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[A MONTHLY REVIEW]

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DETENTION WITHOUT TRIAL

A NOTE PREPARED BY THE ALL-INDIA CIVIL LIBERTIES COUNCIL

In view of the resolution to be tabled in Parliament concerning the Preventive Detention Amendment Act passed last year, the All-India Civil Liberties Council has prepared this Note for distribution among Members of Parliament in the hope that it will, by presenting to them a bird's-eye-view of the more important particulars of the Act, help them to some little extent in discussing the resolution.

I.—GOVERNING PRINCIPLES

The importance of the right to Freedom of Person, or the right to freedom from arrest and incarceration without access to courts to determine the validity of imprisonment, cannot be overrated. In one of his Gasper G. Bacon Lectures at Boston University for 1951-52, Professor Zachariah Chafee, Jr., describes the Article in the United States Constitution—Art. 1 (9)(2)—which forbids suspension of the privilege of the writ of habeas corpus "unless, when in cases of rebellion or invasion, the public safety may require it," as "the most important human rights provision in the Constitution." He gives personal freedom pride of place in human rights because, with the loss of that freedom, all other freedoms (even the most innocent of them) automatically disappear. Thus it is the most fundamental of all Fundamental Rights, for, as Professor Chafee says, "When imprisonment is possible without explanation or redress, every form of liberty is impaired. A man in jail cannot go to church or discuss or publish or assemble or enjoy property or go to the polls."

It should be noted that it is not merely the Federal Constitution of the U. S. framed as early as 1789 which gives a constitutional guarantee of personal liberty in the form of non-suspension of habeas corpus, but the constitution of every component State also gives it in so far as its own territorial jurisdiction is concerned. The constitutions of some of these States were revised quite recently, of one State in 1947 for instance, and yet in all of them the guarantee has been maintained intact. If it were the case, as some persons occupying high places in India are known to hold, that this stringent provision about the security of the person was embodied in the Federal Constitution of the United States about a century and three quarters ago in a fit of idealism divorced from practical considerations of the necessities of government and need not therefore be held in overmuch respect by the statesmen of to-day, the States would certainly have dropped it from the revised versions of their own constitutions. The fact of the matter is that the U. S. Constitution was formulated after a bloody revolution when its framers could not possibly have been blind to the requirements of national security, and that the provision was incorporated in the Constitution only because the framers were convinced that it was an essential safeguard against arbitrary invasion of personal freedom.

It is true that constitutional withdrawal of the power to suspend habeas corpus except in certain narrowly defined circumstances from the competence of the legislature is a peculiarly American doctrine. It has no counterpart in other constitutions, except in those modelled on that of the United States as for instance that of the Philippines. In countries like the United Kingdom and its Dominions, where the legislature is sovereign and where for that reason no constitutional limitations on legislative power are possible, there is of course no such provision. But the fact remains that there too the doctrine of the United States is rigorously adhered to in practice, viz., that habeas corpus cannot be suspended except in a period of grave national emergency. In civil law countries like France where a declaration of the state of siege gives exceptional powers to the government in respect of curtailing the liberty of person, it is ordained that the state of siege cannot be enforced except in conditions which would warrant suspension of the privilege of habeas corpus in the United States. The proposition can therefore be laid down that in no democratic country in the world is personal liberty likely to suffer in situations which do not partake of the character of emergencies such as those contemplated in Art. 352 of our Constitution, the only difference between different countries being that in America the

In war-time, speech should be free, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war.—Professor Chafee in the "New Republic" of 15th November 1918.

result is secured by a constitutional provision and elsewhere by a rule of national policy which, however, in effect is no less binding. India is the only exception to this general rule.

When Acharya Narendra Deva, while speaking on the Preventive Detention Bill in the Council of States last year, referred to the British practice and on its basis asked "the Government not to enact a measure like this in peace-time," but "to reserve it for war-time only, when war is either imminent or has actually broken out or when there is internal commotion in aid of a foreign power," the Home Minister put him off by merely stating that England is not India, and that while England is a disciplined country, India is not." The obvious retort was that since India could not be a disciplined country within two years, which is the period now fixed for the duration of the Act, and would take a very much longer time, the Act must in reality be almost a permanent measure. Acharya Narendra Deva also referred to the Prime Minister's speeches in which what the Prime Minister said in effect was that "ideas and principles, which were sacred to us before our liberation, when we were fighting for the cause of the country's freedom, those ideas which were cherished by our people, and which formed part and parcel of our being, have become outmoded and we have no longer any use for them." Freedom of Person was at one time sacred to us; it is no longer so.

* * *

II.—PURPOSES OF THE DETENTION ACT

The Detention Act is now retained on the statute book for employment in a wide variety of contigencies. Under it detention can be enforced for securing (i) the defence and (ii) the security of India, and (iii) the security of any State in India. If this extraordinary weapon is not to be given up altogether but is to be kept in the hands of Authority, its use should at least be limited to the above-mentioned three purposes. So limited in scope, the power to detain could be brought into operation only when the very existence of the community appears to the Executive to be in danger. But, under the provisions of the existing law, detention is not restricted in this manner. It can also be enforced for the sake of (iv) maintaining "public order," which, as the minute of dissent appended to the report of the Select Committee on the 1952 bill by Mr. N. C. Chatterjee and those who joined with him pointed out, is "a term of the widest amplitude," enabling the Executive to make short shrift of the personal liberty of people even in minor affrays where only some police action would be warranted. It can also be enforced in the interest of (v) "the relations of India with foreign powers," which, as Dr. H. N. Kunzru pointed out in his minute of dissent, would enable the Executive "to detain a person because of his criticism of Indian foreign policy." It can likewise be enforced (vi) "for the maintenance of supplies and services essential to the community," i. e., it can be enforced against such anti-social elements as profiteers, hoarders, and the like. No one doubts that these elements of society must be severely dealt with. "But," as the Socialist members' minute of dissent said, "the ordinary law of the land should be enough to meet the menace of these classes. Nobody has ever heard of a preventive detention act being enacted to meet such a menace." The Act is similarly enforced against those who are being prosecuted for criminal offences but in whose case the Executive comes to think that detention would be preferable to prosecution on the ground that evidence against the accused cannot safely be produced in open court. One such case was referred to at p. ii: 283 of the BULLETIN. This involves complete disruption of the ordinary processes of our system of law, which can on no account be allowed to take place.

