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The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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DETENTION WITHOUT TRIAL

The position that the All-India Civil Liberties Council has always taken and consistently adhered to in regard to detention without trial, permitted by Article 22 of the Constitution and provided for by the Public Safety Acts of the Provincial Governments and since 1950 by the Preventive Detention Act of the Central Government, may be restated. It is that such detention ought not be resorted to except in the actual presence of an external invasion or an internal insurrection or in conditions in which there is an imminent danger thereof, the Government concerned being left to take a chance in all less critical situations with other security measures. This represents the law in countries like the United States and France and the invariable policy of Governments of all shades of opinion in the United Kingdom.

With this view, however, when put by the Opposition parties in Parliament at the time of the debate on the Preventive Detention Bill, the Government expressed utter impatience as sheer legality and a shibboleth of philosophical liberalism which has no relation to realities. They appear to think that to limit themselves to ordinary methods of dealing with lawlessness, either by express command of the Constitution or as a matter of settled policy, and not to be allowed to have recourse to the extraordinary method of detaining individuals on mere suspicion unless the circumstances have become so grave as to amount to an emergency, is necessarily to disable themselves from maintaining the stability and security of the nation. The Council is as sensible of the demands of national security as the Government themselves. But in the first place it is incorrect and dangerous to put the nation first in one's thinking. It is the individual human being for whom all social institutions are maintained; the State is simply an agency to serve the human being. If the State is to be an end in itself, and allowed to become all-powerful, the rights of individuals will be submerged, and this itself will lead to insecurity. There is great danger in accepting a morality which is subsumed under the heading "national security."

But the consideration which should weigh with the realists in our Government who look with undisguised contempt on all theory is that those countries which have dropped the weapon of preventive detention for good in

times which are normal or slightly abnormal have not in actual fact suffered for that reason from the point of view of national stability or security. The United States, which went so far while drafting its Constitution as to withdraw, constitutionally, the power to suspend the writ of habeas corpus from the Congress except in cases of invasion and rebellion, has had no cause to regret this self-imposed limitation on legislative power. In addition to this prohibition of suspension of the writ in the federal Constitution, every state has enacted a similar prohibition in its own Constitution, and some states revised their Constitutions as late as five years ago, without any thought, however, even after going through particularly troublesome times in World War II, of removing the prohibition as something detrimental to the public security. In France, similarly, no one would think of enacting the law of the state of siege, which alone would empower the executive to detain without trial, except in an emergency as narrowly defined as in our Constitution. And how often has France had in its long history to encounter forces of serious disorder! Yet no French statesman, no matter to what school of thought he belonged, would ever cherish the desire to have the power of detention available to the Government in order to cope with its difficulties.

On the contrary, the whole political philosophy of our Government is different. It is consistent with that philosophy to resort to detention without trial on a very slight provocation. As soon as trouble grows anywhere to any dimensions they think of having recourse to this remedy as an easy way of putting a stop to the evil instead of going through the somewhat leisurely process of law. The Home Minister, Dr. Kailas Nath Katju, said as much in defending his Bill. He spoke of nipping every kind of trouble, whether present or prospective, in the bud. There is profiteering and hoarding going on on a fairly large scale. Put these anti-social elements under lock and key without giving them the benefit of a judicial trial, so that the masses of people may live in peace and comfort. Abolition of landlordism, which has not yet taken place anywhere but is going to take place soon in some provinces, may bring trouble in its wake. Flourish the weapon of detention against such putative makers of trouble, again in the interest of the masses of people, so that the social

revolution which zamindari abolition is intended to usher in may be peaceful. When some one suggested to the Home Minister in Parliament (we suppose in order to bring home to him how drastic was the measure he was proposing) that instead of imprisoning Communists supposed to provoke disorder without establishing their guilt by the judicial process, he had better put the Communist Party as a whole outside the pale of law, the Minister did not feel embarrassed in the least; he welcomed the suggestion, and said: The Government would consider that too, but the banning of the Party could not be a substitute for detention; it would only be an additional safeguard! Mr. Gharpurey, whose speech on the Independence Day is referred to in the Comments column, said truly: "We have obtained Independence, but lost our Liberties."

Civil Liberties Unions have not to fight against this or that provision of the Detention Bill, now passed into law, though there is plenty of room to do so, but against the mentality at large which gives rise to such a measure. However, if any particular provision seems most vulnerable, it is that which permits use of detention power to be used in order to counteract prejudicial activities concerning "the maintenance of public order," as distinguished from the safety of the State, "the relations of India with foreign powers," and "the maintenance of supplies and services essential to the community." If the Government cannot be persuaded to give up this power even when the security of the State is not in peril from the activities of any subversive elements, there can be no hope for Freedom of Person. But Civil Liberties Unions must not rest content till the Government cease to have this power even in reserve. Detention must be abolished altogether except in an acute crisis. This seems a far cry for the Unions situated as they are. They cannot but be conscious of the limitations of their resources, but their ultimate aim can be nothing less. They must be particularly on their guard against the excuse that the Government plead for non-achievement of democratic freedom in India, viz., that the Indian people have not yet imbibed the essential qualities and habits of a free people. That this is true must be admitted: our people yet lack discipline, self-control and toleration which are essential if freedom is to live. But the excuse has very little force in matters concerning fundamental human rights. In this sphere it is the ideology of the rulers that mainly counts, and the truth is that our Government still retain the habits of mind which are a legacy of the era of our decadence. They lack the spirit of democratic freedom. They even question the validity of the ideals which are vital to a democratic system. That is the root of the trouble.

