

Foreign Department Publication

THE STRUGGLE FOR CIVIL  
LIBERTIES

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WITH A FOREWORD BY  
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## FOREWORD

There has been much talk of civil liberties in India during recent months. That is not surprising for the suppression of civil liberty here has assumed prodigious proportions and become a public scandal of the first magnitude. It affects all of us intimately and mere self-interest would prompt us to combat this suppression. And yet, in spite of all this talk and interest, there are not many persons who think clearly about it or are aware of the full significance of the idea. Questions are frequently put to us which betray an amazing ignorance of the subject, and economic and social questions are mixed up with it. Dr. Ram Manohar Lohia has done well to prepare this pamphlet on the subject, to tell us what the concept of civil liberty is and how it has grown in western countries. I hope that many will read it and that it will help us in combating the suppression of civil liberties here and the ever-increasing encroachment by the State on what little remains.

*December 21, 1936*

JAWAHARLAL NEHRU



## CIVIL LIBERTIES IN FRANCE

“The League was born out of a revolt of conscience against the will fanatically to maintain an illegal and unjust condemnation. It was founded with the object to defend, against the spirit of caste and race and reasons of State, all survivals of a remote past, the Rights of Man as affirmed by the French Revolution.” So begins a resolution of the 1935 Congress of the French League of Rights of Man.

Dreyfus is a household word in France. It is almost a synonym of the tyranny of a ruling caste and the vain and futile prejudices on which such tyranny rests. It awakens men to the dangers and the horror of a judiciary that is associated with the ruling caste. At the same time, it is a by-word for the dogged determination of the people to fight against tyranny and injustice. No matter if miscarriage of justice is oft repeated, Dreyfus is the word that denotes final victory of injustice through persistence and continued effort.

Dreyfus was a Jew and an officer in the French Army. A very capable man, he succeeded in arousing the ire of the caste that considered the army its preserve. Important army secrets were leaking out to Germany and the responsibility was naturally fastened on Dreyfus. Dreyfus was dishonoured, sentenced to hard labour and transported to the Devils Isle. Time after time, true facts were brought before the courts, which were none too pleasant for the army aristocracy, but reasons of State and the prestige of the French army decided the verdict against Dreyfus. The conscience of the French nation was convulsed and Emile Zola made a spirited attack on the culpability of the Courts. Twelve years of persistent effort, 1894-

1906, succeeded in the rehabilitation of Dreyfus.

In 1898, the League of Rights of Man was founded. Men had harboured the fond illusion that, with the end of the Dreyfus case, ignorance and prejudice and miscarriage of justice had been finally overcome. The League has since had to defend several cases against persecution of opinion, illegal detention, arbitrary action of the Government, tyrannous laws and such other attacks upon the Rights of Man.

The League has to-day a membership of over 160,000 which is spread over a territory of 96 departmental federations and 2,490 sections. Each section has its own executive and the right to convene conferences and public and private meetings. It may intervene on behalf of victims of injustice and arbitrary action and report to the higher Committees for the organisation of national agitation on certain issues. The League meets once a year in an annual Congress, reports on the work done, elects a central Executive and raises issues of changes in existing laws or of their maladministration. It is not difficult to imagine the extent to which the League, with its large membership and marvellous territorial reach, has become a part of French national life.

The more important of the Statutes of the League are:

1. A French Association to defend the principles of Liberty, Equality and Justice laid down in the "Declarations of the Rights of Man" of 1789 and 1793.
2. The League intervenes on every occasion where an injustice, an arbitrary act, an abuse of power or an illegality is done against the individual, the associations and the peoples. Its action consists in appeal to public conscience, presentations to public authorities, petitions to Parliament, publication of literature, conferences and demonstrations.

3. No member of the Central Committee can assume Governmental functions.
4. An annual subscription of 10 Francs is levied on each member.

The concept of civil rights in any clear form arose first out of the French Revolution. In their fight against the Bastille where countless men were made to suffer and die without justice and without law, except an order of the Government, the French gave to the world a concept of what no Government dare do to its citizens and what is the right of every man. "Men are born and live free and equal before law;" "The aim of all political association (the State) is the conservation of natural rights of man; these rights are liberty, property, security and resistance to oppression"; "Sovereignty resides in the nation. No group or individual dare exercise authority which does not emanate expressly from the nation"; "Law is an expression of general will. All citizens are equally admissible to public employment and dignities"; "No man may be accused, arrested or detained out of the scope of the law and the prescribed forms"; "The free communication of ideas and opinion is a very precious right of man"; are a few of the articles laid down by the French Constitution of 1789. This statement of human rights is among the first points of departure for modern civilisation in the regulation of relations between the citizen and the Government. The French League through its incessant and numerous activities, attempts to pattern real life on the ideal and, also, to chisel the ideal brighter and clearer.

What this ideal is like, is evidenced in an extract from a speech Monsieur Guernut, an ex-General Secretary, made in Rumania in 1925:

"It is said that Mr. Caillaux, while the war was on, wanted a piece of compromise. That is bad, but, then, it is his right to say so".

"It is said that M. Caillaux, even during the war,

wanted to change the Constitution. That is bad, but it is his right."

"It is said that M. Caillaux believed that peace was possible in 1917. Perhaps an absurd idea, but that is his right." Monsieur Caillaux, who had to suffer a preventive detention of 27 months, is one of those whom the Civil Liberties Unions of the World seize upon as an "affair" around which to rouse a terrific campaign against executive encroachment on human rights.

Before, however, we fully understand the League's concept of civil rights, let us examine how it seeks to adapt judicial and executive action to its principles. In order that justice is done from day to day to individual sufferers, the League makes representations on their behalf. So, during the fortnight ending on 24th September 1936, the numerous Sections and Federations of the League intervened for about 50 individual cases with either the Minister of Justice, of Public Health, of Education or of Interior. Authentic information on each individual case is collected and documented dossiers prepared. The League and its Sections, also, pronounce their judgment on cases involving breach of civil rights in the form of resolutions and national campaign is sometimes organised. The sympathetic section of the daily press and journals, to whom communiques are furnished, assist the League in agitating public opinion in the necessary direction. The League itself issues a fortnightly periodical "Les Cahiers Des Droits De L'Homme", (Sheets of the Rights of Man), which surveys its work, resolutions and conferences and is generally educative on human rights. It publishes and distributes a large number of brochures of information and education and tracts, such as, "The Dreyfus Affair", "Democracy and War", "The Present Duty of the League", "Problems of Nationalities", "Colonel Picart in Prison", "Declarations of Rights of Man and of Citizens",

“Fascism in Italy”. Further, the League seeks to touch public conscience by organising mass meetings as also educative conferences. The mass meetings dramatise certain broad ideas and the educative conferences are designed for a deeper and more detailed impression. Vigilance, publicity and doggedness seem to be the League’s eminent qualities.

The League does not confine its attention to France but is vigilant on the suppression of civil rights in the colonies and of other peoples. Monsieur Moutet, the present Secretary of State for Colonies, is a member of the League. In the course of a letter to the President of the League recounting his achievements during two months, Moutet says, “Since the advent to power of the new Government, the dossiers of 1871 political prisoners in Indo-China have been examined. For over 68 per cent of these, for 1277, interventions (mostly unconditional release) have been effected.” In like manner the League carries on agitation for sufferers in other countries, particularly those under Fascist Regime.

The French League has rolled on from milestone to milestone on the road towards greater human dignity. Its tasks are not confined to the defence of human rights against the overt attacks of laws of sedition, of press, of restrictions on freedom of association and those of arbitrary executive action or of miscarriage of justice. Its concept of civil rights is wider. The League seeks also to fight all ultimate sources of mischief and to provide all citizens with a solid base from where they may ward off attacks on their rights. Democracy and peace are, therefore, essential items in the League’s propaganda; the former to safeguard and extend the sovereignty of the people and the latter to secure its unbroken enjoyment. In the absence of democracy, the League rightly fears, human liberties stand in danger of being engulfed by dictatorial authority.



In a message of greetings to the Deputies of the People's Front, the League defines its task as the defence of democratic liberties conquered by the people, provision of bread to workers and labour to youth and the conferment of the grand human peace on the world. The League reminds the Deputies of their pledge that they will abolish the infamous laws of restrictions on public opinion and work for the liberty of conscience and encouragement of non-denominational public schools. They will ensure the liberty of the working class to organise and to strike. They will seek to deliver the State and the organs of information of the democracy, press, etc. from the tyranny of money and financial oligarchies. They will effect an increase in the people's purchasing power, nationalise the Bank of France and the Arms Industry and take the world from armed peace to peace without arms. Further, the League draws the attention of the Deputies to its own demands for curtailment of the powers of the judiciary and police and the grant of freedom to the colonial peoples and the extension of franchise to women.

