S. Satyamurthy, *Rights of Citizens* (Madras: Ganesh & Co., 1919)

INTRODUCTORY

ACCUSTOMED as we are to live under laws and regulations restricting our freedom in various ways we have, especially in India, come to hold the belief that these laws are part of the scheme of nature and that we have nothing to do with them, but to obey them. Of course, if one is asked and made to think about it, one may see things in a different light. But, ordinarily the average Indian citizen, at least till very recently, took the law enacted for him as dispensations of providence. Thanks, however, to the political awakening in the country, a different attitude is beginning to be assumed towards these man-made laws. In order that this attitude should become the normal attitude of the Indian citizen towards the laws, it is necessary that he should have a clear conception of his rights as an individual citizen of the state.

It is often forgotten tat the modern political state is only a voluntary combination of individuals who have agreed to certain restrictions being placed on their freedom for certain specific purposes. It is not necessary to discuss the metaphysical question as to whether man can have any rights in a state of nature, excepting the right of physical force. It must be obvious that, in a modern state, we do consent to our actions being restrained in various ways and that such restrictions are imposed as means to certain ends. In other words, the State is no longer a sovereign power which commands; it is a group of individuals having in their control forces which they must employ to create and to manage public service.

From this it follows that all laws have got to be tested from the point of view of their capacity to secure the ends, which the legislators should have in view. Two questions, then, emerge. 1) What are the ends, which legislators should keep in view? (2) What are the means by which such ends alone can be secured by the working of those laws? In this connection, it may be as well to define Law as a body of rules intended to control the conduct of members of a political society, for the violation of which penalties may be expected to be inflicted by the authority of the Government of that society. Again, the laws with which we are now concerned are those defining the primary civil rights of private members of a civilised community. What, then, are the specific ends which such laws ought to be designed to secure? The answer of Professor Sidgwick may be accepted as correct, namely, that the ultimate criterion of the goodness of law and of the actions of government, generally, is their tendency to increase the general happiness. The legislation of modern civilised communities is based largely on the application of this principle. And an important school of political thinkers is of opinion that the coercive interference of government should be strictly limited to the application of this principle. This is necessary in the interests of the laws themselves. For, the relation of the citizen to the laws under which he lives should be that of perfect respect and obedience to their commands. In order to enable him to assume this attitude, he must be satisfied that these laws represent the judgement of the majority of his fellow-voters and that they are intended to be just. So far as India is concerned, the first criterion is not satisfied by any of the existing laws. As Mr. C. Vijiaraghavachariar says, "Excluding the common law of India and the few laws of Parliament hardly in use, all our laws are decrees of the bureaucracy under the triple name of Acts, Regulations and Ordinances. None of these is law as known in civilised countries. None of these is enacted by the people through their representatives; hardly any of them is a reflection of Indian public opinion. Nor is any of

them even the product of bureaucratic legislature distinguished from the independent of the executive and administrative bureaucracy. We have no public law in this country. The triple bundle of Acts, Regulations and Ordinances are the kaleidoscopic product of one and the same bureaucracy. The whole of British India is one Schedule District- one backward tract without the name". The first criterion, then, not being available in the case of Indian laws, we have to test ands see whether these laws are so framed as to avoid injustice, which, in other words, is the utilitarian doctrine referred to above.

Having thus defined the ends which all legislation should subserve, we now proceed to consider the means which have been devised by civilised countries to see that the law s intended to secure certain ends secure only those ends, and no others. The compendious phrase which accurately described the most effective method evolved by civilised countries especially England, for this purpose, is the Rule of Law. Professor Dicey very acutely examines the implications of this phrase and lays down the following positions.

When we say that the supremacy of the Rule of law is a characteristic of the English constitution, we generally include under one expression at least three distinct, though kindred, conceptions. We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. The Rule of law even in this narrow sense is peculiar to England or to those countries, which have inherited English traditions. In every continental (European) community, the Executive exercises far wider discretionary authority in the mater of arrest, of temporary imprisonment, of expulsion form the territory, and the like, than is either legally claimed or in fact exerted by the Government in England. And wherever there is discretion there is room for arbitrariness, an din a republic no less than under a monarchy, discretionary authority on the part of the Government means insecurity for legal freedom on the part of subjects. This is the besetting sin of all Indian coercive legislation.

In the second place, the Rule of Law means that every man whatever be his rank or condition is subject to the ordinary law of the Realm and amendable to the jurisdiction of the ordinary tribunals. In England, every official from the Prime Minister down to a Constable or collector of taxes is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the Courts and made in their personal capacity liable to punishment or to the payment of damages, for acts done in their official character but in excess of their lawful authority. In India, although there is no administrative law as, for example in France, still officials are in their official capacity, in many cases by statute, protected from the ordinary law of the land and exempted from the jurisdiction of the ordinary tribunals.