LEGAL ASSISTANCE TO DETENUS

In India and in England

In trying to rebut the arguments of those members of Parliament who urged on his attention the fact that in

England detention without trial was never resorted to except in war, the Home Minister cited, in his speech in the House of the People on 4th August, some remarks which Mr. Herbert Morrison as Home Secretary had made in the House of Commons on 10th December, 1940, in replying to an adjournment motion on detentions. We looked up these remarks in Hansard and find that they lend no support whatever to the conclusion which Dr. Katju drew from Mr. Morrison's remarks, viz., that the weapon of preventive detention was employed in England in peaceful times also. Because on the adjournment motion cases of members of Sir Oswald Mosley's British Union of Fascists were raised, Mr. Morrison referred incidentally to the "too soft" manner in which the Republican politicians of Germany had dealt with Hitler in the "revolutionary situation" which faced these politicians at the time, and the whole point of Mr. Morrison's speech was that the principles of classical liberalism—and he admitted that Regulation 18B was a departure from those principles—were inapplicable "in situations of crisis and war." He said, the Government enacted the Regulation permitting detention without trial, "because in the critical days of war, with possible Fifth Columnists about and with all the experience of Holland, Belgium and Norway, we knew that normal legal procedure (viz., a judicial trial) simply would not fit the situation." Whatever one may think of what Mr. Morrison said on this occasion with particular reference to the treatment of Hitler as an enemy of the German State (and Dr. Katju himself does not think that that was justified), there was nothing in what Mr. Morrison said about detentions in England that went to any extent to show, as Dr. Katju tried to make out, that British statesmen felt that detention without trial was justifiable except in times of the most acute crisis. For Mr. Morrison's whole thesis was that "in situations of war and situations of revolution" liberal principles could not be meticulously observed and that enforcement of the regime of Regulation 18B became necessary.

Dr. Katju's reference to Mr. Morrison's speech, however, gives us an occasion to emphasize the substantial difference in the position in regard to legal assistance that was given to detenus in England in war time and in the position in regard to legal assistance that is proposed to be given to detenus in India in peace time under our Detention Act. First, let us see to what extent such assistance would be available in our country. The Home Minister said on the final day of debate in the Council of States:

What he proposed to do was to ask the State Governments to consider whether there would be any objection to allowing any detenu, if he so desired, to have an interview with a lawyer of his choice or a friend to enable him to draft his representation with respect to the grounds of detention. But when the next stage arrived, namely, the examination by the Advisory Board, no question of lawyer would arise. It was a question of a face-to-face discussion between the

detenu and three friends (members of the Advisory Board). . . . "I do not want to have any third party interfering at that stage, nor do I want any legal advisor to interview the detenu at that stage." If one brought any lawyer between the Advisory Board and the detenu, he would be causing more harm than good.

The final position in India, therefore, is this: If the State Governments allow it, a detenu will have the benefit of legal advice in preparing the representation that is to go before the Advisory Board, but when the representation has once been prepared he cannot have legal assistance in arguing his case before the Board.

The position in England, however, was quite different, as explained by Mr. Morrison in the debate on this very adjournment motion. He said:

The point has arisen about legal defence, assistance or aid at the hearing before the Advisory Committee. I think there has been a general assumption that when these rules were elaborated my right hon. Friend (the former Home Secretary, Sir John Anderson) provided that in no circumstances would a lawyer appear. What he did provide was that if the Advisory Committee came to the conclusion that, in the circumstances of any case, there would be advantage to the proceedings by the bringing out of facts,

and that this would result from legal assistance being available, that tribunal or committee had the right to say that such legal assistance could be provided. That was so. It is still so. It is not the Home Secretary who settles whether legal assistance shall be available or not, but the committee outside. . . . If the tribunal think that in a given case the person concerned should have an opportunity of fortifying himself with certain legal assistance it can give it. But I am not going to issue any instruction that it should do so generally.

The difference is thus clear. In England too legal assistance was not provided in every case at the hearing of the Advisory Committee, and in fact there was only "a limited number of cases" in which the Committee "heard a solicitor or barrister on points of law or evidence." But it was for the independent Committee to decide which cases were suitable for a lawyer's appearance, and in any case there was no bar to it. In India, however, the Advisory Boards are not consulted in the matter at all; they have no opportunity of saying that assessment of true facts would be facilitated by the assistance of a solicitor or barrister, which should therefore be made available. The law simply forbids a lawyer from appearing before the tribunal.

SOUTH AFRICA'S HIGH COURT OF PARLIAMENT A CONSTITUTIONAL CRISIS IMPENDING

By its policy of extreme racism the Malan Government is, in the apt words of the "New York Times," lighting up fires that cannot be easily quenched. While it is filling its prisons with passive resisters among Natives and Indians for defiance in a most peaceful manner of unjust laws passed against them on the ground of race, it is creating a most serious political situation by its persistence in flouting the decision of the Appeal Court, the highest judicial authority of South Africa, in the case of *Harris v. Donges*, the Minister of the Interior (vide p. ii:95 of the BULLETIN), holding the Separate Representation of Voters Act, 1951, which eliminated about 50,000 coloured voters of the Cape from the Parliamentary voters' roll to be null and void. The Government took power in June last to nullify this decision by establishing a so-called High Court of Parliament, which met on 27th August and, annulling the Appeal Court's unanimous decision, declared the 1951 Act a legal measure. Just about this time, i. e., on 29th August the Supreme Court of the Cape Province declared the High Court of Parliament Act to be invalid, and of no legal force and effect, and if the Appeal Court to which the Government is filing an appeal against this decision decides against it, the resulting clash between the judiciary and Parliament will lead to a constitutional crisis such has never faced any country in modern times.

High Court of Parliament Act

This Act set up Parliament itself as a court with superior authority to the Appeal Court; it clothed this new court with power to review judgments and orders of any court based on a declaration that a law was invalid; it empowered Parliament in the name of a court to confirm, vary or set aside any of these judgments and orders and provided that its decision shall be final and binding. All the members of both Houses of Parliament were to be its members and they were to decide by a majority whether any law held invalid even by the Appeal Court should remain in force or not. The Government maintained that since appeals to the Privy Council had been abolished it created this High Court to take the place of the Privy Council to give a final ruling on the validity of laws passed.

This measure evoked the bitterest opposition of all non-Government parties. While they admitted that the Government had power to abolish or create courts, they objected very strenuously to giving Parliament power to pass on the constitutionality of laws passed by itself, which would amount to a destruction of the testing right vested in courts properly constituted. As Senator Heaton Nicholls, Leader of the Opposition in the Senate, put it:

I do not deny that it would be competent for Parliament to establish another court to have the

testing right now exercised by the Appellate Division. But what it may not do, and what is being done in defiance of the Act of Union and all constitutional propriety, is to give itself the testing right to adjudicate on measures which it has itself passed under the name of Parliament and thus circumvent any challenge to its unconstitutional action. You can only test your own actions legally by submitting the issue to another party. If you insist on destroying the testing right which lies in another party and assume the right to test your own actions, then there is no testing right. You have destroyed it.