In the words of an ex-President, Ferdinand Buisson, the League is an advocate of the Little Man, of the working class, of the colonial peoples and oppressed nationalities and the organiser of public conscience.

The League to-day makes an approach to public conscience not merely on the judicial plane but also on the political. It is no mere revolt against miscarriage of justice or the existing penal laws but a positive defence of democracy and republicanism. The League does not directly participate in the elections but devotes itself to delineating the grand directions in which public authority, Government and Parliament alike, should engage itself.

An ex-General Secretary of the League once proclaimed that the League shall continue till "the last knot of the last chain of the last slave" is broken

asunder. Its President declares, "We are the vanguard of the Republic, the defence of democracy."

No greater tribute could be paid to the oldest of the Civil Rights Leagues in the world than that its President, Monsieur Victor Basch, is also the President of the People's Front, the power behind the Blum Government.

## CIVIL LIBERTIES IN AMERICA

In the theoretical justification of extensive civil liberties and, in particular, of the rights of the citizen in opposition to the Government, the United States of America easily holds the palm in the world. The unlimited moral and legal freedom of the individual to express by speech, if he so chooses his revolt against the existing social order and the Government has met with an openhearted and an unhedged assent. Thomas Jefferson, Patrick Henry, Benjamin Franklin and Abraham Lincoln, in pre-war times, ex-Governor Smith, Senator Borah and Justice Holmes, in recent years, to select only a few, have expressed noble sentiments in advocacy of unfettered freedom of opposition to the Government. Defending the 'field of opinion' against the magistracy, Thomas Jefferson declared in 1786 that it was time enough for the government 'to interfere when principles break out into overt acts against peace and good order.' A little earlier, Patrick Henry had advised the people to 'guard with zealous attention the public liberty' and to 'suspect everyone who approaches that jewel.' Admitting that abuses of freedom of speech ought to be suppressed, Benjamin Franklin retorted, 'to whom dare we commit the power of doing it.' Whenever the people shall grow weary of the existing government, said Abraham Lincoln in 1861, 'they can exercise their constitutional rights of amending it, or their revolutionary right of overthrowing it.' The United States Commission on Industrial Relations reported in 1914 that a government which could be maintained only by the suppression of criticism should not be maintained. Ex-Governor Smith of New York while pardoning prisoner Larkin in 1923,

thought that 'an imprisonment of five years for the mere expression of an erroneous, or even an illegal, political doctrine unaccompanied by an overt act' was not at all required. Senator Borah said a year ago, "Repression is not only the enemy of free government, but it is the breeder of revolutions. It is the enemy of progress and human happiness. And above all, it is neither a test of error nor of truth." In the course of an opinion, Justice Holmes remarked only recently, "those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty." For fear either that it will led to tyranny, that it will block progress and breed revolutions or that society will stagnate and experiments in better social forms stand outlawed, repression of opinion meets with unqualified condemnation at the hands of America's most eminent and respected men of affairs.

Still, in practice, America has its Tom Mooney and Billings, Tampa, Scottsboro, Sheriffs and vigilantes to put down rural agitation and smash workers' strikes, laws of sedition and criminal anarchy and suppression of freedom in education. Only with these 'affairs' and laws as the background, can one expect to understand the nature and extent of the American Civil Liberties movement.

The Mooney-Billings case, as has been suggested, is 'the civil counterpart of the great French military scandal,' the Dreyfus affair. Mooney and Billings were trade unionists before they were arrested on a charge of bomb-throwing in 1916. The industrialists, particularly the shipowners and the railway and electric corporations, of North California were then smarting under the 'closed shop' and the organisational strength of workers that were in no small measure due to Mooney. During the days of war hysteria, a dynamite exploded in the rear of a patriotic parade in California and the crime was fastened upon Mooney and his associates.

They were sentenced to a life term and it is now twenty years since they are held in prison. Prosecution witnesses, on whose evidence the original conviction followed, have been, one by one, proved to be unreliable and the presentation of testimony to be perjured. Congressional records and Federal enquiries reveal the then District Attorney as a crook who manufactured evidence. State officials have been shown up as men of the California Chambers of Commerce and the private-owned Railways. Positive photographic evidence of Mooney's alibi has been obtained by accident. Judge Griffin, who presided at Mooney's trial, says, "there can be no two opinions. There is now no evidence against him. There is not even a serious suggestion that it exists."

Still, Mooney and Billings continue to languish away in prison. The reason for this was recently given by a California editor, "It is quite beside the point whether or not they are guilty of the particular crimes of which they were charged and convicted. The question is: are Mooney and Billings the sort of people we want to run at large? We have decided this in the negative and we have locked them up. We intend to keep them there."

Mooney and Billings are victims of case-fixing and frame-up and miscarriage of justice. They are symbolic of a judicial and political administration that is too blatantly on the side of big property.

Since March 25, 1931, nine Negro boys are held in an American prison on a charge of assault and rape on two white girls. They were travelling on a freight train when they were provoked to a fight by a few white boys. The white boys were thrown off the train, and, on their telephonic information, an infuriated mob met the train at Scottsboro in the State of Alabama. Two white girls, hobbing on the same train, lodged a complaint of rape in order to escape a charge of vagrancy. Race hysteria and Ku Klux Klan did the rest.

Medical evidence showed that the girls had lied. One girl subsequently retracted her testimony. The United States Supreme Court has twice reversed previous convictions. And yet the Negro boys are held in prison.

In Alabama, the Courts and the State administration are ridden by race-hatred and the fiendish desire legally or illegally to lynch Negroes. The Negroes are underprivileged and live under the dictatorial rule of their economic masters, the former slave-owners of the South.

In Tampa, in the State of Florida, a man, who wanted to change the administration of the country and fought for the rights and liberties of the people, was illegally kidnapped and flogged to death by the regular State police. The Tampa Police and the ku-klux-klan knights of the whitehood deliberately burnt Joseph Shoe-maker and poured boiling tar on his body. The Committee for the Defence of Civil Rights in Tampa informed after Shoemaker's death has disclosed the widespread influence exercised by the gambling dens and the cigar manufactures and their hired gangmen on the State administration. No one who chooses to organise workers, employed and unemployed, for a better living and a superior Government is safe at their hands.

The suppression of civil liberties on the land, that is, in the villages is quite as widespread and acute. The fall in agricultural prices coupled with the heavy fixed charges of the monopolists, the railroad interests and the banking groups have reduced the farmers, particularly of South and West America, to dire straits. Out of these economic conditions ever since 1932, rural struggles have developed to an unprecedented extent and variety. There has been a corresponding increase in the use of repressive measures, private and official, directed against the farmers. Ground down by poverty and hunger, if the small land-owning farmers and farm labourers choose to agitate and struggle,

they are confronted with a ferocious resistance. Mass movements, for example, against chattel-mortgage foreclosures appeared all over the country as early as February 1933 and auction sales became impossible. The organised and determined farmers succeeded in forbidding high bids and what is commonly known as "penny sales" took place. Farm machinery brought anything upto 8 cents (4 annas) an item and a team of horses went for 12 cents. Courts and officers sought to prevent this. Leaders of such protests against foreclosure sales were punished with fines or with imprisonment. In the year 1933, over 200,000 dairy farmers, oppressed by low prices paid them by monopoly milk companies, organised into new farmer groups and resorted to strikes. They picketed the roads leading into towns where creameries and cheese factories were located. Strike-breaking trucks were escorted by the hired gangmen of the milk companies as also the State militia. Armed encounters were a frequent occurrence and a large number of farmers was thrown into jail.

In the Southern States of America, a vicious system of land tenure prevails which is commonly known as share-cropping. The share-croppers, of whom Negroes form a very high percentage, own neither land nor means of cultivation. They are virtually the serfs of the big landowner who is legally entitled to a one-half share of the produce but, in fact, extorts whatever he likes. Attempts to organise these share-croppers and tenants and awaken them to a sense of their rights have met with violent reprisals. The organisers are attacked by private guards of the ku-klux-klan and sheriffs together with the State judiciary have been fairly active with their prisons and lawcourts. Banning of meetings and their violent dispersal are frequent practices.

As the valuable brochure of the American Civil Liberties Union "The Struggle for Civil Liberty on the Land," puts it: Vigilantes, mobs, troops, sheriffs gunmen—legal and illegal agencies alike—have been

brought into play against rural agitation.