It is no doubt true that the public at large feels keenly about any possible injustice being done to politicals on mere suspicion and is therefore critical of such detentions, but it is generally tolerant when similar injustice results in the case of criminals or would-be criminals in their being deprived of their personal liberty without proper cause, in the professed interest of protecting society from their nefarious activities. Advantage has been taken by the Government of this mass psychology in applying the detention law to such anti-social elements. But the Executive is not otherwise defenceless against them. They can be properly dealt with without having to discard the due process of law. On this point it would be well to take to heart pronouncements of eminent judges in the United States when they had before them cases of bootlegging and such other conspiracies. For instance, Justice Brandeis said in *Olmstead* v. *United States*, 277 U. S. 433 (1927):

> It is immaterial that the intrusion (of the prohibition officers in the seizures they effected without authority) was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Justice Murphy in *Goldman* v. *United States*, 316 U. S. 126 (1942) said, with reference to the Fourth Amendment to the U. S. Constitution concerning searches and seizures:

> Its protecting arm extends to all alike, worthy and and unworthy, without distinction. Rights intended to protect all must be extended to all, lest they so fall into desuetude in the course of denying them to the worst of men as to afford no aid to the best of men in time of need.

Judge Cuthbert Pound said in *People* v. *Gitlow*, 234 N. Y. 132 (1922):

> Although the defendant may be worst of men . . . the rights of the best of men are secured only as the rights of the vilest and most abhorrent are protected.

III.—THE ADVISORY BOARD

The Advisory Board which investigates cases of detention has not been given sufficient authority to examine these cases thoroughly. The three essentials for a proper functioning of any investigating body are :

(1) That full information concerning the circumstances in which detention has been ordered be made available ; (2) that the detenu be allowed to appear in person or by a legal representative to put forward his case ; and (3) that he be enabled to call evidence and cross-examine witnesses.

None of these pre-requisites of a proper inquiry are satisfied by our law, while all of them were satisfied to the maximum extent by Regulation 18 B, 1939, of England and the procedure adopted under it by the Advisory Committee.

These will now be considered seriatim.

1.—FULL INFORMATION

Our Constitution itself in Art. 22(6) authorizes the withholding of information considered by the detaining authority "to be against the public interest to disclose," and this constitutional provision is reproduced in sec. 7 (2) of the Preventive Detention Act. Such a provision giving a special privilege to the Executive to keep back information disclosure of which is thought to be against the public interest is not to be found either in the constitution or law of any country — a privilege by which, as the Supreme Court said in the State of Bombay *v.* Atma Ram [A. I. R. 1951 S.C. 157], "a wide latitude is left to the authorities in the matter of disclosure." That the information which is supplied in India to the detenu about the grounds of his detention is not as full as it could be, even after making allowance for this extraordinary reservation, was graphically described by the Chief Justice of the Bombay High Court in this case when it was in the High Court (A. I. R. 33 Bombay 266) as follows :

> In all the matters which have come up before us, we have been distressed to find how vague and unsatisfactory the grounds are which the detaining authority furnishes to the detenu ; and we are compelled to say that in almost every case we have felt that the grounds could have been ampler and fuller without any detriment to public interest.

The Supreme Court itself pointed out in this very case "that there has been quite an unnecessary obscurity on the part of the detaining authority in stating the grounds for the order."

Nor is necessary information withheld from the detenu alone ; it is capable of being similarly withheld from the investigating body itself. For though sec. 10 (1) of the Act allows the Advisory Board to call for further information than has been supplied to the detenu by the Government, no obligation has been placed on the Government to supply to the Advisory Board the information the latter may call for, even subject to the reservation about the withholding of information, non-disclosure of which is in the opinion of the detaining authority warranted by "the public interest." The result is that there is no guarantee that the detenu or even the tribunal itself will be in full possession of facts which it is obviously necessary to know if justice is to be done.

In this respect, Regulation 18 B presents a complete contrast. In the first place, it did not contain the limiting language appearing in sec. 7 (2) which warrants keeping back any information on the ground of the public interest. In the second place, the duty was in express terms cast on the Advisory Committee to obtain from the Government and furnish the detenu "with such particulars as are in the opinion of the Chairman sufficient to enable (the detenu) to present his case." If this was the law, what was the practice ? "The Advisory Committee have before them all the evidence which is in the possession of the Secretary of State" (Home Secretary in the House of Commons, Oct. 31, 1939). "It is the invariable practice of the Advisory Committee to put before (the detenus), as explicity as they can, all the facts which are known against them" (Under Secretary, July 23, 1941). All that is in the record of the Home Office had to be and was made available to the Committee, and through the Committee to the detenu, without permission being given to the Government to keep back anything even in the supposed interest of the public security.

It may be added that in Eire's Offences against the State Act, passed in 1939 to combat widespread disorders detention without trial was permitted, but the law placed upon the Government an explicit obligation to make every kind of information without exception available to the Commission appointed to investigate detention cases. The section in the Act providing for this is quoted below :

> The Minister for Justice shall furnish to the Commission such information and documents (relevant to the subject-matter of such inquiry) in the possession or procurement of the Government or of any Minister of State as shall be called for by the Commission.

2.—LEGAL ASSISTANCE

Sec. 10, sub-sec. (3), of the Act forbids the detenu to appear before the Advisory Board by a legal practitioner. It was explained by the Home Minister that a detenu could take legal assistance in preparing his representation against the order of detention, but that after his case went to the Advisory Board he would have to confront the Board himself without the aid of counsel in making out his case. This ban on legal assistance is wholly unsustainable and must be lifted. The practice in England in this respect is to be found in the following statement of the Home Secretary in the House of Commons on Dec. 10 1940 :

> 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 has the right to say that such legal assistance could be provided. . . . It is not the Home Secretary who settles whether legal assistance shall be available or not, but the Committee outside. (The Advisory Committee asks a legal representative, if the detainee has given him instructions,) to appear before them to give evidence on behalf of the appellant or to assist the Committee on the appellant's behalf in the investigation of the facts of the case.

It is of course unthinkable that there could be any peace-time legislation providing for detention in the United States, but assuming that such a law could validly exist, the mere provision in it for denying legal assistance would render the law unconstitutional on the ground that it deprived those who were affected by it of the due process of law. And this is not a mere formal defect. The enforcement of such a provision necessarily vitiates the whole character of the inquiry. As Mr. C. K. Allen says in "Law and Orders" at p. 239:

> Speaking from considerable experience of the examination of conscientious objectors, the present writer can say without hesitation that legal aid may make all the difference to that large class of persons who are inarticulate or discursive and quite unable to present their own cases; and this must be so, however eminent, experienced or sympathetic the examining tribunal may be.