The judgment of the Appeal Court in the Harris case declared that the entrenched clauses (35 and 137) of the South Africa Act were effective and binding on the Parliament of the Union even after the passing of the Statute of Westminster. Parliament of course had power to abolish these safeguards provided by the Constitution for the minorities, but it could do so only by the special procedure laid down in sec. 152, i. e., by a joint sitting and a two-thirds majority at the third reading. But the High Court of Parliament Act in effect conferred power on Parliament as ordinarily constituted to do away with these safeguards. That is to say, Parliament was now enabled to do by sitting under the disguise of a High Court what it could not do as the legislative body, sitting separately and by a simple majority. And if the doctrine expressed in the maxim *plus valet quod agitur quam quod stimulate concipitur* has any value, that the law regards the substance rather than the form of things, this Act is only *in fraudem legis*. And the Opposition so described it; they said it was a fraud, an outrage, on the Constitution.

ENTRENCHED CLAUSES AND STATUTE OF WESTMINSTER

The Government believes that the effect of the Statute of Westminster which relieved all Dominions from liability to the Colonial Laws Validity Act is to make legally inoperative sec. 152 which requires two-thirds majority of both Houses of Parliament sitting together to alter the entrenched clauses. It was so advised by its own law officers, and it must be added that several eminent constitutional lawyers had expressed this opinion after the Statute was passed. For instance, Professor Wheare of Oxford wrote in 1933 in "The Statute of Westminster":

With the repeal of the Colonial Laws Validity Act in so far as South Africa is concerned, it is legally possible for the Union Parliament to repeal the South Africa Act as a whole and replace it with an Act which perhaps contained none of the entrenched clauses of the present Act.

Professor W. Pollak, K. C., of the University of the Witwatersrand, wrote:

One is forced to the conclusion that with the coming into operation of the proposed Statute of the Parliament of the United Kingdom, the entrenched

clauses of the South Africa Act will no longer be legally safeguarded and that the Union Parliament will have power to repeal or alter such entrenched clauses by an Act passed in the ordinary manner by a bare majority in each of the two Houses of Parliament. . . . It will no longer be true to say that any sections of the South Africa Act are entrenched.

Professor W. P. M. Kennedy of the University of Toronto wrote in 1935:

The effect of this enactment (the Statute of Westminster) appears to be that the Union Parliament now possesses power to pass legislation which is in conflict with legislation of the British Parliament applicable to the Union. If that is so, it means that the clauses of the South Africa Act, entrenched by section 152 of the Act, are no longer safeguarded by law. The Union Parliament will be able validly to repeal or alter the entrenched clauses of the South Africa Act without observing the requirements of section 152. . . . The Constitutions of the other Dominions are clearly safeguarded, but the Constitution of the Union appears to have been made as flexible, as uncontrolled, as easy to amend in every detail as the Constitution of the United Kingdom. With the coming into force of the Statute of Westminster, the Parliament of the Union now has the legal power to pass any legislation altering the South Africa Act

Professor A. Berriedale Keith wrote in 1935 in the "Governments of the British Empire":

The difficulty, however, arises that the Union Parliament is no longer subject to the restrictions of the Colonial Laws Validity Act and that therefore it may be held to be in the same position as the Imperial Parliament, so that these restrictions have no legal effect.

THE TESTING RIGHT

One more fact needs to be borne in mind in this connection. Whatever the legal position might be according to the Nationalist Party, the leading lights of the Party had expressed the opinion at the time of adopting the Statute of the Union Act which approved of the Statute of Westminster that the entrenched clauses of the Constitution were binding on them. For example, Dr. Conradie, now Deputy Speaker of the House of Assembly, said then:

We are all agreed on it that there are certain entrenched clauses in our Constitution which we placed there ourselves. It is a matter of honour to us to have, and it is our intention to have, those entrenched sections in our Constitution.

Similarly, Dr. van der Merwe said:

It is our Constitution, our basic law, and we shall regard those entrenched sections as a matter of honour to the Africaners and we shall honour them as such, as a question of honour.

And when in 1936 the Government dealt with the question of the native franchise the change was made in accordance

with the special procedure prescribed in sec. 152, because it felt that it was bound in honour to follow that procedure, although, as General Smuts explained, the ordinary procedure "was available to us under the Statute of Westminster."

As for the testing right, the Malan Government's contention is that the Constitution has not given this right to the courts in so far as the Acts passed by Parliament are concerned. Sec. 98 gives the testing right to courts in regard to laws made by the provincial councils, but nowhere is it stated in the South Africa Act that the right applies to the laws made by Parliament. And the Appeal Court in the case of *Ndlwana v. The Minister of the Interior*, which was decided in 1937, had said:

Parliament's will, therefore, as expressed in an Act of Parliament, cannot now in this country, as it cannot in England, be questioned by a court of law whose function it is to enforce that will, not to question it. In the case of subordinate legislative bodies, the courts can of course be invoked to see that the particular enactment does not exceed the limited power conferred. It is obviously senseless to speak of a sovereign law-making body as acting *ultra vires*. There can be no exceeding of power when power is limitless.

The Government argues that this right has been assumed by the courts without authority, and it does not believe that anything is really lost if the constitutionality of laws which Parliament adopts cannot be assailed in courts. Such is the position, it argues, in Great Britain, France, Belgium, Holland and Sweden. In France the constitutional questions are resolved by a Constitutional Committee consisting of thirteen members of Parliament: the President of the Senate, the Speaker of the Chamber Deputies, seven members elected by the Lower House and three members elected by the Upper House, and the President of the Republic who presides. And the South African Government claims that its High Court of Parliament is on the analogy of the Committee in France, which is also a non-judicial body.

But whatever force there might have been in all these arguments, it was the clear duty of the Malan Government to abide by the judgment of the Appeal Court in the Harris case after it was delivered. The Court laid down the law. It was to the effect (1) that the entrenched clauses and sec. 152 were legally effective and that the Statute of Westminster did make no difference to them; and (2) that the courts had the testing right in regard to Acts of Parliament: the entrenched clauses "give the individual the right to call on the judicial power to help him to resist any legislative or executive action which offends against those clauses."

Cape Supreme Court's Decision

The Court, on 29th August, in a unanimous opinion declared the High Court of Parliament Act invalid. The

Judge President, Mr. J. E. de Villiers, remarked that the contention put forward by the respondents (the Minister of the Interior and the Electoral Officer of Capetown) that Parliament, in the ordinary exercise of its legislative power, could create whatever court it pleased, was in his view clearly unsound as a general proposition. It failed to recognise that in so doing it might infringe section 152 of the South Africa Act providing for a joint sitting of both Houses of Parliament and a two-thirds majority. He said:

By enacting the High Court of Parliament Act in disregard of section 152, the legislature has overstepped its powers, for in so doing it has altered section 152.

