

BASIC RIGHTS

Two clauses of India's draft constitution, one of which was recently discussed by the Constituent Assembly, touch directly on the fundamental liberties of the subject but paradoxically enough they have received less public attention than they deserve. Both affect the citizen's basic rights, impinging as they do on the sanctity of person and property. The discussion on clause 15, which is designed to protect life and personal liberty and ensure equality before the law, evoked a lively debate with Mr. K. M. Munshi and Mr. Alladi Krishnaswami Aiyer as the principal protagonists. It was a lawyers' field day, the arguments hinging on what was described as "a legal nicety of 'major consequence.'" "No 'person', declares the clause, 'shall be deprived of his life or 'personal liberty except according to procedure established 'by law' etc. etc.'" Mr. Munshi supported an amendment which sought to substitute the phrase "without due process of law" for the phrase "except according to procedure established 'by law."

Its effect, as the former Bombay Home Minister and his supporters explained, would be to arm judicial authority with powers to examine not merely whether convictions had been in accordance with the law or whether a proper procedure had been adopted but whether the substantive part of the law as such was proper and justified by the circumstances of the case. In other words, when a law had been passed which entitled the Government to take away the personal liberty of the individual, the court would be authorised to consider whether the law was such as was required to meet the exigencies of the case. Mr. Alladi Krishnaswami Aiyer in countering the amendment spoke more impressively as a lawyer than as a private citizen, and many will characterise his performance as Buzfuz arguing to his brief. The liberty of the subject is among the most prized attributes of democracy and to allow the executive as normal practice to arm itself with repressive powers (which might include detention without trial) obviously constitutes a violation of the democratic spirit. As the clause stands the liberty of the subject is not guaranteed constitutional protection. It would surely be more honest and equitable for authority, central or provincial, to proclaim a state of emergency should circumstances so warrant, and to use its extra-constitutional powers under these emergency conditions. That a popular government should seek to fortify itself with so formidable an armoury of repressive might does not flatter either authority or the people. It bespeaks a lack of confidence in both.

Equally open to objection is clause 24 which, in its present form, stipulates that "no person shall be deprived of his 'property save by authority of 'law.'" The clause prescribes for the payment of compensation but leaves its determination to the legislature from which the law emanates. Equity is implicit in the principle of compensation which, by any fair definition, postulates adequate recompense. Compensation which does not conform to these standards is nothing but legalised expropriation which in effect is what clause 24 appears to condone. Consideration of this article has been postponed, but both Government and the Constituent Assembly would do well to modify it on more enlightened lines since basically it involves the very credit of the State.