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Friday

1st August, 1952

PARLIAMENTARY DEBATES

HOUSE OF THE PEOPLE

OFFICIAL REPORT

(Part II - Proceedings Other than Questions and Answers)

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HOUSE OF THE PEOPLE

Friday, 1st August, 1952.

*The House met at a Quarter Past
Eight of the Clock.*

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(No Questions: Part I not published.)

FORWARD CONTRACTS (REGU-
LATION) BILL

**The Minister of Commerce and
Industry (Shri T. T. Krishnamachari):**
I beg to move for leave to introduce a Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

Mr. Speaker: The question is.

"That leave be granted to introduce a Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith."

The motion was adopted.

Shri T. T. Krishnamachari: I introduce the Bill.

PREVENTIVE DETENTION (SECOND
AMENDMENT) BILL

**The Minister of Home Affairs and
States (Dr. Katju):** I beg to move:

"That the Bill further to amend the Preventive Detention Act, 1950, as reported by the Joint Committee, be taken into consideration."

124 P.S.D.

The House would have noticed that the Report has appended to it a large number of dissenting minutes. It has been rather a curious experience for the Select Committee. The normal rule has always been that when a Bill is referred to a Select Committee it is presumed that the House acquiesces in the principle of the Bill and only details will be thrashed out. In this particular case hon. Members who became members of the Committee declared on the floor of the House that they were opposed to the Bill root and branch, every principle of the Bill and, therefore, no one would be surprised that they would not be satisfied and could not be satisfied.

Mr. Speaker: I would like to make one point clear here. When the motion for reference of the Bill to the Select Committee was put to the vote of the House it was pointed out that certain Members of the House did not feel themselves bound and they had some mental reservations of their own as regards the principle of the Bill. I had then clarified the position that whatever mental reservations individual Members may have, so far as the House was concerned, by the acceptance of the motion, the House as a whole was committed to the principle of the Bill and there would be no question of reopening any discussion on the principle of the Bill. Whatever one may have to say as regards the details is a different matter. The only difference in the usual or normal procedure and the present one is that the House was pleased to give instructions to the Select Committee not only to touch on and consider the clauses of the amending Bill but also all the sections of the original Act. That does not mean that the principle of the Act is open for discussion today.

Dr. Katju: Sir, I am indebted, and I hope the House as a whole is indebted, to you, Sir, for this clarification of the whole procedure. I was

[Dr. Katju]

only going to suggest in passing that hon. —Members who went into the Select Committee on that particular basis would not be satisfied, could not be satisfied, by any concession which might be made. They said openly that they were opponents of the Bill and they were there not with a view to try to improve the Bill in substance, but only, in so far as they could, to make it ineffective.

Shri N. C. Chatterjee (Hooghly): Sir, we must protest against these remarks. That was not the attitude of all the Members of the Select Committee. It is not fair to us.

Mr. Speaker: He said some of the Members.

Shri A. K. Gopalan (Cannanore): Sir, I have also to make some observations with regard to the hon. Minister's remark. Though on the floor of the House we said that we were opposed to the Bill, we went into the Select Committee with a view to improve the Bill by suggesting amendments. The main amendment we suggested was that if there is to be preventive detention, it must be used only in emergencies. It is not opposition to the Bill. Even though we did not agree to the principle of preventive detention, when we actually went into the Select Committee we said: "We agree to the preventive detention; but it must be used only when there is an emergency". Every amendment that we moved in the Select Committee was an amendment to the Bill: not with a view to set aside the whole Bill. I am sure the hon. Minister will accept this and proceed on that basis.

Dr. Katju: I only wish to say one thing, so that I may not have to repeat it again and again. If any interruption comes from any hon. Member, I shall take it and consider it absolutely a sort of presumptive proof that the cap fits his head.

Dr. S. P. Mookerjee: (Calcutta South-East): The cap fits your head very well.

Mr. Speaker: It is better not to rake up past controversies. The hon. the Home Minister will see that if he carries on in that attitude, he will be inviting replies which cannot be prevented then. If he goes on in that strain I must allow the other side also to go on. But, with all respect to the House, the hon. the Home Minister and the Opposition. I am of the view that such a procedure,

though it may satisfy the urge of some of us to go at each other, is, on the whole, neither conducive to the growth of Parliamentary Government nor to the dignity of the House. That is the humble view I hold, in spite of there being scope for differences of opinion. On other grounds also, I should appeal to all hon. Members, including the Home Minister, not to go into the previous history but take the Bill as it is before the House, as amended by the Joint Committee, and on the assumption that Mr. Gopalan and Mr. Chatterjee and also Dr. Mookerjee.....