In the American colonies Philippines, Puerto Rico, Virgin Islands, Hawaii, Samoa and Guam, Haiti peaceful assembly for the redress of grievances is often prohibited, the right of free speech is severely curtailed by laws of sedition and repressive measures such as use of military, banning of organisations and exiling of 'undesirables' are not an uncommon practice. In another brochure of the Union, the main causes of such restrictions are shown to be: (1) the imposition of an American culture, based on the assumption of the superiority of Anglo-Saxon civilisation (2) the penetration of American commercial interests and their support by the Government as against the interests of the colonial peoples, (3) centralised and arbitrary government by American officials, many either navy officers or with their mentality (4) absence of legislation in protection of civil rights such as the right to agitate for independence and that of peasants and workers to organise associations for the betterment of their conditions.

Laws of sedition and criminal anarchy and of compulsory patriotism in educational institutions very seriously suppress freedom of speech and of imparting of information in several States of America. In Indiana, for example, a statement that 'people can force Congress to change conditions' was construed as sedition and a heavy sentence was the outcome. In several States, teachers are required to take oaths of loyalty. Libraries are cleansed of books and text books of passages that are deemed objectionable by the State administration. Certain subjects of study are ruled out as vicious. Strict censorship over students' papers is attempted. Auditoriums of schools, which by right belong to the people for purposes of lawful meetings, are refused to political organisations of a radical profession.

This illustrative background of the wide array of affairs and laws in the United States of America will have



shown the dangers to the civil liberties of the people, that lie or lurk in the Government of the country. The struggle for civil liberties on the land and in Tampa shows the extent of organised private violence that is tolerated and even encouraged by Governments of several States. The political machinery of numerous States is more or less in the employ of big interests and officers of Law and police are no better than case-fixers, oppressive gangmen and fabricants of evidence. Practically all the cases described here reveal the enormous miscarriage of justice. Scottsboro affair and repression in colonies demonstrate the ruthless oppression of imperialist interests when they find a convenient sanction in the mob hysteria of racial domination. And above it all, are the laws of sedition and of assembly, the restrictions on Negroes rights and on freedom in education, that choke all efforts for the reform of abuses in justice and administration and national economy.

Let us remember the exalted conception of civil rights held by eminent Americans in the past as also now. This conception is also enshrined in the following articles of the Bill of Rights of the Federal Constitution.

No law shall abridge the freedom of speech or of the press and of the right of the people peacefully to assemble. No warrant shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. No person shall be deprived of life, liberty, or property, without due process of law. No person shall be denied the equal protection of laws. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Why then is this inhuman variance of practice from the laws permitted? Is it that public vigilance is not sufficiently strong? Or, is it, that the conception of civil rights first arose in the struggle between feudal absolutism and modern industry, which, like the poacher turned gamekeeper,

has no use left for its former ideas, now that it is engaged in a deadly combat with the masses both at home and in the colonies? Perhaps, it is both.

No one can, however, accuse the American Civil Liberties Union of inactivity or lack of vigilance. In its annual story of the fight for civil liberty, which is a precious document of far-reaching social importance, it gives a close-up survey of all manners of suppression and of the forces ranged on the two sides. The Union plans its campaigns for the year and those of the running year further testify its vigilance. Under the four sections of Freedom of opinion, Rights of Labour, Censorship and Racial Minorities it evolved a fight on 14 different fronts. Under Freedom of Opinion, they comprise opposition to all forms to gag legislation and to restrictions on freedom in education and campaigns for the release of political prisoners, for changes in the immigration and deportation laws and for the setting aside of all recognised public places in all areas or cities for purposes of meetings and organisation. The Rights of Labour and Peasantry include the right to organise, strike and picket and the right of the unemployed to organise and demonstrate. Under the Section of Censorship is understood the fight for freedom of the radio by requiring equal facilities for all sides of controversial topics and opposition to Censor's control over motion pictures, books and plays and the post office. The fight for racial minorities consists of campaigns against lynching and for Negroes' civil rights and for civil forms of Government for the colonies.

Freedom of opinion is the rock-bottom of the concept of civil liberties held by the Americans Union. All through its various activities and the copious literature that the Union ceaselessly produces, there runs a single thread of the historic American position on the freedom of speech. No expression of opinion shall be punished, even if it extends up to the advocacy of

violent overthrow of Government. Opinion to be punished must be accompanied by an overt act of revolt. It is easy enough to imagine the vast labour that must be undertaken in any country to approximate the actual practices of Government to this ideal concept of civil liberties. Laws of sedition have to be radically changed and a constant vigil kept on the decisions of law-courts. Public opinion is a potent instrument and the conscience of the people must not be allowed to relapse into a state of indolence or perversity, so that it may always revolt against laws and decisions contrary to the right of unlimited freedom of opinion. Dark interests will, of course, tenaciously cling to their power and raise scares of insecurity and violence and disloyalty and revolution to hack at the civil rights of the people. Lest the people should be deluded to forego their rights and, even, to support those who would restrict their freedom, these scares have to be exposed and fought against. On a more theoretical plane too attacks have been directed against the basic civil right of unrestricted freedom of opinion. It is argued that such freedom can be granted only to those who will secure it to their opponents when they have attained control over the State. The American Union has rightly described this argument as highbrow; for, whatever the reasons adduced for the propriety of governmental control over opinion, all the corollaries of such a control, suppression and tyranny and social stagnation and blocking of progress, flow in as soon as its propriety is admitted. If society is to progress, no theory nor argument shall restrict the basic civil right of the people to express any opinion unaccompanied by an overt act. It is time enough to punish people when they actually resort to revolutionary action.

It will be seen that the American Union is not quite so extensive in its field of operations as the French League. It is, however, a very assiduous watch-dog

of the civil rights of the people in the narrow sense of the term. No doubt, in its effort to secure freedom of speech and the right to organise and picket and proper dispensation of justice, it is faced with social and economic conditions which, as in France, are the roots of all mischief. No doubt every attack on civil liberties is but a reflection of certain basic social condition. A thoroughgoing investigation into acts of suppression of civil rights has thrown very instructive sidelights on the economy and the political management of the country, as with Scottsboro, Tampa, Mooney and Sharecroppers. In so far, a campaign for civil liberties resolves indirectly into a campaign against social abuses. The concept of civil liberties, therefore, includes indirectly the campaigns for reform in administration, police and judiciary and for the suppression of private gangsterism.

The American Civil Liberties Union has over 3,000 members and contributors. Over 5,000 persons are active in one way or another in its work. This number includes 700 co-operating attorneys, 800 correspondents and investigators and 500 speakers, writers and churchmen who have volunteered their services. The ultimate control of policies rests in a National Committee which represents every shade of economic and political opinion and includes lawyers, teachers, clergymen, editors, businessmen and labour organisers. The Union is managed by a Board of Directors and the work of the national headquarters at New York is in the hands of a director, a staff counsel, a secretary and a publicity director. It has a representative in Washington, State chairmen in 41 states, and branches in 23 cities. The operating expenses of the Union are about 20,000 dollars a year (Rs. 60,000) and its annual financial assistance in legal aid goes up to 10,000 dollars. Distributed all over the country, the co-operating attorneys assist in legal advice and defence; the correspondents investigate into breaches

of civil rights as they arise from time to time, collect all relevant information and report to headquarters; the writers, speakers and clergymen make an appeal to public conscience and develop national campaigns. The Union was organised in 1920 and has issued over 40 brochures and other mimeographed material. Its Weekly Press Releases (Bulletins) which go out to several hundred newspapers and periodicals all over the country already amount to over 750.

Publicity is the soul of all civil liberties agitation and the American Union is keenly conscious of it. Aside of numerous publications and national campaigns, the Union makes an individual appeal to all who read its publications. In each of these, there is a series of "commandments" under "what you can do" exhorting readers to write to the editor of their newspaper asking for editorial comment on the subject matter of the particular pamphlet, to utilise the material in their conversations and speeches and to send protests, individually as also through their organisation, against the specific breach of civil liberties detailed in the pamphlet.

There are no doubt other sectional agencies like the International Labour Defence, the Association for the advancement of Coloured Peoples, Scottsboro Defence Committee, Defence of Civil Rights in Tampa, which engage in the defence of specific civil liberties. But the Civil Liberties Union is always there and it is a happy sign that of late sufficient goodwill and solidarity among all these organisations has come into being to give the civil liberties movement in America added strength and enthusiastic determination.

There is also the International Committee for Political Prisoners, which was formed in 1924 and which is designed solely to deal with appeals for protests and aid on behalf of victims of political persecution in other countries. In its annual survey of persecution abroad, the Committee estimated for 1933 a total of 230,000 political prisoners for the world, of which India contri-

buted the very large number of 40,000. The Committee has published several brochures, such as, Political Persecution throughout the World and Venezuela Land of Oil and Tyranny.

Our account of the Civil Liberties Movement in America, will however, be incomplete, unless we pay a personal tribute to Roger N. Baldwin who is the chief of American libertarians and to whose untiring efforts and will is due the success and growth of the American Civil Liberties Union.