Having been passed not in conformity with the provisions of section 152, it is *ultra vires* and therefore null and void and of no effect.

In its full context the South Africa Act cannot be said to have contemplated that a legislative body, which by its enacting instrument empowered a court of its own creation to declare a constitutional guarantee invalid, could transform itself into a court of law members of which were the same persons who, as legislators had passed the impugned Act.

Parliament, as ordinarily constituted, has deprived individuals of the right to invoke the courts whenever they thought that their rights were infringed. The decisions of the High Court of Parliament will be final and binding both on the courts and on persons.

Persons will have no redress in any court, including the High Court of Parliament. This can only mean that the constitutional guarantee recognising the rights of persons to approach the courts has been destroyed.

In a separate statement, Judge Newton-Thompson said the founders of the South African Constitution had thought fit to follow the American example by entrenching clauses 35, 137, and 152 of the South Africa Act.

I wish they had not done so, but had rather followed the British precedent where the Mother of Parliaments, as ordinarily constituted, can do as it pleases. Until this is changed in the way laid down in section 152 of the South Africa Act, I must give effect to the laws as laid down by the Appellate Division of the Supreme Court, which is binding on me. The result is that the High Court of Parliament Act is declared invalid.

The Government has lodged notice of appeal against the Cape Court's decision to the Appeal Court, which will take about six weeks to give a hearing. That it is going to appeal to this Court, after having established a superior court and secured its decision in its favour, appears somewhat surprising, but apparently the Government has some doubts about the expediency of passing the High Court of Parliament Act. For when, in the debate on the High Court of Parliament Bill, the Opposition challenged

the Government to say what it would do if the Appeal Court declared the "High Court" to be without authority and illegal, the Government kept quiet. It is probably because Mr. Havenga, the Finance Minister, who brought his party into coalition with the Nationalists last year, feels (and it is rumoured that he so told Dr. Malan) that if the courts declared the High Court of Parliament Act unconstitutional, then he would accept the courts' ruling. If out of a desire to maintain the coalition, the Government is prepared in the end to climb down, the threatened disaster of a clash between Parliament and the judiciary will yet be averted, and the Government will be compelled to relax its apathetic policy. It would be well if this happens. Otherwise there is no knowing what is in store for South Africa.

NOTES

Security of the Person

ARTICLE IN THE DRAFT COVENANT

In spite of the General Assembly's direction to the U. N. Commission on Human Rights (conveyed in resolution 421) to draft the limitations to civil and political rights with the greatest possible precision, one finds that the Covenant as it has emerged from the discussions that took place in the Eighth Session of the Commission in April to June is couched in vague language making the rights concerned almost wholly ineffective. This is particularly noticeable in respect of the right to liberty and security of person embodied in what is now art. 8 and the right to freedom of opinion and expression embodied in what now stands as art. 16 in the draft Covenant—rights in which we Indians are specially interested because of the unsatisfactory character of the articles relating to them in our own Constitution.

Of all the countries represented at the Commission none was more insistent than the United Kingdom that if the Covenant was to be a legally binding instrument and was not to become just another edition of the Universal Declaration of Human Rights containing a mere statement of certain general maxims, then the limitations which the Covenant was to permit must be expressed in very exact terms, care being taken that the limitations would not be so comprehensive as to allow arbitrary and unjustifiable executive action on the part of the States in restricting those rights. And this criticism was particularly pungent in regard to these very articles relating to Freedom of Person and Freedom of Expression. But the United Kingdom's warning fell on deaf ears at the Eighth Session of the Commission. The articles remains in a form which permits "overbroad" and "sweeping" restrictions to be imposed on these two basic rights.

The first paragraph of the article concerning Freedom of Person, as approved by the Human Rights Commission, reads as follows :

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

As a moral aphorism this is excellent, but as a law it is next to useless. For what does "arbitrary" mean? Does it mean merely arrest or detention contrary to the laws adopted by a country, whatever the laws may be? The question was asked at the Sixth Session of the Commission. It was pointed out at the time that if this was the meaning, then every country would be at liberty to pass a law (as India has done) permitting detention without trial and then no challenge to such a law could be made, however unwarranted such detention might be in the circumstances. If the legislatures were to be regarded as sovereign bodies in this respect, then there could be no guarantee, either in national constitutions or in an international covenant, for immunity from unjustified deprivation of personal liberty. And at the Sixth Session no agreed conclusion was reached at the precise meaning of the word "arbitrary." Again, the words "except on such grounds and in accordance with such procedure as are established by law"—words reminiscent of, and in fact based upon, Art. 21 of the Indian Constitution—leave personal liberty to be granted or denied at the complete discretion of the national legislatures. This really means that the Covenant in its present form provides no safeguard for the right to Freedom of Person.

The article relating to the right to Freedom of Expression is equally unsatisfactory inasmuch as it allows national Governments to impose any restrictions they think proper on the exercise of the right for the protection of "public order," just as our Constitution Amendment Act permits our Government to do. In this matter also the United Kingdom representative was always pointing out that this limitation was so wide as to leave national Governments almost wholly free to curb the right whenever they thought it desirable, which would practically amount to a complete abrogation of the right of free speech and press. The only good thing that happened to this article in the Eighth Session of the Commission was that it rejected by 8 votes to 6 (with 4 abstentions) an amendment by Egypt to insert an additional limitation in the words: "for the maintenance of peace and good relations between States." Our readers hardly need to be reminded that our Constitution Amendment Act has already added this limitation to Art. 19(2) of our Constitution which permits restrictions to be imposed in the interest of "friendly relations with foreign States."

The "Police Power" Doctrine

It will be remembered that at the time of the passage of the Constitution Amendment Bill the then Law Minister, Dr. Ambedkar, sought to justify the additional drastic restrictions imposed on Freedom of Expression by referring to the American doctrine of the police powers of the states. He argued that on account of this

doctrine "invented" by the U. S. Supreme Court the fundamental rights in that country were limited by the inherent power vesting in the governments of the states to preserve order, etc., and that therefore no constitutional limitations on the scope of these fundamental rights were required in the United States, whereas in India, a similar doctrine not being held to be operative, our fundamental rights must be restricted in the Constitution itself. He spoke as if in the United States the states' police power ranked above the Bill of Rights included in the organic law of that country. The words he used were: "In the U. S. A., the freedom of the press has been interpreted by the Supreme Court as being subject to the police power of the states."