Dr. S. P. Mookerjee: I was not there.

Mr. Speaker: Anyhow, I take it he will not differ from me—agree that preventive detention may be there, should be there—whatever their mental reservations about it may be, that it should be so worked that it will not do any harm or mischief such as they are afraid of. That is the limited issue before the House. So, whether there should be preventive detention or not is not the question before the House now.

Dr. Katju: Sir, starting with your ruling, I shall immediately proceed to the main points that now arise on this Bill.

The first important point on which there has been a difference of opinion is about the duration of the Bill. The Bill as was originally moved by me provided that it should remain in force for two years, namely till 1954. I would have made it 1st of October 1954. But to summon the House in the month of August and September to re-enact the Bill would be very inconvenient. Therefore, we put down 31st of December 1954.

In future the House might consider a Bill like this without any great climatic inconvenience.

Now in the Select Committee amendments varied. I would not call it the extreme right or the extreme left. An attempt was made to reduce the duration to three months, namely, from 30th of September to 31st of December 1952. On the other hand, put it in any way you like, there were amendments that the Bill might be extended to 1955, 1956, 1957, and I think somebody also said 1958, and the Select Committee after a prolonged consideration thought that the

Bill as framed was proper. I suggest to the House that the Select Committee has arrived at a proper decision.

I am not going to cover the ground once again on the theoretic discussions and repetitions of principles, but I will beg the House to consider the prevailing conditions in the world, outside India and inside India. We are living almost in stormy conditions and I say again that the extension of the Act, if it is proved as desirable by two years instead of one year makes really no vital change in the situation. So far as I can see and speaking for myself, we cannot expect that there will be any great or material change in the world position and in the Indian position in the next coming two years. The House would always bear in mind that this is not an imperative Act in this sense that it must be acted upon. It all depends. Even today there are many States in which there is not a single person in detention, and we all hope and pray that the situation would gradually improve, and if it does improve, I am sure that no one would be more happy than the State authorities and the Central Government that the Act should remain on the statute book without any use whatsoever in the coming two years. But we must take a realistic attitude about this matter and while owing to a variety of circumstances, the situation has improved, there are still very many black clouds in the horizon and very many danger signals to be seen. I am not in a position and it would not be proper for me to say what sort of information is received from time to time, almost every week by Government and we cannot possibly be complacent about it. I do not want to injure anybody's feelings. The House would take it from me that I am speaking with a full sense of responsibility about these matters. We know the philosophies, the ideologies, the different passions and emotions which are prevailing over large groups of people, and as I said, this Act is not directed towards any political party; it is directed only against one and no other object, namely, that the purposes for which preventive detention is permitted under the Constitution should be always kept in view and those purposes should be achieved.

Now in the Select Committee one attempt was made to restrict the operation of the Bill. I make no insinuations of any kind, but the House would rather be surprised to hear that under the Constitution

preventive detention may be used for several purposes and notably among them is the preservation of public order, the preservation of essential supplies and the preservation of friendly relations with foreign nations. An attempt was made—I imagine it is also made in the dissenting minute—that all those shall be cut out; there should be preventive detention directed only to two purposes and nothing else, namely, the security of the state and the defence of India. There should be no preventive detention for preservation of public order; there should be no preventive detention even for the stopping of anti-social activities, comprised in that description in the Constitution, namely, the preservation of essential supplies and essential services. They said: "We do not want it."

I will not say who sponsored that particular amendment. The House will gather it when the amendment comes before it—we say that it is no good saying that we want the Preventive Detention Act to continue on the statute book, but we want all the relevant and more important purposes to be cut out. Anyway the Select Committee came to the conclusion that two years was about the minimum period for which this Preventive Detention Act should continue on the statute book. I submit that it takes a lot of time, enormous parliamentary time. The House is here; the Government is responsible to the House of the People. The Constitution says so and there is nothing to prevent the Members of the House—the House as a whole—moving a resolution at any time they like, that in the opinion of the House, the Act should be repealed and through that resolution to convey the opinion of the House, after six months, after 12 months or after 18 months or at any time and I am sure that if there is any indication of such an opinion, namely, if the Opposition of the day should like the matter to be discussed by means of a resolution. I imagine facilities would be given for the ascertainment of the opinion of the House, but to have a discussion about ten days here and five days there and year after year is not desirable. Therefore, the first thing is two years.