There remains yet a third and different sense in which the Rule of Law, or the predominance of the legal spirit may be described as a special attribute of English Institutions. We may say that the constitution is pervaded by the Rule of Law on the ground that the general principles of the constitution, as for example, the right to personal liberty or the right of public meeting are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts; whereas under many foreign constitutions the security given to the rights of individuals results or appears to result from the general principles of the constitution. Hence flow noteworthy distinctions between the constitution of England and the constitution of most foreign countries. There is in the English constitution an absence of

those declarations or definitions of rights so dear to foreign constitutionalists. On the other hand, in Belgium which may be take as a type of countries possessing a constitution formed by a deliberate act of legislation, you may say with truth that the rights of individuals are really secured, the question whether the right to personal freedom or the right to freedom of worship is likely to be securers thus depends a good deal upon the answer to the inquiry whether the persons who consciously or unconsciously build up the constitution of their country begin with definitions or declarations of rights or with a the contrivance of remedies by which rights may be enforced or rescued. Any knowledge of history suffices to show that foreign constitutionalists have while occupies in defining rights, given insufficient attention to the absolute necessity for the provision of adequate remedies by which the rights they proclaimed might be enforced. The Habeas Corpus Acts declared no principles and defined no rights. But they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty. Again, where the right to individual freedom is a result deduced from the principles of the constitution, the idea readily occurs that the right is capable of being suspended or taken away. Where, on the other hand, the right to individual freedom is part of the constitution because it is inherent in the ordinary law of the land, the right is one which can hardly be destroyed without a thorough revolution in the institutions and manners of the nation. Such distinctions are, however, of purely academic interest to us in India, for our liberties are not protected here either by declarations of rights or by provisions for adequate remedies.

For the purposes, however, of testing how far the Coercive laws of Indian conform, if at all, to the rule of law, we may restate in Professor Dicey's words the three senses in which that phrase is commonly used. In the first place, it means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative or even of wide discretionary authority on the part of the government. Englishmen are ruled by the Law and by the Law alone: A man ma, in England, be punished for a breach of law, but he can be punished for nothing else.

In the second place, it means equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law a which governs other citizens or from the jurisdiction of the ordinary tribunals.

Thirdly, the rule of law may be used as a formula for expressing the fact that in England the law of the constitution is not the source but the consequence of the rights of individuals as defined and enforced by the courts. In none of these senses has the rule of law any existence in India. In Mr.Vijiaraghavachari's words," the expressions, majesty of the law, the rule of law have no application in this country".

As Professor Dicey himself recognises, general propositions however as to the nature of the Rule of Law carry us but a very little way. If we want to understand what that principle in all its different aspects and developments really means, we must try to trace its influence throughout some of the main provisions of the constitution. And the method which the Professor has adopted in his book' the Law of the Constitution' will be followed here namely, to examine with care the manner in which the law of India deals with the following topics, namely, the right to personal freedom; the right to freedom of discussion; the right of public meeting; the use of martial law and so on. And as far as possible the law of England on those

topics will be considered as contrasted with our law, for comparison is essential to recognition.

There is one other general principle which we have to bear in mind in considering the limits of coercive legislation. Whenever the Executive may invade by physics acts or restrict by commands the ordinary private rights of citizens. It will do this strictly in accordance with laws that withdraw or limit these rights, in the special case of the persons concerned, either by way of penalty or for some special end of public utility. As Professor Sidgwick says, this condition is generally necessary to relies the security that the laws are designed to give to private persons. For the power of interference with ordinary private rights. Which for the mere defence of these rights it is needful to vest in the executive, involves, to use Bentham's phrase, a formidable sacrifice of security to security; and in order to minimise the sacrifice, it is important to place the exercise of this power under close and carefully planned legal restrictions, of which the well known limitations on the power of arresting on suspicion of crime and detaining in prison before trial and on forcible entry into private houses are familiar examples. We may assume then that normally the coercion of the executive will be exercised under the restraint of laws defining carefully the limits of its interference with the ordinary rights of members of the community. And if this restraint is to be thoroughly effective, t e executive that is not to break these laws must not alone have the power to make them: the supreme authority to modify these laws must be vested in a legislative organ. Wholly or to an important extent distinct from the executive. We have already seen that this is not the case in India. The very names of our legislative councils and of the members thereof other than the ex-officio members show that they are merely expansions and phase of the executive government. The illustrious authors of the Montagu-Chelmsford Report admit this. The dispatches between the Government of India and the Secretary of State some of which are quoted in the Report will conclusively prove that the whole structure of the Indian Legislatures was intended to give the appearances of legal expression to the executive will forged in England or India.

In this connection, we have to note another characteristic of India n coercive legislation, namely, the large amount of discretion vested in the Executive, which cannot be justified on any of the foregoing principles. Professor Sidgwick recognises, all indeed all must, that it is expedient that the executive should have some legislative powers on matters requiring regulations that very from time to time according to circumstances; but that, for the security of the citizens at large such powers should ordinarily be exercised for certain strictly defined ends within limits fixed by the legislature. Professor Sidgwick suggests that it would seem betters to give the executive a general power of issuing ordinances having legal force without special authorisation; but subject to the restrictions that it is only to be exercised in case of urgency that such ordinances are to be communicated as soon as possible to the legislature, and that they cease to be valid if disapproved by that body. He suggests a further safeguard namely, that the executive should be bound to summon the legislature for an extraordinary session at least simultaneously with, if not before, the issue of any ordinance which it has not been specially authorised to issue. It will be seen in the sequel that, without any of these safeguards and apart from the question of the legislature being merely an expansion of the executive in India, the executive has large powers of lawmaking without any reference to the legislature whatever. These are the general considerations, which must weigh with us in discussing how far the rights of citizenship are secured by law in this country. A detailed examination of the laws, which affect such rights, will follow and will amply support the position taken up above.