We then pointed out (at p. 280) that it was an entirely wrong interpretation of the constitutional law of the United States that the Law Minister had put forward; that the Constitution of that country is always held to have superior authority and no exercise of the police power by the states is ever allowed to overstep the limits set by the Constitution to that power. We cited authorities to prove our point too. But today we quote another authority. Mr. Walter F. Dodd says in "Cases and Materials on Constitutional Law" at p. 997 (fourth edition):

The term ("police power") means nothing as a test of the validity of legislation... The exercise of these powers is subject to the restrictions of written Constitutions, and the validity of each new assertion of congressional or state legislative power is sooner or later tested in the courts. Enactments which stand this test are proper exercises of the police power. *If they violate constitutional guarantees, they are invalid.*

How misleading was Dr. Ambedkar's contention, and yet Mr. Nehru repeated it parrot-wise!

Freedom of Travel

The complaint is often made in the United States that the State Department withholds passports from American citizens in what has seemed to be an arbitrary manner. Voicing this complaint, the "New York Times" admits that where it is a matter of national security, the Department may legitimately refuse the grant of a passport, which is a formal guarantee of the protection of the United States Government in foreign lands, to persons who can do material harm to the interests of their country abroad. But it insists that citizens' right to freedom of travel "be protected to the utmost limits of the national security" and that "that freedom be infringed only under extreme provocation or in situations of clear and present danger." The Secretary of State, Mr. Acheson, is now going to review the State Department's passport rules with an eye to improvement, and the "New York Times" takes this occasion to urge that the following basic troubles of the system must be cured: "(1) the decision on the grant or denial of passports is taken without formal hearings and is left pretty much to the discretion of the Passport Division; (2) there is no independent, or even separate

board of appeal; and (3) the reasons given for refusing a passport are often unsatisfactorily vague and covered in broad generalities."

"Protection of Infant Democracies"

The "Spectator" recently described the various bills which the Italian Government of Signor de Gasperi is bringing forward with a view to giving the delicate plant of democracy in Italy the "protection" which the Government thinks it needs. Says the paper:

During the coming weeks the Italian Parliament will be debating a variety of measures designed to curb abuses of the democratic system. The penalties for sabotage will be increased; the revelation of "deep secrets" will be punished; it will become an offence to advocate dictatorship or the use of violence to achieve political ends or to organize parties against the fundamental features of democracy. These draft laws, particularly as they affect the press, could easily be made into an instrument of oppression, and not all the Government's supporters are happy about them or convinced of their necessity.

The measures are mainly directed against the Communists, but it will be noted that among them are not yet included a bill for the suppression of the Communist Party or a bill for detaining them without trial. These bills put the "Spectator" in mind about India, which, it says, having written freedom of the press into its Constitution, has "found recently that liberty must be defended against abuses."

Freedom and Freedom-from-Communism

The truth of the dictum uttered by the California Court of Appeals in holding the loyalty oath required by the Board of Regents of the California University from its professors to be unconstitutional, viz., "We are keenly aware that equal to the danger of subversion from without by means of force and violence is the danger of subversion from within by the gradual whittling away and the resulting disintegration of the very pillars of our freedom" (which we quoted at p. 296 in the July 1951 issue), is convincingly emphasized and reinforced by Mr. Archibald MacLeish in an essay entitled "To Make Men Free."

Mr. MacLeish is a poet, who won the Pulitzer prize in 1932 and served as the chairman of the American delegation to the U. N. Conference on Unesco in 1945. His essay is now reproduced in a pamphlet form under the same title by the Institute of Public Administration, Sholapur, along with another essay on academic freedom by Professor Robert Redfield. Mr. MacLeish's essay, written in poetic language, should be read from beginning to end by all who, starting to repel Communist aggressions, are only likely to end in destroying their own freedom.

What is the reason for adopting this fatal course? Mr. MacLeish says:

Communism is the mortal enemy (thus people argue), and Communism must be destroyed even at the cost of our own liberties. Freedom-from-Communism is now more important than freedom itself, and since we must choose between the two it is the first we must elect. The difficulty with this position is that even if it provided a convincing justification for the acts committed under cover of its rhetoric, it would not be true. When freedom is sacrificed, freedom-from-Communism suffers also. For the most powerful defence against Communism in any country is precisely the people's realization of the distinction between Communism in action and freedom itself.

What is this distinction? Mr. MacLeish proceeds:

What men detest in Communism is its denial in theory, and its destruction in practice, of the human attribute we have declared in our Constitution, and asserted in our action. We value above anything in this world the singularity, the uniqueness, the spiritual personality of the individual human being. Men hate and detest Communism because it turns men into Members: because it suppresses and eradicates those differences and those distinctions between one man and another which we have defended as the principal worth and richness of human life: because it imposes on all men the kind of intellectual conformity of subservience to official opinion, which we have rejected in our fundamental law and which earlier generations of Americans rejected in their lives.

Freedom to think does not mean freedom to think *right* thoughts, but freedom to hold *any* opinion. Unless we agree among ourselves that this is what freedom means, says Mr. MacLeish, "we may end by finding ourselves 'free in the sense in which the Russians now find themselves 'democratic'." A most illuminating essay.

PRESS ACT, 1931

Sec. 7 (1) Held Invalid

THE SECTION REQUIRES SECURITY TO BE DEPOSITED

On 22nd January a full bench of the Saurashtra High Court unanimously held sec. 7 (1) of the Press Act of 1931 to be unconstitutional as violating the right to freedom of expression conferred by Art. 19 (1) (a) of the Constitution.

Dr. Bhanushankar L. Joshi was ordered by the district magistrate of Madhya Saurashtra under sec. (7) 1 of the Press Act to deposit security of Rs. 1000 for the publication of a weekly newspaper called "Poornima," for which he had made a declaration under sec. 5 of the Press and Registration of Books Act of 1867. Dr. Joshi challenged the order for furnishing security in a petition on the ground that it was inconsistent with the Constitution. The Court allowed the petition, upholding Dr. Joshi's contention.