The second point that was considered was, who should have the right to take the initiative. The Central Government, no objection; State Government, no objection, but the whole crux of the discussion lay on the clause as to whether the district

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magistrates and additional district magistrates—not every additional district magistrate, but only those additional district magistrates, who are specially empowered in that behalf by the State Government—may be entitled to take action. It was said that the district magistrates are—I put it colloquially—an untrustworthy lot. And it was said that they should not be entrusted with these enormous powers and therefore it should be cut out. On the one hand, the very purpose of the Preventive Detention Act is to see to it, among other things, that anti-social activities are put an end to, that essential supplies and essential services are not interfered with unduly. And on the other hand is this plea that there should be delay.

The House would remember that our district magistrates are not petty officials. I am more familiar with Uttar Pradesh. We have got now a population there of 620 lakhs, all divided into 52 districts, and there are altogether 52 district magistrates. Each district magistrate, on an average, therefore, looks after about 20 lakhs of people. In the course of his administrative duties he looks after the administration of the district, and the other laws—what are called normal laws, the Criminal Procedure Code and many other administrative Acts—give to him, in emergencies, great powers to act. He can direct the Superintendent of Police to arrest people on suspicion whenever there is a question of commission of any offence. He can—even magistrates of the first class can—issue orders banning meetings and so on and so forth. Now, to think that a district magistrate cannot be trusted to take action under this Act, and for a very limited number of days—I shall come to that—seems to me to be an argument based on hypersensitiveness. I suggest again that it is really not intended to make them have more power but to avoid any hampering or obstruction of the proper working of the Act. For instance there are many districts even in Uttar Pradesh, and I know in Orissa with which also I am familiar, where for long distances, hundreds of miles, there are no communications. In Orissa there are not even roads in some places. Or you take for instance Rajasthan, Bikaner, Jaisalmer and places on the border. Situations may develop at any time. Violent speeches may be delivered. There may be incitement to violence. And the district magistrate, if we hold

him responsible, must act then and there.

The amendment that was suggested was: no, no, he must report. And there was a very touching confidence displayed in the ability—I take it the judicial ability, administrative ability and impartiality—of the Home Minister everywhere that he can be trusted to pass very fair orders. He became a sort of Lord Chief Justice, he was not a part of the administration for that purpose. And, therefore, the argument was that the district magistrate should report to him; the situation may be there but the district magistrate should report to him, report all the materials to him, and wait. The Home Minister might be away on tour, unfortunate individual. He may not be at headquarters. There may be riots going on, but no, no, you must wait. I suggest that the Select Committee was quite justified in saying that this was not the proper course to adopt.

I want to revert once again to additional district magistrates. I do not know about other Provinces. Hon. Members will forgive me if I am wrong. I am only acquainted with three of them, as I said, among the Part A States, namely Uttar Pradesh, Bengal and Orissa. The additional district magistrate everywhere is a senior officer. He is not an ordinary magistrate. He is really there as a sort of—and that is why he is so styled—an additional district magistrate. And he exercises in the branches of work entrusted to him almost equal authority with the district magistrate. Then there is this additional care that it is only that additional district magistrate that may be selected or specially empowered in that behalf by the State Government, who will exercise these powers.

The House would also remember that in many States there is separation of judicial and executive functions, for instance in Hyderabad. The district magistrate is in charge of the judicial administration, and the person who is in charge of the executive administration is called the collector. I am told that in some other States also the district magistrate, where there has been a separation of judicial and executive functions, has only judicial functions. So we have got to bear that also in mind.

Then comes another important change. If the district magistrate

intervenes and passes an order. formerly, under the Act of 1951, he had barely to report for information of the State Government—just for information. And the State Government might or might not intervene. Very likely the State Government might think that there would be the Advisory Board, so let the orders stand. Now we have made a very salutary and important change. We made it in the Bill, and we have altered it a little in the Select Committee also. The district magistrate, as the Bill had been framed, was directed to report the matter at once to the State Government with all relevant papers bearing on the necessity for making the order, and the papers must include the grounds for detention. And the State Government must approve, expressly approve, the order within fifteen days. There the venerable Home Minister would come on the scene. Objection was taken to this—look at it—that the district magistrate might suppress material. The Bill as framed says that he should only send papers bearing on the necessity for making the order—very punctilious. The Select Committee said: very good, it was never the intention that he would send half the papers and not send the other half. So the change has been made that the district magistrate should, along with the grounds of detention, send all the relevant papers bearing on the matter—both ways, this way and that way—and I am sure that if by that time, within the five or seven days, the detenu has already submitted his representation, the magistrate will send that representation also. So we get there.