## CIVIL LIBERTIES IN ENGLAND

It is only in recent years that the English citizen has begun to experience attacks upon his civil liberties. During the latter half of the nineteenth century and till before the outbreak of the world war, the Englishman had settled down to a comparatively unbroken enjoyment of the rights of free speech and assembly and association and equal justice which he had won after great efforts. Right from the days of the mediaeval Magna Charta upto the nineteenth century Chartist revolt for democracy and the Tolpuddle martyrdom of workers who had dared to form Trade Unions of the working-class, the fight for social changes and for civil rights had been waged. Social progress had later become possible in England without basic transference of power from one class to another. This was due to a variety of reasons such as the possession of the world's best industrial machinery and the largest colonial domains. What the American ruling caste did to the Negroes and the emigrant workers at home, the English could conveniently shift upon the colonial peoples. The English middle classes and the working class were fairly prosperous and participated, however meagrely, in the spoils of their ruling caste; they did not clamour for basic social changes and their civil rights were consequently untouched. Post-war England is, however, different. Social progress is now become dependent on disturbance in the control of political power. The fight for social progress, therefore, involves governmental attacks on the civil liberties of such citizens as seek such a progress and, therefore, a basic transference of political power. Civil Liberties have now acquired a new meaning and, though won

after continuous sacrifices, they have to be fought for again. Whoever is for democracy as the basis of social progress, whatever his other opinions on different economic and political systems may be, he lines up in this broad front of civil liberties against the autocracy and misuse of executive power.

In view of the fact that the traditions of civil liberties are particularly strong in the country and that a cry raised on an issue of freedom of opinion or organisation can rally large sections, flagrant breaches of the American or the colonial type are still uncommon. The attacks are directed more in isolated localities and on details of police and executive procedure and, oftener, in an indirect manner. Not that such indirect and subtler curtailment in the liberties of citizens does not take place in other countries and that the American and the French Civil Liberties Unions do not have to combat it with vigilance. But the activities of the British Union provide a more instructive field for the study of such subtle attacks of the Government on citizens' rights, even as the Union's major operations are directed against them.

Certain methods of the police securely sheltered from the public eye, which are quite contrary to law but are commonly practised, have of recent been widely talked about in England. They relate to the prevalent irregularities of wrongful arrests, of the questioning in regard to offences, of the influence on lower courts for refusal of bail and of wrongful detentions. "Suspected persons" are arrested on the flimsiest evidence of their "loitering with intent" and, it is believed, that the number of such wrongful arrests has increased in recent years. Individual policemen, often with an eye on promotion, effect the arrest of persons who, they allege, are loitering about suspiciously. To expose this police action of wrongful arrests, publicity in the newspapers and in the House of Commons has become necessary.



It is also the usual practice of the police to question a prisoner as to any offences of which he may be suspected other than that in connection with which he is in custody. That is clearly a violation of individual liberty. The Report of the Royal Commission on Police Powers and Procedure (1929) went so far as to recommend that the police should be rigidly instructed not to question a person in custody or in prison about any crime or offence with which he is or may be charged. There is a view, and that seems to be the proper view on civil liberties, that no statement, voluntary or otherwise, made to the police should be permitted as evidence. The police also exercises influence on the lower courts and police courts in the grant of bails. At the behest of the police, bails are either refused or excessive demands are made. This is a practice which requires a constant searchlight of publicity and exposure. In fact, so does the entire atmosphere of a police station which, as a Judge remarked sometime ago is "singularly conducive to confessions." The use by the police of agent provocateurs and the detention of arrested persons, while the police decide whether any charge shall be brought, are illegal practices and, yet, widespread.

Obsolete laws which have not been used for a century and over are now being revived. Legislation, in its executive application, is made to depart from its original designs and put to uses other than those intended by the legislators. Thus, for example, a law made a hundred years ago to prevent 'blowing a horn or a noisy instrument' was recently used by the police to prevent a loud speaker campaign for the Peace Ballot. At the same time, the commercial use of noisy instruments against which the law was directed is allowed without hindrance. An example of how an obsolete law is revived is the Statute of Edward III, passed in 1361, which has recently been used to imprison persons who have done nothing but who the Govern-

ment suspect might say something dangerous. As the declaration of principles of the British Civil Liberties Union says, "These restrictions are the danger signals. The only way to preserve freedom of speech is to resist now, before it is too late, each individual infringement wherever it is attempted."

Police bans, departmental encroachments and local legislation, which have no legal validity, have, of recent, tended to restrict severely the right of free assembly and procession. The English law on processions has, through a continuous series of court decisions, become very liberal so that there is no legal justification for an advance ban by the police on processions nor is a subsequent conviction easily obtainable in the case of moving processions on a charge of obstruction to traffic. Recent attempts have, however, been made by the police to ban processions in advance or disperse them by force. One such attempt in Manchester aroused such a storm of protest from prominent politicians and public-men of the country that the City Constable, despite his own ban, allowed the procession and demonstration to take place. An Armistice Day Procession in Blackburn, planned as a demonstration against War and Fascism, was banned by the local Chief Constable but, when the Council for Civil Liberties sent a telegram and a letter of protest, the ban was withdrawn on the following day. Certain other orderly processions have been dispersed with baton charges and arrests were made. The Council is following up the matter by interpellations in the House of Commons.

The law regarding meetings is not quite as liberal as that on processions. Still, there are traditional meeting-places in practically every area of the country where public gatherings have been held for generations. Of recent, the police has attempted to ban such meetings on the plea of obstruction to traffic. A serious interference with the right of assembly is the so-called "Trenchard Ban" on all meetings outside Labour Ex-

changes, where the unemployed pass in que for work or relief. The Council has helped in the organising of test meetings and contesting of test law-suits with varying success. There is the famous "Duncan Case" in which Mrs. Duncan is charged with obstructing a police officer in the execution of his duty, because she insisted on holding a meeting as there was no obstruction to traffic. The Council is assisting the case by way of press propoganda and arrangement of legal defence.

The Council also directs its campaigns against cases of political discrimination and victimisation. The refusal of the lessees of the Albert Hall, for example, to let their hall for a type of political meetings arouses protest from the Council as much as the victimisation of a professor or a teacher in an educational institution who is known to express pronounced views on such subjects as war and peace. The Council has often had to bring to light the opposition of the British Broadcasting Corporation to the judicial and fair presentation of differing views. That all this amounts to a curtailment of the freedom of thought and expression, there is no doubt. In some of these cases, the Government is directly involved. In view, however, of the subtle manner in which this censorship over thought is exercised, it is not strange that a highly developed sense of civil rights is preliminary to preventing it.

England, however, is not altogether devoid of major attacks on her civil liberties. The Incitement to Disaffection Act of 1934, as it has passed both Houses of Parliament, is to an extent different in its scope and provisions from the original plans of its sponsors. Still, under pretext of safeguarding His Majesty's Forces from incitement to disaffection or rebellion, stringent clauses have been enacted which will tend to suppress freedom of opinion in the country. As it has been pointed out in a statement of the Council, it will be very difficult for the publisher of a book, pamphlet

or newspaper to put in a strong defence, as the very existence of such literature, even though it may not have been expressly written for the army, might seduce a soldier. The Government had persistently refused to accept an amendment which would have limited the operation of the Act to literature devised and intended for the armed Forces. It is clear, therefore, that such literature as seeks to educate the public on the causes of war, the destruction that it effects and the measures to prevent such a calamity, though it may not contain a direct and special appeal to the soldiery, may be held objectionable under the scope of this Act. Moreover, the Act arms the magistracy with large powers of a general search. As the Council points out, such powers are capable of being used for political purposes, to enable the police to gain entry to the offices of political societies on which a single copy of an objectionable literature may be found. Assurances have of course been given by the Government that such wide powers will scarcely be used. But it is clear that behind the pretext of keeping intact the loyalty of the soldiery, a major attack on the freedom of opinion and its expression has been made by the Government through this Act. The Council has throughout the career of this legislation expressed a determined opposition to it and has succeeded in toning it down considerably. A much larger success achieved is the awakening of the consciousness of the British citizen to the menace of repression. This has been due largely to the vigilance of the Council which, within 48 hours of the publication of the text of the Bill, analysed its provisions and emphasised their dangerous character. This analysis was circulated to every member of the House of Commons. Meetings and demonstrations at which numerous political, religious, and other organisations participated were also organised. A Conference was organised in opposition to this legislation composed of 1600 delegates who were official

delegates of societies representing every phase of progressive thought. A mass demonstration organised by the Council in Trafalgar Square was described by the press as having drawn together all progressive elements to a degree never known before. Whatever may be the provisions of this legislation, the British citizen is now definitely awakened to the danger that it represents to his liberty and will not so lightly tolerate its executive application. Already certain printers have refused to print entirely legal material in fear of possible punishment under this Act and the Council has made this an issue in its campaign against the Act.