3.—Calling in Witnesses

The former prohibition as to the calling of evidence by the detenu and the cross-examining of witnesses is maintained. It has been loosened to this extent that the Advisory Board is now given power to obtain information "from any person, called for the purpose through the appropriate Government." How this would work in practice was thus explained by the Home Minister. If a man is charged with having committed a prejudicial act at a certain place and on a certain day, he may plead that he was on that day lying ill in a different place, e. g., a hospital in Madras, in which case it would be within the competence of the Advisory Board to write to the Madras Government suggesting that the superintendent of the hospital might appear before them. Although this is a relaxation of the original prohibition inasmuch as it now contemplates the possibility of any person other than the detenu (who too formerly could not meet the Advisory Board) appearing before them, this will clearly not meet the situation, as it would seem that under the amended clause a detenu will not be in a position to call character witnesses, for example, who in cases of imprisonment on mere suspicion of having committed or planned crimes are of the utmost importance to the detenu in defending himself against the charges. There was no such disability in England. The practice that prevailed there was thus described in the statements of ministers in the House of Commons:

> (The Advisory Committee can) call in any person who, in their opinion, may be able to assist in elucidating the matter with which the Committee have to deal.—Home Secretary (Oct. 31, 1939). In some cases witnesses may be available, in others not; and where witnesses are available, it is for the Committee to decide whether the attendance of witnesses is necessary.—Under Secretary (Feb. 13, 1941). Witnesses can be called, and are called in many of these cases —Home Secretary (July 23, 1941).

Provision of such a facility, it need hardly be said, is absolutely essential even in a semi-judicial inquiry, if the inquiry is to bring out the true facts.

The major improvement which was made in the Preventive Detention Act last year consisted in this: that the maximum period of detention in respect of any detention order in now fixed at twelve months under sec. 11A. This provision of course does not debar the making of a fresh detention order, but such an order can only be made, as provided in sec. 13 (2), on the basis of "fresh facts" that may have arisen after the expiry of the old order.

IV — Conclusion

This particular provision no doubt mitigates the injustice that is inherent in any measure which sends people to gaol not for any proved but merely suspected wrong-doing. But the whole point is that no one should be punished except for any wrong-doing that is brought home to him. And the question one should ask oneself is: Why should it be necessary in this country to resort in peace-time to extra-legal devices which it has been found by the experience extending over centuries to be wholly unnecessary in every other country. But if the power of preventively detaining any person is not to be given up in its entirety, the use of it should at least be limited to exigencies in which recourse to it is thought essential in order to maintain the security of India or any of its States.

SOUTH AFRICA'S TRADITIONAL POLICY OF
SOCIAL SEPARATION AND COLOUR DIFFERENTIATION

The United Nations three-man Commission of Inquiry appointed to study the racial problem in South Africa has made a good job of its report. It has described in detail how racial discrimination extends to all spheres of the domestic, social, political and economic life of the non-white population there, and bluntly characterising such

discrimination as "fundamentally irreconcilable with human thinking," suggests that the Union Government hold a round table conference of all the racial groups in the country to consider how a peaceful and constructive solution of the difficult racial problem can be achieved, with the help if desired of representatives of the United Nations. It believes that if the Union Government was willing to review its racial policy and to accept, "spontaneously and in complete sovereignty and independence," the co-operation of the community of nations, it might "even now clear the air and open a new path of justice and peace to the development of South Africa within the United Nations."

The commission has done well to emphasize that the racial differentiation which runs through all the aspects of the government of South Africa is not something which was enforced for the first time by the Nationalist Government of Dr. Malan when it came into power in 1948, though this Government has given the doctrine a new name, viz., apartheid, and is pursuing it with the greatest possible vigour. It is a doctrine which in its essence has been accepted by all sections of the whites as necessary for the development of the country and for that of the non-white population itself. The doctrine lays down that

> (racial segregation) is a desirable end, likely to promote the parallel development of the various ethnic groups and constitutes the best method of subsequently achieving equal opportunity and possibly equal standard of living for those groups. The doctrine is based on the theory that the white race, as the heir to Western Christian civilization, is in duty bound to maintain inviolate and to perpetuate its position in Western Christian civilization and must at any cost, although in a numerical minority (of one-fifth), maintain its dominating position over the coloured races. It refutes all dogmas of civic equality and, therefore, cannot grant (non-white groups) the political rights which the white population enjoys and confer on it the management of public affairs.... The alleged purpose of the policy is to extend, to a population subjected to strict discrimination and having a very low standard of living and very limited opportunities for development, *eventual* opportunities equal to those enjoyed by white people.

Differential treatment of non-Europeans and their separation from Europeans has been the traditional policy of white South Africa pursued by all political groups for 300 years, though this separation with its attendant inhibitions is now being carried to its uttermost length by the Nationalists. Soon after Jan can Riebeeck landed on 14th October 1652, he issued proclamations prohibiting Hottentots from doing this, that and the other which Europeans were free to do. Lord McCartney in his first proclamation of 7th July 1797 ordered the Natives in the Eastern Province to carry passes. It was the first Pass Law enacted in the country. It was followed by a registration law. The natives were prohibited in those early years from carrying on the sale of liquor or trading in firearms. In its first constitution of 1858 the Transvaal Republic declared itself to be in favour of racial inequality in these unambiguous words:

> The people refuse to allow equality between non-European and European inhabitants in the Church or in the State.

The Transvaal Parliament thereupon adopted a resolution prohibiting coloured people from living in cities. The constitution of the Orange Free State says:

> The citizens of the Orange Free State shall consist of all white persons in the State.

Thus, a coloured person or a native was not even recognized as a citizen of the Republic. An Act of 1893 placed coloured people in the State in locations. A statute prohibited coloured people from possessing land in the State. This colour bar was included in the constitution after Union in another form. The constitution provides that non-Europeans cannot become members of either House of Parliament. Constituencies are based on the number of European voters alone. Non-Europeans have no franchise in the northern provinces and they are to be represented in all provinces in Parliament by European senators. Racial discrimination being thus recognised in the Constitution, a number of laws have been passed involving the colour bar. Among them the most prominent are: the Native (Urban) Areas Act; the Native Taxes and Development Act; the Mines and Industries Act, which closes certain industries to natives; thr Liquor Act, which prohibits natives from participating in the liquor trade; the Native Laws of 1936; and the Indian Act of 1946. The result is that the statute book is honeycombed with differential legislation and the separation now runs through the entire social life of South Africa in all its parts—it extends to clubs and societies, the churches, the schools, public vehicles, hospitals, places of burial, playgrounds, and everywhere. All these laws were passed before the Nationalist Pary had appeared on the scene, thus demonstrating that a colour bar is not a policy restricted to the Nationalists, but is the policy of all European groups. Only the Nationalists enforced it more blatantly than others.