Then came the period. Some one said it should be three days; some one said it should be seven days. In the Select Committee I ventured to suggest that the district magistrate will send it at once. He may send it within five days or seven days. But you must give the State Government time to consider. They said that it may be considered by the Secretary, by anybody, by the Deputy Secretary, by the Under Secretary. I venture to say that when the phrase used is State Government, it may be taken for granted that the matter will be disposed of by some Minister, either the Chief Minister or the Home Minister, I do not know, because in different States there are different official descriptions. Sometimes, the Home Minister is called the Police Minister; sometimes, the Home Minister may be called by some other designation. But I am sure that every State Government will see to it and as a

matter of course, it might be made clear by official instructions, that whenever a reference is received from a district magistrate, that reference will be considered and disposed of and action taken by him expressly approved in the name of the Central Government and on its behalf by some Minister and not by some Secretary, either Chief Secretary or Deputy Secretary or Under Secretary. The period was reduced. I was not very keen about it. But, out of consideration for the hon. Members who put forward that view, I said, very well, reduce it from 15 to 12 days. Here the situation is, either you get the order expressly approved within 12 days or the man is off. I submit that no more reasonable course can be taken. Do not let us be very tender for law breakers or prospective law breakers. During the course of the discussion one hon. Member, I remember, referred to the people who remain behind the screen and direct others to take action, to lead processions, to break the law. Some action has got to be taken. If those gentlemen remain there for four five or six days, no harm will be done. That is about 12 days.

Then comes the next stage. In the Bill it was said that as soon as the State Government makes an order on its own motion or approves an order of the district magistrate, it should send a report of it. I remind the House, for the information of the Central Government, because I do not want the Central Government to come very much into the picture. The primary responsibility for maintaining law and order or peace and tranquility and the continuance of essential supplies and everything else is that of the State Governments. I do not want to interfere with that. I do not want to take it over. Nor do I want to have a sort of a parallel Advisory Board set up here. Please remember that while the State Government is communicating for the information of the Central Government all these orders, simultaneously the papers will go also before an Advisory Board. We do not want to hamper the consideration of the Advisory Board by a parallel consideration here. I am not talking of exceptional and very rare cases. Leaving that aside, the normal procedure is that the papers come to the Central Government merely for the purpose of information so that we may keep a record, we might not gather from the newspapers as to which person has been detained or not detained, and we might have accurate official information as to what happens. Incidentally I might also say, while we

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are discussing this question of unauthorised or improper detention, that the House would recollect that the Government in every State and here is continuously, so to say, on the defence before the Legislature. There is the short notice question, there is the motion for adjournment, there is the long notice question. Whenever any person is detained by any district magistrate or State Government, it is open to any Member of the House here or the State Legislature to raise this matter immediately by way of a question and ask, why that man was detained. Every Government would be extra-careful to see that the order made is an order justified by the circumstances of the case.

Mr. Speaker: I may just make one observation here so that there may not be any misunderstanding. It is not in respect of every detention that a question or motion can be permitted in this House. It is only in the State Legislatures that that may be permitted, except in cases where the order is made by the Central Government.

Dr. Katju: I beg your pardon. When I said House of the People, I wanted to include State Legislatures as well: Legislature here and the Legislatures in the States. If it is an order by the Central Government, the matter can come up here. There is a State Legislature everywhere and they are very much alive to the importance of this matter.

Then, we come to the Advisory Board. In the original Act it was provided that the matter must go before an Advisory Board within a period of six weeks. We wanted to shorten the period and expedite disposal. That period has been reduced from six weeks to 30 days. Further more, there is the constitution of the Advisory Board. There is a direction laid down in the Constitution namely that it must consist of three classes of eligible persons; either sitting High Court Judges or retired High Court Judges or persons who are qualified to be appointed as High Court Judges. Under the third category, you can appoint advocates of ten years' standing; you can appoint Judges who are qualified to become High Court Judges. I circulated a list of the members of the Advisory Boards in the different States two months ago. You would find that in many States the Advisory Board consists either of High Court Judges in *toto*, or at least

one or in several States, there are two High Court Judges. In some smaller States, there are people who are qualified to become Judges. A wish was expressed that there must be a senior man and he must be a High Court Judge. We thought, very well, we will make a change to that effect. The Select Committee has recommended that the Chairman of an Advisory Board should either be a sitting High Court Judge or an individual who has been a High Court Judge. The object I had in my mind was to ensure that the Chairman was a man mature in age, mature in learning and mature in experience, and you get that by having either a retired High Court Judge or a sitting High Court Judge. It seems to me that a High Court Judge on retirement does not become merely by retirement malleable to any external influence. It would be almost libel to say so. I know many and every High Court Judge is an embodiment of integrity and judicial honesty. So, that change has been made. The remaining two members, in the terms of the constitution, may be sitting or retired, or persons qualified to be High Court Judges.