Sec. 7 (1) of the Press Act empowers a district magistrate to require a publisher to deposit security, and the effect of sec. 11 (1) is that unless the security is furnished the publisher cannot publish a newspaper on pain of imprisonment or fine. It is true that the security, if deposited, cannot be forfeited unless the publication falls within the scope of sec. 4 (1) and has to be refunded within three months if it is not forfeited. But the mere demand for security under sec. 7 (1) is not connected in any way, in the scheme of the Act, to sec. 4 (1). Such a demand, the petitioner contended, was clearly in conflict with Art. 19 (1) (a), as the restrictions it imposed on freedom of the press were not saved by Art. 19 (2) which, as amended by the Constitution Amendment Act, allowed only "reasonable restrictions" to be imposed.

The main argument urged by the petitioner against the constitutional validity of sec. 7 (1) of the Press Act was that it did not restrict the district magistrate's power of demanding security to the objects enumerated in Art. 19 (2) of the Constitution. The section itself contained no indication for what reason the magistrate could require security to be furnished and he could, without breach of its provision, make an order for purposes totally alien to Art. 19 (2). Sec. 7 (1) therefore operated to impose an unreasonable restriction on the petitioner's freedom and consequently, after coming into force of the Constitution it could not be upheld. Baxi J., speaking for the Court, said on this point:

We think that this objection must prevail. The true test of the validity of the provisions of the sub-section is whether it enables the district magistrate to impose restrictions for purposes not authorized by Art. 19 (2). If it does the provisions are not saved by the sub-clause. Now the sub-section merely requires that there must be some reasons which in the opinion of the district magistrate call for an order against the publisher. These reasons need not relate to the purposes mentioned in Art. 19(2). They may well spring from considerations of policy which may have nothing to do with these purposes. The sub-section is therefore not directed solely against those purposes and enables the district magistrate to impose restrictions on the publisher which are not authorized by Art. 19(2).

And here His Lordship referred to the remark of the Supreme Court in the "Cross Roads" case, viz., "where a law purports to authorize the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable." Applying this principle, His Lordship said:

Sec. 7 (1) of the Act under consideration does not lay down any condition within the ambit of which the district magistrate may exercise the power to require

security to be furnished. This power is consequently an unlimited restriction on the fundamental right.

The Advocate-General had argued that the power of the Government to require security under sec. 7(1) was limited to cases where the newspaper contained matters of the nature described in sec. 4(1), as would be seen from the provisions of sec. 7 (3) under which security could be forfeited. But in regard to this contention, the Court said:

In our opinion, the two sections appear to be quite independent of each other in this respect, and the district magistrate is not necessarily bound to pass orders under sec. 7 (1) in those cases only which satisfy the conditions laid down in sec. 7 (3).

Accordingly, the Court held that "sec. 7 (1) is repugnant to Art. 19(1)(a) of the Constitution and became void under Art. 13(1) after coming into force of the Constitution."

HABEAS CORPUS PETITIONS

Some Grounds Beyond Scope of Act

DETENTION ILLEGAL

A division bench of the Pepsu High Court consisting of Teja Singh C. J. and Gurnam Singh J. on 5th February allowed the habeas corpus petitions of Gurbax Singh and Santa Singh who were detained under sec. 3 of the Preventive Detention Act, for the reason that two of the grounds of detention furnished to the petitioners, viz., that they were active members of the Communist Party and attended a meeting of the Party held at Masna on 24th July 1950 at which it was resolved to collect funds for the wife of a person in detention, were outside the scope of the Act and the orders for detention were therefore without authority.

The question before the Court was whether a detention order was illegal when out of the several grounds supplied to a detenu only one or more, but not all, were beyond the scope of the Act. The Court took the view that if one of the grounds mentioned was not within the ambit of the power given to the Government to detain, the whole order for detention was vitiated, notwithstanding the fact that the other grounds were good. The Court based its decision upon the Federal Court's judgment in *Keshav Talpade v. Emperor* (A.I.R. 1943 FC 1). Reversing the judgment of the division bench of the Bombay High Court in this case to the effect that if even one of the grounds given be justified as coming within the competence of the Indian legislature the order would be valid, the Federal Court per Gwyer C. J. said:

We doubt whether this is a correct statement of the law. If a detaining authority gives four reasons for detaining a man without distinguishing between them and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the

detention order would have been made at all if only one or two good reasons had been before them. Acting on this principle, the Court held the detention of the petitioners to be illegal and ordered them to be released forthwith.

RESERVATION OF REPRESENTATION FOR COMMUNITIES

Held Valid by Madras High Court

In an application for the issue of a writ of mandamus filed in the Madras High Court Mr. A. R. V. Achar, a sitting member of the Council of the Madras Corporation, challenged the provisions of the Madras City Municipal Act relating to the composition of the Council and prayed that the Madras Government and the Commissioner of the Corporation be directed to forbear from holding elections to the Council according to those provisions. Mr. Justice Subba Rao heard the application and on 25th August partly disallowed it.

Under the Act out of a total of 66 seats on the Council four are reserved for Muslims, two for Indian Christians and one for Anglo-Indians. His Lordship held that this reservation violated Art. 15 (1) of the Constitution prohibiting discrimination "on grounds only of religion, race, caste or sex." Referring first to the case of Muslims, His Lordship observed that it could not be denied that Muslims and non-Muslims had equal rights under the Constitution of India. But under section 5 of the Act, in a double constituency, a Muslim could stand for election for both the seats whereas non-Muslims could only stand for the non-reserved seat. A contingency might be visualised when a double constituency with two seats was captured by Muslims, whereas, under the Act, a non-Muslim, even if he got more votes than the Muslim candidate, might not be declared elected to the reserved seat. There was, therefore, a two-fold discrimination in favour of Muslims and against non-Muslims. "In this case," His Lordship observed, "the State is certainly discriminating against a non-Muslim on the ground that he is not a Muslim. The reservation, therefore, for Muslims offends Article 15 (1) of the Constitution, and, therefore, bad." His Lordship held that, similarly, reservations made for Indian Christians and Anglo-Indians also offended Article 15 (1) and therefore, were bad.

The Act reserves five seats for members of the Scheduled Castes and this reservation was held by His Lordship to be valid under Art. 15 (4) introduced into the Constitution in October 1951 by the Constitution Amendment Act which provides that "nothing in this Article (that is, Art. 15) or in clause 2 of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." His Lordship added that it was unnecessary to consider whether the provision of the Act concerning reservation of

seats for the Scheduled Castes was valid before the amendment of the Constitution. Regarding reservation of four seats for women, His Lordship observed that the petitioner had not established how such reservation offended Art. 14 of the Constitution providing for equality before law.