In England a large mass of legal standards, regulating the relation between the government and the citizen, has grown up through a series of Parliamentary enactments and, more particularly, the decision of law courts. The National Council for Civil Liberties takes its stand on this heritage of liberty and has in its declaration classified this heritage under six heads. They are: freedom of speech, freedom of assembly, freedom of association, freedom of thought and expression, full rights for all peoples under the British Parliament, democratic control of Government. We have already seen the manner in which the Government is seeking to curtail this freedom. The Council, therefore, has more ample opportunities than sister organisations in other countries of directing its attention to the details of executive and police procedure. It has, therefore, rightly stated in its declaration that "National Liberty is in a great measure the sum of local liberties and freedom as a whole will be preserved to the extent that men and women in their work and in their own localities resist legal encroachment upon their rights." In England it is not the law nor its judicial application that has yet become such a danger to civil liberties as it has in America. It is the irregular action of the police and other local bodies which though not so monstrously outspoken as a bad law or a bad decision hits

at the liberties of the people. In so far the concept of civil liberties of the British Union is emphasised by this opposition to executive and police action contrary to due processes of law.

The Council has also stood up for democratic control over Government. It opposes the recent practices of the Executive to put into force its measures and, only subsequently, submit them to Parliament for necessary legislation. The Council considers that, in the measure legislative functions are assumed by the Government departments and the Civil Service, the liberty of the citizen is curtailed. The vigilance of the Council is not confined to England, for it espouses the cause of all peoples under British Parliament. In the colonies of Gambia, Nigeria, Trinidad, Sierra Leona and others and in India, political parties and meetings are banned and leaders arrested and imprisoned without trial. The extent of its activities in behalf of victims of colonial oppression is discernible in its statement, "History shows that attacks on the freedom of Englishmen at home are always preceded by attacks on the rights of British subjects abroad." Ronald Kidd, the present Secretary of the Council, is actively associating himself with the campaign in England for Indian Civil Liberties.

The National Council for Civil Liberties was formed at the beginning of 1934, when the country was agitated on the provisions of the Incitement to Disaffection Bill. The need of a non-party and undenominational organisation was acutely felt. Such an organisation could concentrate into a single channel the diffused efforts of many political and other bodies. The Council has an Executive Committee of not more than 24 members which controls its day to day action. It takes associate members on a minimum annual subscription of five shillings and has succeeded in establishing several branches.

Among other activities the Council has developed

a particular form of organisation, which it calls Vigilance Committees. These Committees consisting of prominent writers and publicmen are sent to act as observers on the spot when processions and demonstrations are organised by one political party or the other. This institution has considerably curbed the irregular activities of the police who are afraid of the evidence of distinguished men and women in the law courts. The Council for example organised a Vigilance Committee of 30 persons consisting of such prominent men as Prof. Lasky, Mr. H.G. Wells, Mr. Nevinson, to report on cases of violence or irregularity on the occasion of simultaneous fascist and anti-fascist demonstrations in the Hyde Park of London. A temporary headquarter with a telephone was established for the day near the park and the Committee was to mix with the crowd in batches of two. Complaints of irregularities could thus be communicated at once on the telephone.

In its instructions to branches, members and affiliated societies, the Council has noted nine heads on which reports should be made. They relate to banning of or interferences with (1) meetings (2) processions (3) propaganda (leaflets, loud-speakers, etc.) (4) irregular police actions (5) censorship over literature, films, plays, radio, newspaper press and printers' refusal to print under Incitement to Disaffection Act, (6) victimisation for political, racial or religious reasons (7) cases of search or prosecution under the Disaffection Act (8) refusal of passport for political views. (9) unwarranted deportations for political views. The branches, members and others are required to report to the Council's Headquarters in England on any breaches of Civil Liberties under the foregoing heads and are at the same time expected to lodge complaints locally.

We have, until now, considered the civil liberties of the citizen. There are special societies all over the world to watch over the rights of the citizen when he

is transformed into a prisoner. One such society, the British "Howard League for Penal Reform", has been better publicised in India than such other organisations of a similar type as the "International Penal and Penitentiary Commission" of Berne. Standard Minimum Rules for the treatment of prisoners have been prepared and the League of Nations has accorded them its seal of approval. These rules relate to the prisoner's food, work, accommodation and bedding, health and medical services, punishments, prison staff etc. It is rather surprising that the Government of India should have declared in its 1935 report to the League of Nations that these rules are already in force in this country. The Howard League has, however, published a number of violations in different parts of the world without naming the countries and it will not be very misleading to imagine that India is included on the list of violaters. The Howard League works on an international scale and is ready to fight in the cause of prisoners anywhere.



## THE CONCEPT OF CIVIL LIBERTIES

In order to arrive at an understanding of what civil liberties are, it is necessary to go into their conceptual extent, origins, present state and contemplated actions to maintain them. An enquiry under these four heads: What is the number and types of civil liberties? How did they arise? How and why are they attacked today? Why and how should they be defended? will yield us the concept of civil liberties.

What is the number and types of civil liberties? We have only to string together the epochal statements of state-builders and the basic doctrines of organic laws and court decisions. These doctrines and statements have related to various types of civil liberties. At the head of them all stands liberty of person and movement and the sanctity of dwellings. "The aim of the State is the conservation of natural rights of man; these rights are liberty, property, security and resistance to oppression," lays down an article of French Constitution of 1789. No one shall be arrested and detained or imprisoned without due processes of law. Such processes have gradually come to include an open trial by jury, whose predominating element is drawn out of the same class of men as the accused. Everyone shall be secure in his house, which will not be broken into and searched unless on charge of a definite and specified act of lawlessness. No restrictions shall be imposed on the freedom of a citizen to move about in the country and to obtain passports in order to travel abroad.

In this age of great mass efforts and people's awakening, the liberties of opinion and assembly are as important as those of person and dwellings. The

standard in regard to freedom of expression by speech or press is the American dictum that no opinion, whatever its revolutionary import, may be punished unless it is accompanied by an overt act of revolt. The standard in regard to freedom of assembly and processions is the English doctrine that, unless serious obstruction to traffic can be proved, the police or the executive may not take any action. These doctrines imply the abolition of sedition laws and of censorship over press, books, post and radio. Ban orders on meetings and processions are also impermissible. Equal rights shall be granted to everyone to hold meetings in public halls and such areas in every town and village as are traditionally used for purposes of assembly.

Together with the two types of civil liberties relating to person and opinion, the freedom of association and organisation has been steadily acquiring a unique significance. In order that larger masses of men may translate their keen interest in State affairs and economic management into organised effort to remove existing evils, they must in no event be robbed of their precious freedom to organise and strike and picket. The executive might often pretend and advertise the fear that such strikes or organisations will eventually lead to breaches of peace and the spread of a revolutionary mentality and, thus, seek to interfere with this precious freedom. Such attempts have to be resisted and exposed and, short of an overt act, the freedom to organise and strike should not be allowed to be tampered with.

“Law is an expression of the general will” was laid down in an article of the 1789 French Constitution. State authority is to originate from the will of the people and thus democratic control over the Government is considered as an important type of civil liberties. The Government may not act secretly nor without the previous permission of a democratically elected assembly. In some form or the other the civil liberties unions

of the world have accepted democratic control over the Government and even the republican form as one of their agitational planks.

The rights of racial minorities come within the extent and scope of a civil liberties agitation. The persecution of racial minorities is obviously a reflection of unequal laws as also unequal dispensation of justice and is therefore an attack on the civil liberties of a section of citizens. Thus, the Civil Liberties Union of America lays especial emphasis on the protection of Negroes and the British and French Unions on that of the colonial peoples.

Freedom of conscience and thought and education is properly speaking a part of liberty of opinion. This freedom must however be especially emphasised in so far as all interference takes place within the precincts of governmental or semi-governmental institutions. If a professor or a teacher is dismissed from his job for expressing opinions unsavoury to the administration and denominational or communal institutions are encouraged by the government, the liberties of free conscience and education are directly attacked without serious possibilities of appeal.

The demand for the release of political prisoners is yet another aspect of civil liberties. Most convictions are based on a legal and judicial system, which is too heavily weighted in favour of the government as against the citizen. A fight against this system would obviously entail protection of its victims and, therefore, the release of political prisoners is a demand of civil liberties. Pending such release, the rights of prisoners in relation to food, accommodation, punishments, intellectual provisions and the like have to be fought for.

The conceptual extent of civil liberties is now clear. It embraces the rights of the citizen in regard to security both of his person and of dwellings, to freedom of opinion and assembly, thought and organisation, to equal justice and control over the Government

and to release from political convictions.