Then, Sir, I made that suggestion myself. I said: "We have got these part C States, small units. There are no High Court Judges there, and it would be very difficult to have the Chairman as a High Court Judge for the mere reason that there is no High Court." So, the Select Committee has suggested that in regard to Part C States, the Central Government, in consultation with the State Governments, may reconstitute the Advisory Board so that each Advisory Board of each Part C State may have a High Court Judge of a neighbouring State as its Chairman. I suggest that that shows an anxiety on our part to see to it that the Advisory Board is a real, functioning and completely independent body.

Then comes the period, and what is to come before the Advisory Board. The House would recollect that beginning from 1950 in the first Act that was introduced, the Advisory Board came into the picture only when an order was made against persons for anti-social activities—hoarders, profiteers, blackmarketeers, and also for persons who wanted to interfere with communications, essential supplies—excepting that there was no recourse to an Advisory Board whenever public order was endangered. Last year a change was made and every case was to go to the Advisory Board, but it was said

that the Advisory Board would decide the case on paper, it may send for a person detained if it thought necessary. Now, we went further this year on our own accord, and we said if the detenu expresses a desire that he would like to be heard and should like to make his representations personally before the Advisory Board, well, he should be entitled to go. I thought to myself that this was a great privilege given, and a great improvement. In the Select Committee and during the debate in this House, there was a great discussion upon it, and they said there must be a lawyer, legal representation, and the right to summon witnesses, examine and cross-examine them. Now, I suggest once again that an allowance of this description. I mean if we were to allow any provision of this description, it will be totally destructive of the Act for a variety of reasons, and one reason I may say at once is: if you do so, then why should a detenu have the benefit of the service of three High Court Judges, retired, qualified or sitting. It is an expensive proposition. Send it to an honorary magistrate. He will hear the witnesses, examine, cross-examine and finish. It is a great privilege to have your case examined, simply because it is a case of preventive detention, by three officers, judicial officers, highest in the land. "No, no", they said "we must have examination and cross-examination".

Now, my next remarks, one or two—there are many lawyers here—might probably cause disapproval, perhaps even resentment. I am a lawyer myself and an advocate. I will not say of some standing, at least of some standing in point of years, and I have said over and over again—if my hon. friend wants to quote me again. I shall send him the book—that the best art of advocacy consists—I came to this conclusion—in the advocate keeping himself completely behind the prisoner, and not arguing the case at all. I tell you it is a great mistake by which we profit of course—I am not talking of legal rulings, legal discussions in the Houses and rulings and 9 A.M.

precedents of America, Australia, Germany, England or anywhere. Full Bench ruling or High Court ruling. I am talking of pure facts. My experience has been this. Mr. Chatterjee said that he was ashamed of me when he heard it, but I will repeat it again because it is my conclusion.

Shri N. C. Chatterjee: It is all right. We shall have our say.

Dr. Katju: The moment a Judge sees the seat of an advocate or a law-

yer by the side of the accused vacant, he becomes suspicious.

Shri S. S. More (Sholapur): Is it not derogatory to the judiciary?

Mr. Speaker: That is his opinion.

Dr. Katju: The Judge becomes suspicious. I have seen that and the wisdom of our law-makers provides for it. You, Sir, would recollect that there is a section in the Criminal Procedure Code which says that every magistrate and every sessions judge of a criminal trial, even though there be a galaxy of legal talent before him, must examine the accused personally in regard to every circumstance appearing against him. I think it is section 342 of the Criminal Procedure Code. It says when all the prosecution evidence has been adduced, the Judge must solemnly say to the prisoner at the bar, "Now, what have you got to say? Guilty or not guilty?" He says "not guilty". Then: "What have you got to say about this circumstance appearing against you? Such and such a witness has said this against you. What have you got to say?" It covers pages. And there are many rulings of every High Court which say that if this examination is perfunctory, the whole trial is vitiated and there might either be a retrial or there might be an acquittal on that very basis. Now, why is it so provided? Because the Judges think and the legislators think that the Judge should like to have a look at the accused when he is either denying facts or not denying facts.

I venture to repeat again here that it will be doing a positive disservice to the detenu—I speak with a sense of responsibility, not as a Minister, but as an Advocate—to make him go before the Advisory Board accompanied by a lawyer. If the chances of the Advisory Board of releasing him were 50 per cent, they would diminish to five per cent, if the lawyer goes. You may take it from me, in spite of what all the jurists and the lawyers may say. Because, please remember there are three Judges. There is no court atmosphere there. A lawyer, in order to function—a pleader, a *vakil* or an advocate—requires a judicial atmosphere. He requires the Evidence Act at his elbow. He requires the right to object—"I object to this question, it is relevant, it is irrelevant"—and there is cross-examination and there is citation of authority and so on and so forth. But look at these three Judges sitting across the table. No publicity. Then the poor lawyer must feel himself completely at sea. What has he to say? There is nobody to clap for

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him or report him. I sometimes think that judicial work and arrears would be diminished by ten per cent. if there were no reporters in the law courts. I will not proceed further on this line, but this question of lawyer representation is not a veritable boon.