This was brought out most clearly in the recent discussion of the Reservation of Separate Amenities Bill, introduced by the Malan Government as a result of the Appeal Court's decision of 23rd March 1953 in the so-called Cape Town waiting room case. A magistrate's court of Cape Town acquitted a native named Lusu who had gone into a waiting-room reserved for Europeans at the Cape Town Station and had refused to leave when ordered to do so by the police. He was prosecuted under the Railway Act and at his trial evidence was led to show that the facilities provided for natives at the station were not similar to those provided for Europeans, and

the magistrate, in effect, found that that was so and that there was inequality of treatment; and on that ground he held that the relevant provision in the Act was void in that particular case and that there could be no conviction. On appeal the Appellate Division of the Supreme Court held:

> The Railway Administration may not, when reserving Railway premises as waiting rooms for the exclusive use of males or females of particular races or different classes of persons .... exercise unfettered discretionary rights and powers when the exercise of such rights and powers may result in partial and unequal treatment to a substantial degree as between such persons, races and classes.

Because the decision took the bottom out of all such differential statutes and regulations, the Government brought forward a comprehensive bill permitting separation in all kinds of reservations on public vehicles and in public places even if the separation resulted in inequality and injustice. And it must be remembered that even all the Opposition parties fully recognised that the law on this subject as interpreted by the highest court in the land must be altered to permit the granting of unequal facilities. If the Opposition parties opposed this particular bill, it was only on the ground that it was too drastic. But the principle underlying separation was fully accepted by them. Mr. Lawrence, when opposing the bill on behalf of the United Party, began by saying that in South Africa it "is enshrined in our hearts and is enshrined in our laws." He explained the position of his party in these words:

> This bill seeks to crystallise the time-honoured tradition in South Africa of social separation. It has become part and parcel of South African Society. It is enshrined in our laws. It is the policy of the United Party and it is the policy of the Nationalist Party. The provision of separate amenities for the different races is on the basis of goodwill and understanding and the relative needs of those races, having regard to the circumstances of each particular race. That is the traditional background.
>
> Sir, we recognise this, that in carrying out that policy there may be a need for partiality; there may be a need for partiality in fact and partiality in administration. We realize that, having regard to the set-up of our people, the different racial groups, and the circumstanes and the extent of development of those groups, it is not practicable or wise or necssary to give exactly the same facilities to every section. One cannot go round with a tape measure and measure up whether one waiting room is the same size as another. There must be partiality in fact.

Similarly, Sir de Villiers Graaff, Leader of the Labour Party, supported the principle of the bill. Only the Liberal Party, of which Mrs. Ballinger is the Leader, opposed the bill on the ground that it was based on an entirely untenable principle, viz., of socal separation. "I shall not be party to legislation," she said, "which is going to enshrine on our statute book a blanket provision of this kind that allows this Government or any government for that matter to treat sections of our community on a discriminatory basis."

The bill allows all the statutory bodies, viz., the Union Government or the provincial Administrations, or the local authorities, to institute, for instance, ample amenities for Europeans without providing any amenities for non-Europeans, or if any amenities are provided for the latter to provide them to a very limited extent, thus making an obvious and possibly an unwarrantable discrimination between race and race. To this the United Party and Labour Party did not in principle object. What they objected to was that the bill allowed such discrimination not only on the part of these statutory bodies, which might be expected to act with a sense of responsibility, but also on the part of any private persons. A banking house, for instance, may put up a notice that a particular counter was reserved for Europeans, and if a non-European went to that counter, he would not only be liable to be ejected from it, as would have been the case before this bill, but would also be liable to a penalty of a fine of £50 or imprisonment for a period of three months for disobeying the notice. The bill in fact creates this new offence of disobeying such discriminatory notices and, what is worse, allows even private persons, the owner of a small tearoom for instance, to create this new offence and have the persons committing it criminally punished. In order to ensure that the discriminatory provisions of the bill will be administered with discretion an amendment was proposed by Mr. Lawrence to provide that separate facilities might not be reserved for members of any particular race, "unless it can be shown, in any particular case, that it would be manifestly inequitable or capricious" not to extend such facilities to other races also (the burden of proving the "manifestly inequitable or capricious" nature of the arrangement falling on the aggrieved party), and that if any facilities are provided for other races, they "shall be of such standard, extent or quality as shall have due regard to their number and standard of civilizatian." The Government of course opposed the amendment. While the Government gave an assurance for what it was worth that the bill would be applied fairly and justly, it refused to accept any legal obligation in the matter. For the whole object of the bill was to oust the jurisdiction of the courts from any discriminatory measure that would be brought into force. The support that the bill received from the two main Opposition parties in so far as the fundamental principle underlying it is concerned shows that social separation and racial discrimination, which the U. N. Commission of Inquiry into Racial Relations roundly condemns, is common ground between all political parties of South African whites.

NOTES

Loyalty Oath by Tenants

REQUIREMENT INVALIDATED AS DENIAL OF DUE PROCESS

In accordance with what is called the Gwinn amendment passed by Congress in December last year, which provides that no tenant may occupy low cost housing under the 1937 Housing Act who belongs, or a member of whose family belongs, to an organization listed as "subversive" by the Attorney General, the federal Public Housing Administration has directed the housing authorities in the States to take from tenants in all federally supported housing projects an affidavit that they are not members of any of these subversive organizations. Pursuant to this, the New York City enforced this requirement on its citizens. A resident of the city's Brooklyn housing project, Mrs. Rebecka Peters, sued the authority concerned on the ground that his action was " capricious, arbitrary and unreasonable."

The Supreme Court of the New York State has ruled that the PHA's action in requiring the affidavits deprived tenants of the due process guarantees. Mr. Justice Martuscello observed that in attempting to exclude subversives from housing projects, Congress actually excluded all persons who are members of organizations that are designated subversive by the Attorney General, and pointed out that the federal Supreme Court has questioned the constitutionality of the way in which the list was compiled. He then continued:

> Such a legislative mandate should be based on a finding that the organizations listed have been found to be subversive after a hearing granting all the safeguards of due process as understood by our courts since the time of the adoption of the federal Constitution. No such hearing is provided by Executive Order 9835 [the Loyalty Order] nor by the Gwinn amendment.

Thus enforcement of the loyalty oath in housing has been blocked in the biggest city of America. The American Civil Liberties Union assisted in this case, and it has brought several test cases challenging the constitutionality of the amendment.

The American C. I. D.

PRAISED BY CIVIL LIBERTIES BODIES

Our Criminal Investigation Department continues to be as unpopular now as it was under British rule, but what corresponds to that department in the United States, viz., the Federal Bureau of Investigation is not only not so unpopular but is thought essential for the preservation of civil liberties. In fact, the American Civil Liberties Union had occasion recently to defend FBI against an attack by the Governor of Pennsylvania for the FBI's probes into violations of civil rights in States. For FBI, along with other investigation work, makes it its business to find out, strange as it may appear to us from our experience of CID under the present as well as the former regime, if any State Government has infringed upon civil liberties guaranteed to all citizens by the Federal Constitution. The Pennsylvania Governor attacked FBI not for following any unjust investigative procedures, but for coming on to the scene at all in respect of the doings of States.