How did they arise? The concept of civil liberties is an outcome of the struggle that the citizen has eternally waged against his State. Throughout history, the State and its laws have given rise to manifold types of abuses. Whether it was an oppressive tax system or a bloodthirsty landed aristocracy, the citizen groaned and attempted to resist. Wars and cultural stagnation were forced on him and he sought to end them. In his efforts, however, to end oppression and existing evils, he was met with stern repression. The authority in whom State-power was vested did not brook the defiance, which was naturally involved in the struggle against abuses and evils. The wrath of the State fell down on the citizen who tried to be critical. He suffered long and solitary confinements, quite often death, and his most precious possessions were snatched away from him. He, therefore, stood in need of a minimum basis of safety from where he could launch attacks on the abuses and evils of his times. The rights of the citizen in opposition to the Government, as enshrined in the organic and ordinary law of different lands, are an expression of such a minimum basis of safety. If a regime of civil liberties prevails, resistance to oppression is not attended with frightful consequences.

It is instructive to recall the occasions of the American and French Constitutions and the English Bills of Rights. In each case, much oppression and many social and financial abuses had preceded. Bastilles of one type or the other had been built to frighten people into submission and acceptance of conditions as they obtained. When finally the peoples had gathered sufficient strength to smash the State and its economic and social laws, they overthrew the Bastilles. On the ruins of the Bastilles was reared the imposing structure of civil liberties. It was an organic defence against the living memory of persecutions and repression.

Civil liberties comparatively smoothen society's

march towards progress. Society is being eternally pulled between reaction and progress and, often, degenerates into a state of stagnation. In this pull, the State has more often been controlled by forces of stagnation and reaction. There are, of course, brief interludes when former rebels, in the initial stages of their power, have used the State as an agency of progress. Soon however the rebels acquire a distaste and hatred of all changes and the powerful machine of the State is directed against the progressive efforts of the dispossessed. Lest the State should turn into a terrible obstruction to progress and continually block it by its repression, its supreme authority over the citizens stands in need of description and curtailment. The entire scheme of citizens' rights is an outcome of the effort to describe and curtail State-authority. In this manner, orderly social progress becomes possible and society is not continually faced with the choice between tyranny and revolution. The concept of civil liberties is thus essentially a liberal concept which acts as a shock-absorber of the cruel impact between State tyranny and mass revolts. It enables society's march towards progress to proceed on orderly lines. If a citizen chooses to be critical of the world in which he lives, society permits him to question and test and experiment without fear of serious reprisals.

Why are civil liberties attacked today? The answer is obvious. A titanic world struggle is going on before our eyes between the forces of status quo and reaction and those of progress. Whether in the colonies or among the masses in imperialist countries, banners of criticism and revolt have been raised against the prevailing economic and political system. This system has meant progressive deterioration in employment and living conditions and cultural attainments and is ever resulting in humiliations for the colonial peoples and barbaric wars. The whole world is a vast question mark and old social structures are being tested and found

wanting. The colonial peoples and oppressed masses all over the world are thinking out an alternative Society and are propagating and organising and striking for its acceptance. And so the State is weighting the struggle in favour of the existing society and answers the cry for alternatives with stern arrests and bans.

It is instructive to remember that it is the national freedom movement in the colonies and the socialist and communist parties of the world that are the worst sufferers. They suffer because they are voicing the demand for alternatives of the colonials and peasants and labourers of the world. Against them are pitted the powers of status quo, the force of finance and imperialist capital and landed aristocracy. The Governments throw overboard the concept of civil liberties and go out of the pale of their described and limited authority. And so attacks on the civil liberties of citizens have become a permanent instrument of the State and the class policy of finance capital and landed aristocracy.

It is desirable here to go into the stray enquiries, made for some time past in our country, that assume the function of civil liberties as being divided into a religious or a political or an economic scope. It is obvious that such enquiries rest on a misconception. There are no religious or political or economic civil liberties as such. The question of civil liberties arises only when the constituted authority of the State fails to safeguard them to its citizens either by acts of commission or, less often, through those of omission. Civil liberties are violated when the State either itself attacks the various freedoms of opinion and association of its citizens or permits private gangsterdom to do so. The basic factor in all such State and private violence is the fear of criticism and revolt against the existing system of laws and government.

How are Civil Liberties violated? In the first instance, laws of detention, house-searches, sedition,

ensor and association and codes of criminal procedure practically all over the world militate against the fundamental guarantees of civil liberties. These laws and codes are either frankly repressive or deliberately vague. In either case they deliver the citizen to the caprices of the Executive. Secondly, the executive and judicial administrations of the world are trying increasingly to conquer every inch of territory that they had to concede to liberty and justice. This they do in all manner of ways. Justice is severely and often faultily applied; imprisonment and heavy sentences out of all proportion to the offence have become very usual. The executive issues edicts which could not be defended in a properly constituted court of law and, otherwise, seeks to corrupt and frighten public opinion by State subsidies, propagandist scares and secret action. Thirdly, in the dark chambers of the police, shielded from public eye, excesses are done and third degree methods used. Often, the police stretches the law much beyond its proper scope. Illegal detention and forced statements and threats of drastic action are usual. Fourthly, private violence in the employ of the State or of vested interests is permitted and encouraged. This is particularly done in the villages. In their total effect, the four types of violations restrict the right of the citizen to hold meetings and form associations and propagate thought through books, newspapers and radio. The citizen becomes an easy prey to dismissal from his job, police-torture, detention and heavy sentences.

How should civil liberties be defended? The Civil Liberties Unions of the world have developed an efficient mechanism of branches and local correspondents who throw the searchlight of publicity on legal, judicial, executive, police and private excesses and prepare dossiers of each individual case. Action is taken on each individual report. Interventions on behalf of the victims are made with the authorities. With the voluntary aid of prominent speakers, writers, solicitors and

public men, the national headquarters develop mass campaigns against specific laws, for individual affairs, for public enquiries and free trial and for release of detenus and political prisoners. They also organise legal defence. The publicity apparatus of special press releases, brochures and other publications is evolved.

Why should civil liberties be defended? The question is obviously absurd and yet it is not seldom asked. Why should we defend your civil liberties; would you, were you in power, safeguard these to us? Again, the advice is often given to those, whose civil liberties are violated, to slow down their agitation against the existing order or, even, to stop it. It is easy to see the implications of both the rhetoric and the advice. Both amount to an acceptance of the status quo and a falling in line with the forces of social reaction. Only the hard-boiled reactionary will not shrink before such a prospect. Whoever believes in orderly social progress, and the front extends in normal-times from the conservatives over the liberals to the radicals, lines up in a joint defence of civil liberties.

There is another type of argument, met with among a section of radicals, that seriously whittles down the importance of any special defence of civil liberties. It is asserted that there is not much use of fighting for civil liberties, for, ultimately it is a question of political power. Suppression and repression will willy-nilly take place, so long as criticism or an organised action against the existing order are attempted. The ultimate guarantee of civil liberties, therefore, lies in the overthrow of the existing State. The argument that civil liberties can finally be protected only under a different regime is true enough but there is a serious flaw in the deduction that it is not much use fighting for civil liberties.

The special front of civil liberties maintains the backbone of the people. The spirit of opposition against injustice is kept intact. The individual gets strength from the knowledge that his resistance to



police or executive oppression will awaken common interest. Again, such a common interest serves to convulse the conscience of the people against encroachment on their liberties. The people are taught to be vigilant and, so they clear the road to progress.

The fight for civil liberties also lays bare political and social abuses which are the fountainhead of all suppression. As in the American fight for civil liberties in the countryside, facts of economic and political management, which would have otherwise remained unknown, come out in the open. An enquiry into a case of violation of civil liberties is simultaneously an enquiry into the particular abuse against which the individual had fought and for which the wrath of the State and other interests had descended upon him. Thus, the fight for civil liberties awakens the social conscience of the people.

We may not also forget that the front of civil liberties is more broad based and inclusive than that of freedom and progress. Among the ranks of freedom and progress, there may be differences of opinion on other matters but they will all unite on an issue of civil liberties. Their ranks are further strengthened by the inflow of such as have not yet turned into hard-boiled reactionaries. Such a broad-based and inclusive front is a great moulder of public opinion and can also exercise much pressure on the State.

It is also incorrect to say, that, till the final objective of State power is achieved, nothing can be done towards the safeguarding of civil liberties. Such an argument assumes that the existing state-power can do whatever it likes until it is fully defeated. That may be a legal fiction and to a very large extent true, but even the State shrinks from doing certain things lest they should recoil on its head. To restrict, therefore, the factual authority of the State, all manners of trenches should be dug and citadels fortified in defence of people's freedom. The agitation for civil liberties is

even such a trench and a citadel. In most cases, it may only stiffen public opinion but, in some, the State shall have to bend. There have been cases where previous orders of the Executive or subordinate officials were revoked and release of political prisoners effected in response to an insistent public demand.

