG OF WAR BETWEEN GOVERNMENT AND HIGH COURT

The Madras Government is really very unfortunate in the matter of the detention of Mr. A. K. Gopalan who has made name as one who challenged the validity of the

Preventive Detention Act. The Government considers that the safety of the country requires that this gentleman be locked up in gaol; and yet he is at large for the last six months, when on a habeas corpus petition he was set free by order of the High Court in February, and all the efforts of the Government to get him back into gaol have proved fruitless — so far. Its last attempt was to seek the leave of the Madras High Court to appeal to the Supreme Court against the former's order of his release, but this attempt failed as the High Court has refused to grant leave to the Government, with the result that Mr. Gopalan remains free to carry on his subversive activities.

The Madras Government is to be pitied in this matter. For when the High Court allowed Mr. Gopalan's habeas corpus petition and ordered him to be set at liberty forthwith, it did so on the ground that the Government had not specified in the detention order the period for which he was to be detained. This the Court held was illegal. If only the Government had appealed to the Supreme Court against this ruling, the latter would probably have set aside the ruling, since in a recent case it has declared that an order for detention would not be invalid if it did not mention the period of detention. But to do so would have meant that for some time at least, however short it might be, Mr. Gopalan would be free, and this in any case the Government could not contemplate with equanimity.

It, therefore, took a short-cut for the purpose of lodging Mr. Gopalan safely in gaol again. It accepted the High Court's finding for the moment but issued a fresh order of detention, which was served on Mr. Gopalan within five minutes of his release. This should have served its purpose in restoring Mr. Gopalan to the place where he rightly belongs, but, as fates would have it, things did not pan out quite so well. The circumstances attaching to this fresh order of detention appeared so suspicious to the High Court that, on a second habeas corpus petition by Mr. Gopalan, it ordered his release once more, holding that this order of detention of the Government was mala fide. In its anxiety immediately to get Mr. Gopalan back into gaol if the first detention order should be declared illegal, the Government had kept another such order ready, signed in advance of the delivery of the judgment, to be enforced the moment Mr. Gopalan came out of the court room. This it did with great alacrity: Mr. Gopalan had barely stepped out of the gates of the High Court when he was arrested. What irritated the Court when it heard of these facts on a second petition was not only that another detention order had already been signed before the judgment on the first petition was pronounced but that also the Court had not been apprised of the Government's intention so to proceed against the petitioner. This led the Court to rule on the second petition that the later order of detention was designed "to somehow evade the operation" of its

own release order and that this second order of detention was vitiated by lack of bona fides.

In the result Mr. Gopalan remained at large and remains so even now because on 9th August Satyanarayana Rao and Raghava Rao JJ. rejected the Government's plea to appeal to the Supreme Court on the ground that "no substantial question of law of paramount importance such as may be allowed to override the liberty earned by the respondent (Mr. Gopalan)" was raised in the plea. Thus a man who, according to the Madras Government, ought to be confined in gaol is still out—six months after it had tried to put him back there. The Government's acceptance of the High Court's earlier order of release on grounds of expediency has cost it much. And, what is worse from its point of view, the High Court even refused to give the Government leave to appeal to the Supreme Court against this decision also, by which it had turned down the Government's earlier plea. The High Court has thus kept the Government at bay all along the line!

CIVIL LIBERTIES CONFERENCE IN ANDHRA

Conference of Three Districts

The first Civil Liberties' Conference of the East Godavari, West Godavari and Kistna districts was held on 8th July at Rajahmundry, in the Municipal Museum hall. Mr. Shyam Sunder Misra of the Servants of India Society, Cuttack, presided. Over 150 delegates from the three districts attended the Conference. Dr. D. S. Raju, Chairman of the Reception Committee, welcomed the delegates.

Inaugurating the Conference, Mr. K. G. Sivaswamy, Organising Secretary of the All-India Civil Liberties' Council, observed that remedies for police excesses from which these three districts were suffering lay in proper recruitment and training of the police. He said that there was need for a permanent commission in each state which would hear complaints and prosecute the police for infringing on civil rights under colour of enforcing laws. Referring to the Governor's rule in the Punjab, he observed that the right to vote and elect a representative government into power had been taken away because the Congress party could not govern and was not willing to allow any other party to come into power. He stated that it was a clear abuse of emergency powers for one-party rule.

Mr. Shyam Sunder Misra in his presidential speech said:

"There are many instances, too numerous to be mentioned here, of responsible ministers of the states taking the help of the magistracy and the police to further their

party propaganda, and to keep in check the propaganda of the parties opposed to them.