In regard to the allotment of eight seats for the Madras Chamber of Commerce and other trading associations of which one is the Nattukottai Nagarathars' Association, His Lordship observed that it was for the legislature to determine whether special representation of such bodies should be retained or abolished and, if retained, what arrangements should be made for it. He said :

I am not satisfied on the records, that the selection was haphazard or arbitrary. All the bodies which have been given separate representation are incorporated associations to further the commercial interests of the country. Though some of the names of the associations may smack of communal, religious or racial discrimination and though, in fact, the membership of some of the bodies is confined to a particular race or community, their constitutions are broad-based and their membership, except in the case of the Nattukottai Nagarathars' Association, is thrown open to all businessmen irrespective of race, caste, creed, or community. Even though the membership of the Nattukottai Nagarathars' Association is confined to that community, it cannot be denied that they are an important section of the business community and the Association was formed to develop commerce. Nor was it brought to my notice that there were similar other incorporated associations in the City which were excluded from the scope of the section.

As for special representation accorded by the Act to the Port Trust, University and labour, His Lordship observed that the interests concerned were important and that the classification made was not arbitrary or unreasonable. In the result, His Lordship held that the reservation of seats for Muslims, Indian Christians and Anglo-Indians was bad and respondents had no power to hold elections in respect of those reserved seats. His Lordship, therefore, directed the respondents to forbear from holding elections to the Corporation Council in respect of the seats reserved for Muslims, Indian Christians and Anglo-Indians.

ACQUISITION OF LANDED PROPERTY

Madras Zamindari Abolition Act Held Valid

At the Madras High Court, the Chief Justice and Venkatarama Aiyar, J., delivered judgment on 22nd August dismissing a batch of connected applications filed by some of the zamindars in Madras State, who held land under sanads granted to them under the provisions of the Madras Permanent Settlement Regulation of 1802, assailing

the constitutional validity of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948.

Their Lordships stated that of the several grounds on which these applications were founded, practically all had become non-available to the petitioners after the passing of the Constitution First Amendment Act, 1951. One of the grounds raised was that even assuming that there was a public purpose that justified the acquisition of the land-holders' interest in the land occupied by the ryots, there was no such public purpose justifying the acquisition of properties like waste lands, vacant sites and lands purchased by land-holders in private sales, mines, markets, forests, hills and buildings used in connection with the administration of the estate. It was clear, Their Lordships stated, that the intention of the legislation was the acquisition of the estate as such and not of the several items or classes of property comprised in the estate. The object of the legislature must be taken to be to bring about uniformity of tenure in the State and to place the entire resources of the country at the disposal of the Government for the benefit of the community. It was neither permissible nor accurate to divide the estate into several classes of property, according to their nature into arable land, waste land, poromboke, forests and mines. All of them were comprised in the estate held by the zamindar under a single grant and what was contemplated was the acquisition of the estate as such.

The other two points raised by the petitioners were that under the guise of the acquisition, the State was confiscating parts of the land-holders' property and that the provision in the Act relating to arrears of rent was a fraud on the legislative power of the State. Following the judgment of the Supreme Court regarding the Bihar, Madhya Pradesh and Uttar Pradesh Zamindari Abolition Acts, Their Lordships held that it was impossible to maintain these contentions. The petitioners had failed in all the points raised by them and their applications must be dismissed.

COMMENTS

Number of Detenus : 1,190.

A press note of the Home Affairs Department states that at the end of June last 1,190 persons were held in detention, the number contributed by the various States being: Hyderabad 553, Bombay 244, Saurashtra 127, West Bengal 97, Pepsu 71, Assam 31, Punjab 27, Rajasthan 19, Bihar 6, Orissa 5, Tripura 3, Madras, Uttar Pradesh and Cutch 2 each, and Madhya Pradesh 1.

Nehrus—Father and Son—on Detentions

Explaining why he opposed the Preventive Detention Bill, Dr. Syama Prasad Mookerjee said in Parliament that he opposed the Bill because detention without trial "is repugnant to any democratic constitution in any part of the civilized world except at a time of emergency or

crisis," and he claimed that in doing so he was only following in the footsteps of the great Nehrus. What was Pandit Jawaharlal Nehru's opinion in 1936? He had written :

A Government that has to rely on the Criminal Law (Amendment) Act and similar laws, that suppresses the press and literature, that bans hundreds of organizations, that keeps persons in prison without trial, is a Government that has ceased to have even a shadow of justification for its existence.

Ten years before this, the Premier's father, Pandit Motilal Nehru, as Leader of the Opposition in the legislature, had to consider a measure similar to the Detention Bill. It was called the Public Security Bill, which, the senior Nehru said, could more fittingly be called "Slavery of India Bill," or "Safety of Bureaucracy Bill," or the "Public Danger Bill." The Bill affected only foreigners coming into India, suspected of spreading Communistic ideologies. Under it, such people "were to be detained; they were to be got rid of from the soil of India" without any fair trial. Pandit Motilal Nehru "detested" the Bill. He said :

My submission is that the principle of the Bill is a very simple one, and it comes to this: "Where the courts will not convict, give us power to punish." That is the principle of the Bill. You may express it in any embellishment of style, but that is the thing into which it resolves itself.

About the provision in the Bill that the persons detained would be exiled if such an order was approved by a tribunal of three High Court judges, Pandit Nehru said :

This man is to be brought before three experienced judges. I say that if this man were to be brought before three angels, they would not be able to do anything for him. And why? Simply because though the judges are there they are crippled; they cannot exercise their functions. Because the evidence is one-sided, because they are told not to lay the whole of the evidence or the facts before the accused.

Dr. Mookerji also quoted the fiery words in denunciation of detention without trial which were written in 1942 by Dr. Katju himself, who was now piloting the Detention Bill. (We ourselves had quoted them at p. ii:130.) The speaker said about this denunciation: "I suppose it is a case of Dr. Jekyll and Mr. Hyde." The fact is that the Congress leaders think they are entitled to adopt in free India the principles which they condemned while India was under foreign rule.

Bogey of a Constitutional Objection

In answer to the demand made by the Opposition that if the detention law is to be re-enacted, its operation should at least be limited to those states in which the Central Government thinks its enforcement has become necessary on account of the particularly disturbed conditions prevailing there, the Home Minister raised a

constitutional objection. He said that if some states were not allowed to detain persons under the central law, it would still be competent for them to pass a local law permitting detention, that being a concurrent subject of legislation.