And secondly, please consider what is the essence of preventive detention? It is not a one-pointed precise occurrence. It is not a trial for murder: "on such and such a date at eleven o'clock three people came and shot", or whether this document is a forgery or not. It is something spread over. I have seen files where it has been stated "On such and such a day you made such and such a speech; another speech you made on such and such a day, you were doing this for the last three or four months; from all this, the inference is that if you are not detained you would indulge in some activities which may be prejudicial to a variety of things". You require a man of commonsense to look into all that material, and there is no need for a cross-examination. Please remember also this. The Advisory Board consisting of these three competent persons meet him, and as the standing Acts says, they may hear the accused, they may call for all information which they think fit, from anybody and even the Government to whom they can say "Supply this or that". It is on this whole material that they come to a decision. Nothing is concealed from them, nothing can be kept secret from them. It is true that a State Government may keep away confidential secret papers on grounds of importance from the detenu, but they cannot do so in the case of the Advisory Board. Someone said "Suppos' the demand is not complied with, what will happen?" My answer to that is very simple. If I were a member of the Advisory Board and if the Government do not supply me the information that I require, there is no question of my fighting with them. I would only say that "I shall release the accused, I do not confirm the order of detention, because the information that you do not send is very likely to be of some benefit to the accused, and therefore you are keeping it back from me". The case will then be finished and become all blank. So there can be no Government, State or Central which would dare to refuse the information to the Advisory Board, when that is required by them. It is open very likely to the Advisory Board to say: "We should like to have such and such a person before us, not as a witness, not for examination or cross-examination,

but we should just like to see that man for ourselves".

There is a general idea that the Advisory Boards are purely nominal bodies which do nothing, and are just some sort of rubber-stamping machines. We looked into these figures—I supplied them to the members of the Select Committee. When Sardar Patel's Act, the first Preventive Detention Act was passed, cases did not use to go before the Advisory Board. and when the previous Parliament amended the Act last year, there was a huge carry-over, and we found from the figures that the Advisory Board during the 18 months—beginning from, I think, 22nd February 1950 to 31st May 1951, perhaps—examined altogether 4400 cases and released about 1200 persons, in about 28 per cent. of the cases, and confirmed the order of detention in about 72 per cent. of the cases. What is the inference from this that I draw? The inference is that the Advisory Board acts in a sort of judicial capacity, and they have got plenty of material before them on which they can form a judgment. If you were to look into the statistics of any appellate court, High Court, or the court of the district and sessions judge, you would notice that the number of successful cases is not more. It is something like 15, 20 or 28 or 30 per cent. Similarly here, the fact that in a large number of cases, the orders were confirmed would go to show that the State Governments were acting with great discretion and even the district magistrates were acting with caution. On an examination of the entire material, in about 28 per cent. of the cases, very likely they may have thought "This man has been in detention for five or six weeks, let him go now", or that "there was no justification for the detention order". Therefore, I suggest that the Advisory Board plays a very important role, its Chairmanship has been strengthened, and care has been taken in this Bill that the duration within which a case should go before the Board should be minimised. In this way, the papers must be sent to the Advisory Board within 30 days. It is open to the Board to take two months. Formerly they could take only six weeks. The reason why we had said two months was that they can make a very detailed examination of the case, they may send for the detenu twice or thrice if they want to. So I am hopeful that the Advisory Board would be able to come to a conclusion within two months, and so the matter would be settled by that time once and for all.

Then came the question of the period of detention. We proposed the maximum period as one year from the date of confirmation of the order by the Advisory Board. There were various amendments. Someone said three months. I considered that, with all respect, as a joke. The Advisory Board may say "the order is well justified, please release him after three months." Then some one said six months. But the Bill provides one year. Please remember that one year is the maximum period only. After the Advisory Board ceases to function, there comes into play section 13 of the original Act, which authorizes both the Central and the State Governments to release any person if they so think fit. During the last six months, the State Governments have taken action upon it, and I believe, more than a thousand have been released. I can speak here again from personal knowledge, and I can assure the House that the case of every detenu is almost kept constantly under review. In the first place it may sound as a sort of anticlimax if I say that the State Government did not want to keep him, because he is an expensive proposition. In Bengal, I think, they spend about Rupees three to four on him per day. It costs money to the State Government and secondly apart from that, they do not want to carry the odium. Why should they? Then there are representations made, by hon. Members of the Legislature, by relations, and friends going to the Minister and saying "Here is a very innocent man, he has suffered enough". Then there is section 14 which says that a detenu may be released on parole. Hundreds of detenus are released on parole. So the maximum period of detention will come into operation and become effective only for extremely serious cases.