To this Mr. Malin, executive director of ACLU, retorted that federal investigations were no infringement of the States' police powers inasmuch as the States were left free to conduct their own inquiries. He said :

> Certainly the federal government has the power to protect its citizens from deprivation of their rights, and when such occasions arise it is its duty to act. The sole reason for federal intervention is usually the failure of state agencies to act in cases where individual rights may have been invaded, and FBI, over-all, has made an excellent record of enforcing these constitutional rights. We submit that increased and improved implementation of the rights granted under our Constitution should be the goal of public officers. These rights are the cornerstone of our free society and must be continually reinforced if we are to maintain our freedom.

The United States Government has set up a special agency to see that the civil rights of people are enforced, but our Government cannot be persuaded to take any special interest in the preservation of these rights. The only interest it takes seems to consist in passing repressive laws like the Detention Act and Press Act for enforcement in all the states.

HABEAS CORPUS PETITIONS

Supreme Court Releases Four Detenus

A division bench of the Supreme Court on 14th October ordered the release from detention of Channappa C. B. Onkarnath, R. L. Patil, R. M. Belwadi, managing editor of " Navashakti," a Kannada weekly published from Davangere in Mysore, and Savalgi (all stated to be members of the Akhand Karnataka Rajya Nirmana Parishad, an organization for the formation of the Karnataka State), allowing their habeas corpus petitions on the final hearing.

All the petitioners were arrested on 7th August at Hubli and detained under the Preventive Detention Act on the orders of the district magistrate of Dharwar. It was stated that these petitioners addressed a public meeting on 23rd July at Hubli and urged the starting of satyagraha on 9th August in accordance with the directions of what was called the Action Committee of the Parishad for the realization of the Karnatak State.

Mr. Justice Vivian Bose delivered the judgment of the Court. Their Lordships held that the mere fact that the petitioners addressed a meeting asking the people to start satyagraha was " in itself innocuous. "

"It can only be made relevant when tacked on to the second allegation, namely, that the Action Committee met on 26th July and at that meeting the petitioner Vedamurti Itagi proposed certain measures, some of which advocated violence." But so far as the petitioners Channappa, Onkarnath and Patil were concerned, the Court stated "there is no allegation that they advocated violence or associated themselves in any way with Itagi. The affidavits of these petitioners state that actually the Action Committee rejected Itagi's proposals and this allegation is not denied in the counter-affidavit filed on behalf of the State." Their Lordships said it was evident that the Action Committee, so far from advocating or countenancing violence, was against violence. The grounds of detention served on these petitioners were thus irrelevant.

Dealing with the petition of Savalgi, the Court held that his case was governed by an earlier decision of the Court in Ram Krishna Bharadwaj's case, as one of the grounds of detention was vague.

The Court, however, refused to allow the petition of Vedamurti Itagi, another member of the Parishad and editor of "Netaji," a Kannada daily of Davangere. The allegation against him was that he had published in his paper a plan of action which, if adopted, would lead to violence and, subsequently, he proposed this plan before the Action Committee of the Parishad. Their Lordships said that it was clear from the facts set out in the grounds of detention that some of the matters he was urging, such as cutting of telegraph wires, "are bound to result in violence."

Vagueness of Grounds

On 10th November 1952 Wanchoo C. J. and Bapna J of the Rajasthan High Court (Jodhpur Bench) allowed the habeas corpus application of Durg Sing who hed been detained under sec. 3 of the 1950 Preventive Detention Act. The detenu was supplied with five grounds of detention, all of which the Court found were vague, only some more vague than others, and ordered the applicant to be released.

The Government Advocate, in contending that the grounds were not vague, cited Devisingh *v.* the State of Rajasthan (A. I. R. 1952 Raj. 171), in which the Judge, relying on the State of Bombay *v.* Atma Ram (A. I. R. 1951 S. C. 157), rejected the contention that the grounds were vague. This Supreme Court judgment has in the present case been thoroughly canvassed by Their Lordships. To show that there was misapprehension on the part of the Judge of the effect of Atma Ram's case they have quoted the following among other excerpts from the Supreme Court's judgment:

> If, on reading the ground furnished, it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. .... It is but right to emphasize that the communication made to the detained person to enable him to make the representation should, consistently with the privilege (given to the Government) not to disclose facts which are not desirable to be disclosed in the public interest, be as full and adequate as the circumstances permit and should be made as soon as it can be done. Any deviation from this rule is a deviation from the intention underlying Art. 22 (5) of the Constitution.

In the instant case Their Lordships said: "This appears to us to be that class of cases which are covered by the following words in Atma Ram's case:

> In certain cases that argument may support the contention that having regard to the general language used in the ground he (the detenu) has not been given the earliest opportunity to make a representation against the order of detention.

It may be mentioned that even up to to-day, no further particulars have been supplied to the applicant, and the defect of vagueness in the grounds originally supplied has never been made good. We are, therefore, of opinion that the applicant is entitled to be released as there has been an infringement of his fundamental right under the second part of Art. 25(2) of the Constitution."

On 29th October Moothan and Sapru JJ. of the Allahabad High Court allowed a habeas corpus petition of Mr. Prem Datt Paliwal, a labour leader of Agra, who was detained in Agra under the Preventive Detention Act. Their Lordships held that certain grounds of detention furnished to the detenu by the authorities were vague and not in accordance with law, and that his detention was therefore illegal. They ordered the petitioner to be released from detention.

THE RIGHT TO BE HEARD

Essentials of Procedural Due Process

DISREGARDED IN A PROHIBITIVE ORDINANCE

Mr. Madanlal Kapur was giving performances of shooting by pistol at coloured objects on a board, and the district magistrate of Kotah issued an order, under sec. 3 of the Rajasthan Dramatic Performances and Entertainments ordinance of 1949, prohibiting such performances on the ground that these games of pistol shooting were merely games of chance and were likely to deprave and corrupt persons. Thereupon Mr. Kapur made a writ application in the High Court of Rajasthan, contending that sec. 3 of the Ordinance which confers power upon district magistrates to prohibit any entertainment which in their opinion "is likely to deprave or corrupt persons" present at the entertainment, without giving the person concerned an opportunity to have any kind of hearing, was ultra vires inasmuch as it contravened the provisions of Art. 19 (1) (g), which guarantees to all citizens the right "to practise any profession or to carry on any occupation, trade, or business."