A similar question was raised by the All-India Civil Liberties Council in regard to Rajaji's Press Act. It was contended by the Government of India that it would not be open to any state to enact a press law of its own imposing further restrictions on the press than those that the central Act permits. And to prove this contention, the Government referred to art. 254 (2) of the Constitution, under which it said that the bill seeking to do so "will have to be reserved for the President," and that "in considering the question of giving his assent to the bill the President will naturally be guided by the policy of the Central Government" (vide p. ii:54 of the BULLETIN).

If the Government of India can validly prevent a state Government from adopting for its own use a more drastic press law than the central Act, why cannot the Government of India prevent a state Government from adopting and enforcing a detention law if that of the Central Government does not permit it to resort to detention? It appears to us that the legal considerations in both cases are about the same, and if the Government of India's reasoning in regard to press restrictions is sound there can be no constitutional objection to the Government of India laying down that detention can come into force only in some states and not in others. On the question of policy the Government wants all states to enforce detention when they think it necessary, and on this ground of policy the Home Minister will naturally make the detention law cover the whole of India. But the objection urged on the ground of constitutional principle does not seem to have any force.

Independence Gained but Liberties Lost

Speaking at the ceremony of saluting the national flag on the Independence Day in the Deccan Sabha, Poona, Mr. H. G. Gharpurey, I. C. S., (retd.) made the following remarks on the state of civil liberties under the Republican regime :

Of what is called liberty this Government has no real idea. On the slightest pretext they proceed to restrain it. In fact it would be almost a truism to say that we have obtained Independence but lost our Liberties. Constraint is put upon activities which are considered essential in every civilized State for the maintenance of a proper standard of democracy. Here in India under the Congress regime persons may be detained in prison without trial for long periods on the mere suspicion that they are a danger to the State and this at a time when the State is at perfect peace with every other State. Our friend Mr. Vaze and his comrades of the Civil Liberties Union are engaged in fighting for the restoration of our lost liberties, but

their protests go unheeded and recently legislation has been passed in Parliament giving the Government drastic powers towards curtailing the liberty of the subject.

It is recorded of Lord Chatham that when during his Prime Ministership days he used to come to London for business of State, the Government used to rent all the neighbouring houses within a furlong's distance of the Prime Minister's residence in order that the Prime Minister's sleep might not be disturbed by the crying of babies in neighbouring houses. Here in India Dr. Katju and his team of Ministers have taken power unto themselves to put in jail any person within a thousand miles' distance of Delhi whose freedom might possibly endanger their position as a ruling team. It is a melancholy fact, gentlemen, that Dr. Katju who is himself a learned lawyer should put so low a value on the liberty of person of an individual. However, we have to bear so many strange things under this regime, and this is one such.

Enforcement of the Smith Act

After the conviction by the U. S. Supreme Court in June last year of the eleven topmost leaders of the national Communist Party under the Smith Act, which makes it a crime to advocate or teach the overthrow of the Government by force and violence, followed the conviction on 7th August in a federal district court of fourteen second-string leaders of the Party from California, who were sentenced to five years' imprisonment and fine of \$10,000, the maximum the Act allows. Among the defendants was William Schneiderman, head of the California Communist Party and reputedly acting head of the national Party.

The same arguments were urged by the defence in this trial as in the trial of last year. It was contended that the defendants had been prosecuted simply for their opinions and that the only evidence of overt acts against them was that they attended party meetings and participated in the issuance of directives and utterances in public speeches and writings, which activities were protected by the Constitution. The defence particularly emphasized that the jury's verdict of guilty should not have been accepted when the judge in his summing-up had specified that mere membership in the Communist Party, even if the Party's aims were deemed subversive, did not constitute guilt under the indictment. On this ground the defence counsel moved the court for reversal of the jury's verdict and for a new trial.

The judge, in upholding the verdict, said:

If this involved no more than opinion, I would dismiss the finding. I would never impose sentence on

anyone for an opinion. Do you consider this only a question of opinion? The jury has found that these defendants conspired to teach and advocate the necessity and the duty of violent overthrow.

Civil Liberties Commissioners in Japan

Our readers are no doubt aware of the Committee on Civil Liberties appointed by the President of the United States in 1946 to recommend in what respects law enforcement measures should be strengthened and improved with a view to the preservation of civil liberties, which, President Truman rightly said, "is a duty of every Government—state, Federal or local." The Committee, consisting of distinguished non-officials, deliberately focused its attention, in considering the prevailing state of civil liberties, "on the bad side of the record," where civil liberties had not yet been realized, and made important recommendations as to how they could be better realized, and the Committee's report, presented in 1947, is recognized in all quarters to have given a powerful push to America's progress in the matter of civil liberties.

Taking its cue from this example apparently, Japan, which was under the rule of the United States till the other day, passed in 1949 an Act to provide for the appointment of civil liberties commissioners for the purpose of "insuring the full protection of human rights." The main provisions of the Act are given below:

The object of this Act is to insure the full protection of human rights, by establishing a system of civil liberties commissioners throughout Japan, and basic standards for their duties. It is also intended to popularize and promote the ideal of civil liberties in order to protect the fundamental human rights guaranteed to the people under the new Japanese Constitution. A civil liberties commissioner is set up in each district of every city, town and village in Japan (provided that the total number shall not exceed 20,000). Their mission is to keep a vigilant watch to protect the people against violation of their fundamental human rights, to take promptly adequate steps against any violation, and also to make constant efforts to popularize and promote civil liberties. In cases of violation of human rights, they report the result of their investigation to the Civil Liberties Bureau of the Attorney-General's office and make recommendations to the other agencies concerned. They are responsible for the civil liberties of the poor through such measures as legal aid, etc. They are under the direction and supervision of the Attorney-General. The Act provides that in performing his duties a civil liberties commissioner shall keep the personal secrets of the person concerned and shall not give any discriminatory or preferential treatment because of race, creed, sex, social status, family origin, political opinions or affiliations. Civil liberties commissioners are also debarred from using their official positions for the benefit of any political party or for any political purpose, and from engaging in any commercial enterprises incompatible with the fair performance of their duties.

In India the Governments take no hand in popularizing or adopt any special measures for preserving civil liberties.