Then after the expiry of the maximum period of detention, I tell you with great respect that we have taken an extremely courageous step. I do not think that many State Governments will be happy about it, because we have said "Now your detention means a wash-out, all your past records will not be looked into, they may be looked into in connection with what type of person you are, but for a fresh detention order, there must be fresh material". The House would realise the importance of this on the merits and also in connection with another aspect of the case. When it is said that the Bill seeks to extend the Preventive Detention Act for two years, that evil is minimised by the fact that so far as any individual detenu is concerned, no detenu will

remain in detention in spite of the continuance of the Act, for more than 12 months substantially or say 14 months. It does not matter to him whether the Act remains on the statute-book or not. He is going to be released.

I have covered almost the entire picture and I want to assure the House once again that so far as this review business is concerned, you may take it from me that every State Government reviews and I have no doubt that if they so advise, they would make it a point to review them every three months or six months. Some attempt was made to bring it again before the Advisory Board. Now to ask the Advisory Board to examine the case again—what would be the material? The detenu had been in jail. He says: "Look at my conduct; it has been very wonderful; I have been a very quiet, decent and law-abiding citizen in jail". It is for the State Government, the executive Government, to consider the change in the political situation, whether a particular detenu can be released without danger or cannot be released without danger. To ask the Advisory Board to take up the matter again, to consider it again, would be very unfair to the Advisory Board and, therefore, we have not taken that matter up.

Some attempt was made to say that there should be provision of family allowances. Now that is a matter entirely within the discretion of every State Government. I know about the State, with which I am very familiar, Bengal particularly. Such allowances are granted in needy cases and it is a matter entirely within the discretion of the State Governments. I have no doubt that where there is considerable hardship and any particular family is in distress, they would pass suitable orders. I cannot possibly lay down any hard and fast rule for them and I submit it to the House that you would not do it in the Act itself. And please remember that while for convicts of all types we have no sympathy, similarly for under-trials we have no sympathy. I have seen under-trials for eight months, ten months. So far as this preventive business is concerned, either you say that the Central Government or the State Government are embarking upon a course of tyranny and therefore there should be this extenuating circumstance—that they should soften their tyranny by giving something to the dependants—or say that it is for the prevention of crime that it is done

[Dr. Katju]

and we must, therefore, leave it to the good sense and the discretion of every State Government to take suitable action.

I imagine that I have covered the entire field and nothing remains to be dealt with at this instant. There is just one other provision which I would like to refer to and then conclude. We had this question before us: what about the people who are already under detention? Now, I shall be quite frank with the House. During the last three months there has been a most intensive review by all State Governments of old cases and very few of the old detenus still remain in custody. And State Governments have deliberately, after the most careful consideration, I imagine, by the Chief Minister, the Home Minister, probably by the entire Cabinet, come to the conclusion that they cannot possibly release some people. To insist that those people should be released forthwith would be extremely unfair to those State Governments. Now, so far as those cases are concerned, the provision is that whatever may be the situation, such persons must be released by the first day of April 1953 or if there has been a person who has been newly detained—supposing someone was detained on the 1st of February 1952—as to him it is said, twelve months. He would be released after the expiry of twelve months from the date of the order of detention. The result is that so far as older cases are concerned, the deadline is the 1st day of April 1953 and so far as more recent cases are concerned, the deadline is the expiry of twelve months from the date of the order of detention.

This practically covers the whole amending Bill and I submit that it has now become a very improved piece of legislation—I had almost said, a model piece of legislation, but I will not say that, it contains, if you accept the principle, every possible precaution that you can possibly think of. Safeguard No. one: If the district magistrate intervenes, 12 days; safeguard No. two: the State Government; safeguard No. three, the Advisory Board; safeguard No. four, the right of appearance by the person concerned, and negative, protecting him from lawyers. I seem to have made a hit.

Dr. Lanka Sundaram (Visakhapatnam): You will get it back on the rebound.

Dr. Katju: And strictly limiting the period of detention. So far as the

conditions in detention are concerned, I do not want to go into them. I will just tell you the experience that I had. I went to Murshidabad. Some friends were in jail there. I went to them. They were rather sultry to begin with. But if you are determined to be friendly, no one can be sultry. Therefore, I just talked to them and told them: "I have not come to discuss with you the policy underlying this detention. That is not my concern. That is for the Ministers. I have come to ask you whether there is anything in which I can help you". This is what I saw, a big barrack—it reminded me of my old days also. Every cot furnished with a mosquito net, a library of books, and four detenus were entitled to have a newspaper; there were about 20 or 25 of them, so there were about ten newspapers or so; then pen, pencil, everybody can write...