Violations of civil liberties are not restricted to this country or the other and a large part of the world is today more or less a prison-house. World opinion, as never before, is feeling its way towards an organised expression and speedily reacts to suppression of liberties, wherever that might take place. If a national Civil Liberties Union exists in different countries, it can also serve as an exchange bureau of international information and propaganda.

The concept of civil liberties is now clear. It defines State-authority within clear limits. It assigns well-defined liberties to the people. The task of the State is to protect these liberties. But the States usually do not like the task and act contrarily. Armed with the concept of civil liberties, the people develop an agitation to force the State to keep within clear and well-defined limits. The agitation for civil liberties does not directly propagate a change of the existing order, but it attempts to keep the way clear for such as may.

## CIVIL LIBERTIES IN INDIA

India has fought hard and bitter struggle to win her civil liberties. Modern India begins in the eighties of the last century with a fight on the issue of equal justice as between the Englishman and the Indian. It was the Ilbert Bill that sought to abolish the preferential justice meted out to Englishmen. The English bureaucracy and the commercial class were alarmed and launched on a violent campaign against the Bill. The Indian people answered by an equally resolute agitation in favour of the Bill and this agitation became the starting point for a sense of political rights in the country. Again, the period of submissive criticism ends and the era of a vigorous nationalism is ushered in with a fight for civil liberties. Post-war India was made to suffer the Rowlatt Act and the denial of all human liberties, Jallianwala Bag and crawling on all fours, that followed in its train. The first mass action that the country carried out to wrest its freedom from British Imperialism was largely inspired by its revolt against the Rowlatt Act and, consequently, the suppression of civil liberties. Since then, there has been no single year when all manner of repressive laws and Acts of the Government have not been a sore point with Indian Nationalism.

Even to ordinary law which governs the liberties of the people is viciously vague and being constantly put to a repressive use. The ordinary law of sedition, which governs freedom of opinion, punishes all expressions that bring the government of the country into hatred or contempt. Hatred or contempt are vague terms and the line, therefore, between legitimate criticism and seditious utterances is left to be drawn by the

magistracy. It is said that the dictum which guides magistrates is that criticism of or protest against particular policies and measures of government is permitted, but any wholesale condemnation of government falls under the law. Here again, it is the magistrate who decides as to when the condemnation of a particular policy resolves into that of the entire government, and so the difficulty remains. The citizen has, thus, no constitutional nor legal guarantees to defend his freedom of opinion from executive and magisterial encroachment. His expressions need not have caused an overt act of revolt, nor is it necessary to show that he had attempted or even intended to do so, and yet he may be punished for breach of the law of sedition. The citizen's liberties of assembly and organisation are quite as precarious. Under Section 107 of the ordinary Criminal Procedure Code, action is usually taken in the countryside against attempts to form associations on the charge that a breach of the peace was likely. In like manner, wide use is made of Section 144 which empowers the declaration of bans on specified areas and an assembly of more than five men is made punishable. These and several other sections of the criminal law militate against the ordinary liberties of the citizen and deliver him to the caprices of the police and the executive.

When this is the ordinary law, it is not difficult to imagine the deadly grip of emergency laws, variously known as the Criminal Law Amendment Acts, Public Security Acts and the like, on the civil liberties of the people. It is true that emergency laws, like the State Prisoner's Regulation of 1818, Press Acts of 1867 and 1910 and the Rowlatt Act of 1919, have been comparatively normal features of Indian administration also in the past. Today the grip is deadlier and, as the Lucknow Congress Resolution says, "at no period since the great Revolt of 1857 has the suppression of civil and personal liberties and the repression of the Indian peo-

ple. . . . been so great as it is now.”

In several provinces, security of person and sanctity of dwellings and liberty of movement are practically non-existent. Indefinite detentions without trial, internment, and externment are common in Bengal and the Punjab. The number of Bengal's detenus is computed at over 2000 and, in the month of July alone, about 40 Socialist workers were home or village interned in the Punjab. It is made a crime, punishable with a sentence of 6 months, for boys of 12 and over to sit and loiter between sunset and sunrise in certain playgrounds, parks and public places of Dacca and Narainganj in Bengal. Large numbers of young men are not allowed to stir out of their houses between sunset and sunrise all over Bengal. The movements of a still larger number are strictly confined within narrow town limits and they are frequently required to report themselves to the police once a day. In order to travel to Darjeeling, a passport is necessary. In the town and the interior of the Midnapur district, a special police permit is necessary for riding bicycles. General search warrants are issued and warrantless searches are frequently instituted by subordinate police officers in their own judgment. Security of person is further jeopardised by granting large powers to the police of keeping suspects under prolonged custody. All over the country, visitations by the police at odd hours of the night and day and questionings and pestering are becoming alarmingly usual.

The ordinary law of sedition, Sea Customs Act and the Boards of Censors are in themselves sufficient to put a ban on all advanced opinion, thought and art. And yet there are the one time ordinances, designed to combat the Civil Disobedience and other revolutionary movements, which have been enacted into the ordinary law of the land. The Indian Press Act and other provincial Press Laws have made the freedom of press a mockery. Advance permission of the

Government is necessary and security deposits for good behaviour are demanded before a newspaper or periodical may be published. Even the purely literary journals are a victim to this vexatious and embracing interference. Advance securities were demanded of "Hans" and "Bhartiya Sahitya" (Indian Literature), two purely literary monthlies devoted to building up a common platform for the various Indian languages and literatures. Subsequent forfeiture of securities is not rare. The latest instance is that of "Anand Bazar Patrika", a Bengali daily, having to forfeit its security for commenting on "Official Tyranny on Literature." Aside of the Editor and Publisher, the owner of the printing press is also made responsible. It is with immense difficulty, therefore, that movements with scanty resources, such as those of labour, can persuade the owner of a press to print their official organs. The list of newspapers which had to cease publication in recent years because of these laws is formidable—the official number of such suppressions is 348. Imprisonment of violation of Press Laws is frequent. There have been instances when the publisher of a notice for a public meeting has been awarded a sentence of six months hard labour. Such a notice is a newsheet in the eyes of the law and, as such, requires previous permission of the Government before it can be issued. The Newsletter of the Foreign Department of the Indian National Congress also fell under the provisions of this law and the office of the All India Congress Committee was raided and a variety of mimeographed material seized.

Bengal suffers strangling restrictions in the shape of a Press Officer who casts his shadow over the entire Press and has constituted himself into a kind of editor-in-chief of all newspapers. He interests himself not only in the views but the news and the method of display and issues warnings. With the threat of action under the Press laws and the judicious dispen-

sation of official advertisements, he also carries on positive propaganda for the Government.

Advanced literature and books are frequently proscribed. There is the all India banning by the Government of India; in addition each provincial Government proscribes books within its own area. In Bengal, a whole class of literature is banned. A person found in possession of a book, which is not itself banned but which, in the opinion of a policeman or a subordinate magistrate, belongs to that dangerous class, is liable to a term of imprisonment. The usual sentence for possessing such a book is a year.

Throughout the country, the liberties of assembly and association are constantly violated. Even under the ordinary Trade Union laws, workers are not permitted to strike unless they have, very much in advance, given individual notices to the management. Strikes for political ends are unlawful. Under the special laws of association, Trade Union organisations are speedily declared illegal and the Government is ably assisted by the Anglo-Indian Press in the spreading of scares. As soon as a workers' organisation shows signs of activity, the semi-official press comes out with stories of revolutionary mentality and communist influence and what follows is easy to imagine. In recent years, a larger number of Unions of railwaymen, tramways workers, textile workers, crew in inland navigation have come under the ban of the Government. The Bengal Public Security Act of 1932 was styled a "heavy roller" by a former Governor and yet a communique of the Government of Bengal has conferred, since September, 1936, additional powers, particularly in regard to meetings of industrial workers, on the Commissioner of Police in Calcutta and the neighbouring District Magistrates. The communique remarks on the increasing activity of organisations which use expressions commonly associated with violent revolutionary movements in other parts of the World.

In the countryside, meetings are forcibly dispersed and much private violence is permitted. These have become frequent in the proportion that the peasantry is agitating and organising against tax and rental demands, which bear no relation to its shrunken income. From the province of Behar, where the peasantry is growing restless, are reported recent instances of elephants being run on peaceful assemblies and assaults made on peasant leaders.