Preventive detention has become a permanent feature of our Constitution, and the Preventive Detention Act passed by the Indian Parliament has given wide powers to the Government of the day to play havoc with the rights and liberties of the people.

In detention cases the Government supplies to the Advisory Board which reviews these cases only such information about the offence of the detenus as it considers to be proper in the interests of the security of the State.

The detenus alone can be called upon by the Advisory Board to appear before it, but they can never be represented through their legal representatives. The detenus cannot call for evidence, and cannot cross-examine witnesses deposing against them.

RESTRICTION OF FREEDOM OF SPEECH

It may be mentioned in this connexion that, in the United Nations, India was a party to sponsoring a resolution restricting the freedom of speech and expression on the grounds of "friendly relations with foreign States" and "public order," but in both the cases the resolution sponsored by India was ignominiously defeated with the help of the delegates of U. S. A. and U. K. Being thwarted in its attempt to get U. N. support for its proposals, the Government of India has carried these amendments through the Indian Parliament with the help of a meek, docile majority. Their insertion, in spite of country-wide opposition, is a frontal attack on our democracy.

Mr. Jawaharlal Nehru, who was himself President of the civil liberties movement in 1936, has obviously sacrificed his cherished principles to see Congressmen being seated in positions of power.

We should not countenance such infringement of the civil rights in any form, and it is in that way and that way only that we shall lay the foundations of a true democracy in India."

In view of the impending elections the Conference paid particular attention to this subject and said in a resolution:

"A very large number of Government servants of lower grades in the Postal and Railways, employees in workshops and State undertakings whose participation does in no way affect the independence of the Civil Service, employees of Local Boards and Municipalities, teachers and lecturers and the relations and dependants of Government servants are all prohibited from taking an active part in politics. The Conference draws the attention of the Election Commissioner to the existence of the right of administrative orders which contravene freedom of association of all these employees and urges their immediate repeal."

C. L. U. NEWS

Detenus' Release Demanded in Assam

Mr. Bhabesh Chandra Barua, General Secretary of the All-Assam Civil Liberties Union, issued the following statement on 3rd August.

"It has been reported to us that, though the detention of most of the detenus in Assam, detained under the Preventive Detention Act, 1950, is now to be deemed illegal in view of the recent pronouncement of a special bench of the Assam High Court as their cases were dealt with by only two members of the Advisory Board in the absence of the third member, the Government of Assam have not yet cared to release a large number of such detenus. If that is true the position is really deplorable.

"The All-India Civil Liberties Council and its affiliated bodies have always held that extraordinary measures like detention without trial or so-called preventive detention should not be resorted to in times of peace and the persons concerned should be brought to open trial, if necessary. If, however, the Government of Assam deemed it necessary to resort to such an extraordinary and undemocratic measure in the professed interest of security, it was incumbent on them to follow the prescribed procedure under the Preventive Detention Act without malicious care (sic). But having failed to do so, the least that is now expected of the Government is that they would respect the considered verdict of the highest tribunal of the province. But, instead, the Government now seem to be sitting on the fence. The State has no right to keep any of its subjects in illegal detention even for a single moment.

"On behalf of the All-Assam Civil Liberties Union, we draw the immediate attention of the Government to this very urgent matter and demand that the detenus affected by the High Court judgment be forthwith released."

I believe that in the United States at present ignorant anti-Communism (i. e. McCarthyism embodied in the Internal Security Act) is a greater danger than Communist propaganda. Espionage and sabotage, yes; but not the words of those who hand out the party line. If, with the world situation what it is, we cannot combat that propaganda, we must be very inept indeed. The more difficult job is to transform ignorant anti-Communism into a dependable bulwark of freedom. —Granville Hicks in the "New Leader" of 4th June.

"You need not worry about infringements of civil liberties," Congress politicians tell us. But

WE HAVE TO WORRY

How Will you Worry—to some Purpose?

The Indian Civil Liberties Bulletin

will tell you.

Of the Bulletin the Socialist Party's mouthpiece, Janata, says :

Besides citing concrete instances of curtailment of civil liberties from different provinces, it carries a number of enlightening articles on various Acts and governmental pronouncements abridging civil rights.

The Bulletin deserves the support and co-operation of all lovers of personal liberty and freedom.

Your Support will Help us Take a strong Stand for Preservation of Human Rights.

Mr. John Pearmain, Executive Secretary,
International League for the Rights of Man,

writes to the Editor of the Indian Civil Liberties
Bulletin as follows:

The undersigned has read with the greatest of interest your first anniversary number, as also other earlier issues of your admirable Bulletin, and wishes to compliment you on the quality and range of your editorial and other material. We pass it along to others to read much of your material.

Congratulations on the standards you have set for yourselves.

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