Ranawat and Dave JJ. on 22nd October 1952 allowed the application, holding that sec. 3 of the Ordinance imposes an unreasonable restriction on the fundamental right enumerated in cl. (g) of Art. 19(1). Relying on judgments in Khare *v.* the State of Delhi (A.I.R. 1950 S.C.211), Tozamal *v.* the Government of West Bengal (A. I. R. 1951 Calcutta 322), Ismail *v.* the State of Orissa (A. I. R. 1951 Orissa 36), V. G. Row *v.* the State of Madras (A. I. R. 1951 Mad. 147), and Jayantilal Laxmishankar *v.* the State of Saurashtra (A. I. R. 1952 Sau. 59), Their Lordships concluded :

> The essential requirements of procedure ordinarily are :
>
> (1) that a notice should be given to the person against whom an order (of a prohibitive character) is made ;
>
> (2) that an opportunity should be allowed to him to make a representation ; and
>
> (3) that there should be some authority or tribunal to consider the representation, if any, made by the person against whom an order is made.

They allowed that in cases of emergency it might not be possible to give notice before making an order, for instance in case of an epidemic, but that notice ought to be given in such cases after the order to enable the person concerned to make a representation. It was contended by the Government Advocate that an opportunity to make a representation would be available to the petitioner at the time of the trial that would follow if, ignoring the district magistrate's order, he had proceeded to give his performances, whereupon he would have been prosecuted for the offence of contravention of the order ; and that at the trial it would have been open to the patitioner to challenge the validity of the order. Their Lordships saw no force in this contention. In the West Bengal case cited above it was observed by the High Court :

> The fact that an aggrieved person may move the court under Art. 226 of the Constitution will not in our opinion be sufficient to regard provisions restricting fundamental rights as reasonable. The restrictive provision itself should prima facie indicate whether such restriction is reasonable or not.

Their Lordships thus came to the conclusion that sec. 3 of the Ordinance (and some other sections connected therewith) " do not come within the limits of reasonableness of cl. 6 of Art. 19 of the Constitution," which saves restrictions imposed "in the intersts of the general public," and quashed the district magistrate's order.

A similar case was decided in the Allahabed High Court on 16th September last. A cloth-dealer of Kanpur, Rameshvar Prasad Kedar Nath, was refused by the district magistrate of Kanpur a license to buy and sell cotrolled cloth required under the U. P. Coutrolled Cloth and Yarn Dealers Licensing Order, 1948, after having been given a license for the previous three years. It appearad that the refusal was based on the ground of an alleged contravention by the cloth-dealer of cl. 24(1) of the Cotton Textile (Control) Order, 1948, the operation of which was subsequently stayed by an order of the High Court.

On an application for a writ of mandamus Mootham and Sapru JJ. quashed the district magistrate's order cancelling the license and directed the magistrate to consider the petitioner's application for the renewal of his license on its merits. Mootham J., in his judgment, said it was common ground that in this case the petitioner was not afforded an opportunity of being heard. He held that the order of the licensing authority, even though it was an administrative order, was one which they should quash in the exercise of their powers under Article 226. He could see no harm which would happen to the licensing authorities from hearing the person before they subjected him to a disadvantage so grievous as the loss of his right to carry on business. Sapru J., in his concurring judgment, referred to Art. 19(1)(g) of the Constitution guaranteeing the right to carry on any trade or business and said that a license for the carrying on of such a trade or business could not be looked upon as a mere privilege which was within the unfettered discretion of the executive authority empowered to grant it.

Another case of the same kind as the previous one was decided by the same divisional bench of the Allahabad High Court on the same day. Mr. Bhakt Shiromani, who owns a building in Motilal Nehru Road, Allahabad, made a writ petition, in which it was complained that the rent control and eviction officer had allotted a part of the building to a tenant without consulting him, as required by rule 7 of the Control of Rent and Eviction Rules. Moothan and Sapru JJ. quashed the allotment order and directed the officer concerned to make a fresh allotment of the premises in dispute after complying with the provisions of law.

In Their Lordships' opinion the purpose of this rule was to avoid, as far as possible, the friction and difficulties which might arise in these cases in which the owner had, in effect, to share his house with a tenant of whom for some reason he might disapprove, and that when the rule provided that the rent control officer should " consult the owner," it meant that the owner had to be consulted as to the suitablity of the proposed tenant. It was clear in this case that this was not done.

QUARTERING OF SPECIAL POLICE

Writ of Prohibition

APPLICATION ALLOWED BY THE RAJASTHAN HIGH COURT

After a dacoity in the village of Nanan in Bilara tahsil in 1948, an additional police force was quartered on the village for nine months and the cost of maintaining the force was ordered to be recovered from Mr. Ranjit Singh, the jagirdar of the village, by attaching half of his village till the whole expense was recovered. Mr. Ranjit Singh applied to the Rajasthan High Court (Jodhpur Bench) for a writ in the nature of prohibition forbidding the State of Rajasthan and the Inspector General of Police from recovering the cost of maintenance.

He advanced two grounds : (1) that since no notification was issued, as required by sec. 15 of the Marwar Police

Act, 1948, declaring Nanan to be disturbed or dangerous, the order for recovery of what amounted to a punitive tax was illegal; and (2) even if such recovery was permissible, the money could be realised only as provided in sec. 16 of the Act and that it was not open to the Government to attach his jagir and realise the amount by such attachment.

It was contended on behalf of the Government in regard to ground (1) that though a notification had not been issued, such a notification was only directory and not mandatory and that non-observance of the provision of sec. 15 did not in any way invalidate the State's authority to realise the cost of the additional police. With regard to ground (2) the Government contended that sec. 16 did not exhaust all the remedies available to the State for recovering the cost and that it could be recovered in any other manner provided by law, without stating, however, which was the provision of law under which recovery could be made by attachment of the jagir.

Wanchu C. J. and Bapna J. on 8th December 1952 allowed the application and directed that the cost of the additional police be not realized from the applicant. Their Lordships said that, according to the scheme of the Act, a notification " is the basis of all further action by Government in connection with the quartering of additional police." The reason why the legislature required it was that " in order that the inhabitants of that area might know that they were to be saddled with the responsibility for paying for the additional police, it was necessary to provide for some method of publication.... If the inhabitants know of such a proclamation and their liability to pay for the additional police, they may take steps to see that the circumstances which led the Government to make the proclamation disappear as soon as possible so that their liability (to pay what in a sense is a punitive police tax) may be reduced to the minimum.... The publication of the proclamation ... is of the essence, and unless this is done no recovery can be made of the cost of the additional police. In this view of the matter we are clearly of opinion that the scheme of sec. 15 itself shows that the provision as to publication of the proclamation... is mandatory and not directory and that compliance with it is essential before liability can be cast on the landlords or inhabitants of the area."