Among organisations, which were declared illegal during the civil disobedience movement and continue to remain so, are several Congress Committees, Volunteer Corps, Students and Youth Unions. No definite reasons are ever advanced in support of the continuance of the ban, except that it is not in the interests of public peace to disclose them. In the North Western Frontier Province and in parts of Bengal, no political work of any kind is possible. The permanent menace and frequent resort to aerial attacks on the civil population, officially known as war-like tribes, have completely crippled and paralysed the political life of the Frontier Province.

During the year 1936, enormous suppression of civil liberties has taken place in the country and there are a number of 'affairs' as great as those of Dreyfus and Tom Mooney to convulse the conscience of the nation. In the beginning of the year, Subhas Chandra Bose was arrested immediately he set his foot on Indian soil and has since been interned in the remote village of Kurseong. Despite repeated demands, the Government refuses to bring him before an open and free court of law. In the last sessions of the Central Legislature, the Government was asked if they shirked the trial, as they had no evidence to which, the Home Member made the eternally silly reply that an open trial was not desirable in the public interest. The cry of public interest has become a convenient smoke-screen under which the Executive lightly tampers with the



personal liberties of the people. It accuses Subhas Bose of association with terrorist activities and holds him up as an efficient organiser. The people accept that Bose is an efficient organiser in the cause of the Congress and Indian freedom and suspect that to be the real reason of why the Government charges him with terrorist associations. "Subhas Bose is an undesirable person and, whether a particular charge against him stands or not, he ought to be where he is," seems to resemble closely the reasoning of the Californian editor on Tom Mooney. In a similar manner, declared communists and labour workers, who miss no chance of condemning terrorism, have fallen a prey to the charge of terrorist associations and so the punishment of detention. Muzaffar Ahmad, the Meerut case prisoner, came under the clutches of this law and Abdul Halim is still languishing away in prison.

Khan Abdul Ghaffar Khan was, immediately upon his release on August 1, after serving out a two years' sentence, served with orders not to enter the jurisdiction of the Punjab and the Frontier Provinces. The Frontier Government is satisfied that there are reasonable and sufficient grounds for believing that Ghaffar Khan has "acted in a manner prejudicial to the public tranquillity." The Punjab Government prefers to be non-committal and vague and so "has reasonable grounds for believing that Khan Abdul Ghaffar Khan . . . has acted or is about to act in a manner prejudicial to the public safety or peace. . . ." M. R. Masani, on his arrival in Lahore on September 4, was served with an externment order for precisely the same reasons. Khan Abdul Ghaffar Khan is a member of the Congress Working Committee and M. R. Masani the General Secretary of the Congress Socialist Party, which are both open and legal organisations, and it is difficult to understand how the Punjab Government could so definitely speculate on other probable activities.

Three recent cases of alleged suicide amongst the Detenus of Bengal, each in September, October and November, have again brought their deplorable condition in painful prominence. Poet Rabindranath Tagore, President of the Indian Civil Liberties Union, in urging a public enquiry says, "for many years Bengal has endured the agony of seeing thousands of her sons and daughters confined and crushed in detention camps without even the semblance of a trial. Their lives have been ruined, their families broken up, and the shadow of unending suffering has lain heavily over the province and over India." Naba Jiban Ghosh, one of the detenus who have committed suicide, belonged to a family which has suffered a particular and rather vengeful repression. Binoy Jiban Ghosh, an elder brother, was a Professor of History in the Midnapur College for three years, when he was summarily dismissed from his services in October, 1933. Nirmal Jiban Ghosh, another brother, was executed in connection with the Burge murder case in October, 1934. Yet another brother, Jyoti Jiban Ghosh, has been under detention since April, 1932.

In answer to a question in the House of Commons, it was known that Parmanand must continue to be a prisoner, as he had not reformed sufficiently. Parmanand was arrested at Lahore on 22nd February 1915, and has now been 21 years in prison. Parmanand is one of the 62 who were arrested in connection with what is known as the First Lahore Conspiracy Case. 43 of these were sentenced to transportation for life and 8 who did not appeal for mercy were hanged. On the occasion of the amnesty, in December 1919, 28 of these were released and the prison authorities did not recommend the case of the rest. Out of the 15, who continued to be imprisoned, 14 were released in different years between 1925 and 1929. Parmanand alone continues to be a prisoner, though the sentence of transportation for life is usually commuted after the

expiry of twenty years.

Jyotish Chandra Chakravarty was one of the countless little men of Calcutta, when he had a case of cholera in his house. He went out in the early hours to fetch some medicines. The suspicion of the police was as usual lightly, awakened and Chakravarty was clapped in the police prison. Not all his remonstrances were of any avail to him and his child died. A departmental enquiry was later ordered. The 8th of July was no extraordinary day in the history of administration of laws in Bengal. It is only with a view to show what any day has in store for the people that relevant clippings of Calcutta papers of that date are here reproduced. . . . Miss Lilavati Nag M.A., detenu since December, 1931, who was transferred from the Midnapur jail to the Dacca jail in order that she may stay three hours daily with her parents for a period of two weeks, has been sent back to the Midnapur jail. . . . Manoranjan Guha of the district of Backerganj, who was recently released from the Andamans after serving out his sentence of 4 years' rigorous imprisonment, has been interned at Pirganj in the district of Midnapur. . . . Soumyendranath Tagore was sentenced to one year's rigorous imprisonment for a speech delivered on the 'Subhas Bose Day', organised in protest of detention without trial. In the course of his judgment, the magistrate said, "the language used is well-calculated to excite and promote disaffection." . . . . Surya Kumar Bhattacharya, formerly a teacher of a High English School, is appointed a peripatetic lecturer in the district of Noakhali. He tours the district and delivers speeches on the evils of terrorism, unemployment and agricultural and industrial enterprises. It requires no vivid imagination to picture the nature of this man's loyalist propaganda. . . The High Court of Calcutta rejected application of detenu Broja Madab Das, who was sentenced to one year's rigorous imprisonment by a lower court. The charge against him

was that, in contravention of the order served upon him, he was found mixing or conversing with another detenu Kshitish Chandra Chakravarty on 20th October, 1935. . . . Counsel for G. accused charged with rioting in the Hoogly Jute Mills challenged the statement made by the Under-Secretary of State for India in the Commons which, he said, was based on the false and inaccurate message of Reuter's agency. He objected to inaccurate statement of facts of a case which was sub-judice (a total sentence of nearly 20 years has since been awarded in this case.). . . . The Kotwali police raided three houses in Barisal and searched for proscribed literature. Nothing incriminating was found and no arrest was made.

It is obvious that to talk of the liberty of democratic control over the Government in this country is idle. Aside of the neglect with which resolutions of the Central Legislature are treated, the last sessions will be remembered for the number of adjournment motions that were disallowed by the Viceroy. Despite assurances to the contrary, official interference with elections under the New Government of India Act is continuing in a number of ways. Candidates are disqualified from contesting the election on the ground of their conviction for a period of more than a year. Circulars have been unearthed which instruct district and police officers to keep a close watch over the candidates in their area and to help defeat the Congress candidate. In United Provinces, Frontier Provinces and Madras, a number of meetings has been banned under one law or the other.

So all manner of violations of civil liberties take place. The law is repressive and loose. Justice is severe. The executive acts on speculation. Police excesses are manifold. Private violence is permitted. And none of the liberties is safe.

We may here remember the reasons given by the

American Union for the repressive regime in the American colonies. They could as well be applied to the repressive administration in India. British commercial and capital interests have penetrated into the plantations, railways, jute and textile industry, inland navigation and the like and, so, the right to organise and strike, particularly of the industrial workers, is permanently attacked. The administration is actuated by the Indian civilian mentality, which is as bad as the American navy mentality, and carried on by subordinate executive and police officers, who are worse. The Indian freedom movement has entered the stage of frontal opposition to British Imperialism, which can now have but scant regards for the liberties of the people. The increasing poverty and humiliation of the people motivates the nationalist movement, as never before, with the yearning for an alternative society and an uncompromising condemnation of the existing order. The yearning and the condemnation are met with stern arrests and bans.

There can be no talk, therefore, of a voluntary relaxation of the repressive regime in this country. The police state has come to stay. There is a show of releasing some detenus, mostly on conditions, or training them in industrial centres, but the heavy hand of fresh convictions and detentions, internments and externments knows no rest. Efforts of the Congress and other individuals to enquire into the working of repressive laws have come under the ban of the Government. The Law courts acquit but the executive detains, and so the seeming liberality of justice is fully offset by executive fiats. Only an insistent demand of the people for their civil liberties and an agitation to curtail State-authority can bring about the relaxation of the repressive regime in this country.

India lives today under the shadow of tyranny and what is worse, fear of tyranny. All manner of work,

political and social, thought and art wastes and withers away. The Indian Civil Liberties Union is a new comer in the scheme of world defence of Civil Liberties. But its work is vaster than in other countries.