Their Lordships also upheld the argument of the applicant in regard to the method of recovery. They remarked that if immoveable property of the person who was to pay the cost was to be attached, the procedure was that the collector of the district should apply to the civil court for execution according to civil process. Realization of the amount by attachment of the jagir of the applicant was not justified.

COMMENTS

Accent on Religion

in the Pakistani Constitution

In the constitution-making that is going forward in Pakistan's Constituent Assembly religion has been stressed overmuch, which is perhaps due to the origin of the Pakistan State, the State having been carved out of India on the sole basis of the religious factor.

Islamic Republic of Pakistan

The Assembly has declared in the preamble of the Constitution that the country shall be known as the " Islamic Republic of Pakistan, " and that Islam shall be its State religion. This has naturally given rise to the fear that theocracy will be established in the country, tending to foster religious fanaticism. That this is wholly opposed to the concept which Mr. Jinnah, in every sense the father of Pakistan, had is shown by the following words he used in his first address to the Constituent Assembly :

> You may belong to any religion or caste or creed. That has nothing to do with the business of State. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. We should keep that before us as our ideal and you will find that in course of time Hindus will cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.

The Quran to be Followed

The Islamic nature of the State has been further emphasized by a provision in the Constitution that it would not be competent for any legislature in Pakistan to enact laws repugnant to the injunctions of the Holy Quran and the Sunnat, which is the traditional law based on the precepts of Mahommed. This was naturally opposed by the Hindu members, who brought forward an amendment making it clear that the personal laws of non-Muslims will not be covered by the provision. But such a saving clause was rejected by the Assembly. It should be noted that two Hindu members of the Assembly who are associate members of the Muslim League Party voted with their co-religionists in the Opposition on this amendment. Thus the decision not to exempt the personal laws of non-Muslims from the scope of the provision as passed was the decision of the Muslim members of the Assembly alone.

The Assembly has agreed to provide in the Constitution a clause saying that interpretation of the Quran and the Sunnat of one sect shall not be binding on another sect. This clause would seem to guarantee religious freedom for all the different sects of Islam, but non-Muslims are left without any guarantee that their personal laws would not be affected by the provision. The only assurance they have received from the constitution-makers is a statement by the Law Minister that "we will not impose Islamic laws on non-Muslims," and a clause has been inserted which says that non-Muslims are free to amend their personal laws. But Hindu members are still apprehensive that this would not adequately protect them.

One saving grace in this provision which re-asserts the Islamic nature of the Pakistan State is that it will be for the Supreme Court to determine which laws enacted by a legislature are repugnant to the mandate of the Quran and the Sunnat. The Basic Principles Committee had recommended that a Mullah Board to be set up for the purpose should finally decide on the question whether any particular law is or is not repugnant to the Quran or the Sunnat. But the Constituent Assembly rejected this recommendation and has now made the judiciary the sole judge of whether an enactment is contrary to the basic principles of an Islamic society. This is a very wise, and one may say a brave, decision for the Constituent Assembly, knowing as every one does how extremely narrow the Mullahs are in their general outlook and yet what a powerful influence they exert on the public mind.

Religious Propaganda Out of State Funds

Another extremely disquieting feature of the Constitution as now adopted is a clause which provides for the setting up of a State organization to make the teachings of Islam known to the people of Pakistan and to propagate the precepts of the Quran. This clause which enables the Government to carry on in a multi-national State an official propaganda in favour of one religion out of State funds was strongly objected to by Hindu members as being intended obviously for the conversion of non-Muslims to Islam. Their opposition was however ignored by the Constituent Assembly which passed the clause and only adopted a provision, with a view to mitigating the objection to the appropriation of State funds, to the effect that the monies required for the propagation of Islamic principles would be raised by means of a special levy, not (it would appear) from Muslim citizens alone.

The passing of this clause exhausted the patience of non-Muslim members of the Assembly, who on 2nd November staged a walk-out in protest against the trend of decisions, declaring that they would no longer take part in the framing of the Constitution. This declaration of non-co-operation came, the Law Minister said, as a bolt from the blue. He pleaded that the clause was not intended for the conversion of non-Muslims who would not suffer in the least from the operation of the clause. He also gave an assurance that members of the Muslim League in the Constituent Assembly were willing to incorporate amendments in the Constitution to safeguard the rights of minorities " in the appropriate place. " The assurance has done little to assuage the misgivings of the non-Muslim communities, and at the moment a crisis has been created, and it is difficult to see how it can be averted unless the Constituent Assembly retraces its steps and makes Pakistan, like India, a secular State, forgetting for the time being the circumstances in which the State took its rise.

Pakistan's Constitution and Detentions

The Pakistani Congress Party, which made the above-mentioned vain attempts to make Pakistan a secular State, made itself conspicuous for another brave attempt to amend the Constitution of Pakistan. The Constitution as drafted contains, it would appear, no Article, corresponding to Art. 22 in our Constitution which provides for preventive detention. But it does not contain any Article either which forbids suspension of habeas corpus in peace-time like the one to be found in the United States Constitution. The Congress Party saw in the lack of such an Article a grave constitutional defect, and the Secretary of the Party moved an amendment for the purpose of inserting a provision in the Constitution that " there should be no detention without trial. " Seeing that the amendment was not even restricted in scope, limiting its application to war conditions, the Muslim League members of the Constituent Assembly must have felt that the Congress Party could not be very serious about this and that its only intention in pressing it was to lower Pakistan in the estimation of democratic countries. They must also have been wondering why, if the Congress was jealous of Personal Freedom, it had so outrageously betrayed the principle in India, where not only was there no provision in the Constitution to taboo preventive detention but there was an affirmative provision permitting such detention. The amendment was consequently rejected by the Constituent Assembly by 34 vots to 11.

But this occasion was seized by the sponsors of the Amendment in condemning the continued detention in jail for six years of Khan Abdul Ghaffar Khan. The former Chief Minister of undivided Bengal, Mr. Fazl-ul-Haq, also took this occasion to condemn the Public Safety Acts of Pakistan. It is not known that these Acts are more objectionable than the Public Safety Acts of India, and the adjectives which he applied to the Pakistani Acts, "atrocious and disgraceful," would seem to be quite apt if applied to the Indian Acts also. But those matters, not being particularly relevant in the discussion of the Constitution, were not seriously considered by the Constituent Assembly.

The whirligig of time seems to be bringing a change in the policy of ruthless detentions that Khan Abdul Qaiyum was following in the North-West Frontier Province. Since Mr. Qaiyum has now ceased to be Chief Minister, it appears likely that there will be a change in this policy and that Khan Abdul Ghaffar Khan's brother, Dr. Khan Sahib, who is held in detention in Abbottabad, will at last be released. Such a move, if it materializes, will of course be widely welcomed, but even if it does materialize it will only show how dangerous it is to leave such an essential freedom as Freedom of Person at the mercy of the Executive supported by the legislature, as is the case in India. It is for the purpose of preventing such outrages on this basic liberty that the U. S. Constitution provides that there shall be no preventive detention except in emergencies of external war or internal rebellion. (That Dr. Khan Sahib will obtain justice in the end seems probable because of a report that the present Governor of the North-West Frontier Province has appointed a special committee to review all cases of detention.)

Human Rights and Fundamental Freedoms

UNITED NATIONS DAY CELEBRATION IN POONA

On the occasion of the United Nations Day celebration held under the auspices of the Poona Branch of the Indian Council of World Affairs, Mr. Vaze spoke on " human rights and fundamental freedoms," the preservation of which intact, he pointed, was made under the United Nations Charter an integral part of the work of the Security Council, the primary object of which was the maintenance of international peace by resort, where necessary, to collective security measures. The enactment of a Declaration of Human Rights was a first step in this process, and inasmuch as the Declaration received the adhesion of all countries without exception, it was a satisfactory first step. But, Mr. Vaze said, though this was satisfactory, by itself it would be wholly inadequate since the Declaration was a mere statement of aspirations without sanctions to put them into effect. The Declaration is now to be followed by a Covenant on Human Rights which will have legal binding force for those nations which will adhere to it. This international law in respect of human rights, however, is likely to be most unsatisfactory (Mr. Vaze pointed out) because it leaves too many loopholes for national Governments to exercise arbitrary powers, in respect, for instance, of Freedom of Person and Freedom of Speech.

Mr. Vaze further remarked that even if the Covenant, contrary to expectations, became perfect, procedure laid down for the implementation of the rights was thoroughly ineffective. The Human Rights Committee which is to be in charge of this implementation was to be only a conciliatory body; it would as a fact-finding authority inquire into any complaints brought to it about violations of the Covenant and thereafter would offer its good offices to the parties concerned with a view to the settlement of differences on the basis of respect for human rights and

it would not be competent for the Committee to go beyond such conciliation and adjudicate the issues involved. Nor would any complaints be entertained by the Committee unless sponsored by some State. That is to say, one State must lay a charge against another State before the Committee will take notice of it. Private petitions, submitted by even recognized non-governmental organizations, would be taboo. It was obvious (Mr. Vaze said) that this procedure was doomed to futility. Either the procedure would not be availed of by States, or alternatively, if used, would have the effect of exacerbating international relationships. The representative of Belgium, Mr. Kaeckenbeeck, well put it at the 9th session of the Commission on Human Rights in May last. He said:

> Before the implementation procedure could be initiated, it was necessary to start a dispute between two States, which was precisely what should be avoided, the more so since no procedure which did not comprise proceedings before a legal tribunal was a reliable means of solving such disputes. In addition, it was to be feared that, faced with the alternative of embarrassing a friendly State, many governments would hesitate to set themselves up as the protectors of foreigners and, hence, that protection would become the monopoly of governments anxious to aggravate friction.

Police Assault on Pressmen

CHARGE FOUND TO BE "ENTIRELY BASELESS"

Mr. Justice P. B. Mukherjee, who was appointed by the West Bengal Government to inquire into the allegation of a planned assault on pressmen in the Calcutta maidan on 22nd July, has submitted a report of his inquiry, in which he clears the police authorities of all blame. He points out that the pressmen themselves, in assembling in a group of 40 to 50, committed a breach of the order under sec. 144, Cr. P. C., prohibiting a gathering of more than five persons, and that they further committed a breach of the law in resisting the arrest of a reporter of "Swadhinta," who was wanted by the police. He says:

> The police did not obstruct or interfere with the activities by closing any source of information whatever to the press and the charge made by the press, on this account against the police cannot be sustained and is unfounded and misinformed.
>
> The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statutary law, his privilege is no other and no higher.
>
> I am of the opinion that the press certainly have a right to go and watch attempts to hold a banned meeting and to watch the police action to disperse such banned meeting. That is not an illegal act. What is illegal in this case is their congregation into an assembly of more than five in one place, which was not necessary for the purpose of watching and reporting.
>
> Liberty of the press does not give liberty to the press to interfere with policemen on duty. If the policeman is arresting a person wrongly, then it is for that person or for any other to complain about his illegal arrest before a court of law. It is not for his colleagues or his fellow-citizens to prevent the discharge of the duties by a policeman, however ill-conceived the action of a policeman might be.

Mr. Mukherjee found that neither the Commissioner of Police, nor the Deputy Commissioner of the Headquarters, nor the other Deputy Commissioners or Assistant Commissioners were in any manner involved in the assault or arrests that took place, which were due perhaps to some plain clothes policemen who could not be traced.

Suppression of Pakistani Newspapers

Describing how the Pakistani press is suppressed, the "Times of India" says editorially in its issue of 9th November about the anti-press laws of Pakistan:

> They specially empower the Dominion Government to stifle the free discussion of external affairs and to suppress the spread of information by forcing newspapermen to disclose the source of their information on the penalty of being thrown behind the prison bars. It cannot be said that these anti-press laws merely disfigure the statute books. They have been used on the slightest pretext. As the Pakistan Federal Union of Journalists pointed out last month at its delegates' meeting, the executive's contempt for the press has been shown so often and so arbitrarily that it has now grown into a menace to democratic government. For instance, newspaper declarations have been refused and cancelled. When publications are not banned altogether, demands for a heavy security deposit serve the purpose of strangling them. Pre-censorship has been resorted to. Journalists and even cartoonists work under the ever-present danger of arbitrary arrest on charges "which could not stand examination before an independent judiciary." Among these sustained efforts to stifle free and honest newspapers are the attempts to "corrupt the press with favours and financial lures and at times even with intimidation."

Abolition of Trial by Jury in U. P.

The U. P. Government inaugurated on 15th October what it calls "far-reaching legal reforms" in the State, one of these reforms being the abolition of the system of trial by jury in the sessions court.

The jury system of trial of offenders was brought into effect in this State in 1924 but recently certain influential quarters began to oppose this system, as they thought it was resulting in more acquittals than was desirable in the interest of law and order. The State Government appointed a Judicial Enquiry Committee and it recommitted the abolition of the jury system.

Taking their cue from Dr. K. N. Katju, India's Home Minister who expressed the view that courts should not be allowed to become courts of acquittal, the State Government abolished the jury system, as the system was tending to make the courts "courts of acquittal."

For some time controversy had raged round this proposed reform and it was pointed out by critics that abolition of the system was contrary to the spirit of Panchayat Raj, which the State Government and India's Home Minister so much applauded.

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