Sardar A. S. Saigal (Bilaspur): It is tempting to the hon. friends opposite.

Dr. Katju: Then a daily allowance of rupees three. As soon as you are detained, you get an outfit allowance of Rs. 240. It reminded me of Governors.

Dr. S. P. Mookerjee: Are you prepared to exchange places?

Dr. Katju: That is what I saw. And no one could go there. The poor jailors said to me: "You had the courage to come here". So they were completely at liberty, in that particular way. Their games were provided—badminton, volley ball; about twelve servants for cooking, kitchen, and doctor—everything provided. I think about two crores of people in Bengal have not got the facilities which those people have there. That is about the so-called hardships and all that. Interviews, letters and everything else. Of course, I did not discuss with them the question of policy, but they looked pretty—shall I say—friendly, or whatever it is, as you like.

I confidently recommend to the House, every section of the House, to pass the Bill with their blessings.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Preventive Detention Act, 1950, as reported by the Joint Committee, be taken into consideration."

Before we proceed with further discussion, I think, I must dispose of some amendments about circulation of the Bill as reported by the Joint Committee for eliciting public opinion, or recommittal of the Bill to the same Committee. Now, as regards these amendments I feel a difficulty. I am not giving my ruling just now but I am giving the ground on which I am going to rule them out of order. Before I do so, I should like to give the hon. Members concerned a chance, not to make long speeches but in a very short statement to say as to why these amendments should be held to be in order. The matter is covered by previous rulings starting from 1922. I would take up only the last one on this point and the principle enunciated there is as follows. When an hon. Member sought to move an amendment for recirculation of the Bill or recommittal this is what the Chair said. It was my predecessor—I may make it clear:

"I do not think he quite appreciates the ruling I laid down a little while ago regarding a motion for recommittal."

—both are placed on the same footing—

"It is the business of the Chair to protect the House against dilatory motions except where such motions are rendered necessary either by the manner in which a Select Committee have handled the Bill or by unforeseen circumstances arising since the Bill emerged from the Select Committee....."

In that particular case this condition was satisfied.

Now here, the Bill is coming before the House so soon after the report of the Committee that there is practically no case, there could not be any case of unforeseen circumstances having arisen since the Bill emerged from the Committee. The only question to be considered is: Was the Bill so handled in the Committee that the hon. Members' points of view were not considered, or have they no further chances of bringing in their points of view now before the House? It is a very small point. I think the Joint Committee took a very long time. The House gave instructions specially to have amendments to all sections, whether included in the amending Bill or not, and even now those hon. Members will have a chance of moving their amendments. Of course, I cannot say that whatever they move will or will not be in order. That is to be looked into when the

individual amendment comes up. I should like, therefore, to know the points of these hon. Members who have tabled these amendments. Mr. Vallatharas—has he to explain as to why this Bill should be recommitted?

Shri Vallatharas (Pudukkottai): The only reason that prompted me to table this amendment is this. hon. Members had brought to the notice of the Government the extent of the abuses committed by the officers who either abused the detention order or caused the arrest. There were several cases in which persons were unnecessarily arrested. As a matter of fact, afterwards they were released by the Government themselves or by the Advisory Board. But there was no check upon those officers to prevent further abuses. There is a clause in the last section saying, "no suit will lie..." etc. as a provision of immunity for those officers. The abuses are committed at the initial stage whatever the fate of the detenu later on. And none of these officers have been prosecuted for such abuses.

Mr. Speaker: Order, order: I do not want him to argue on those lines. The only point is: Has the Select Committee in any manner so acted that this Bill requires a recommittal or recirculation? His point as he is developing it seems to be that there are certain things which he would have liked the Select Committee to take into consideration. The points were made in this House when the motion for reference to Select Committee was being discussed. But it is a matter of opinion: The Select Committee may agree or may not agree.

Shri Vallatharas: But they have not made any mention of it. If the Select Committee had considered it and come to some conclusion, I would not have minded. It concerns the people at large. My point is that individual cases should be considered.

Mr. Speaker: Order, order. When there was a debate in this House on this Bill a large number of Members who were members of the Select Committee were present. It will not be a quite correct presumption to say that they had not considered the point though there may not be any reference to it—and a reference to it is not necessary. I do not think he can be said to have made out that point.

Shri Velayudhan (Quilon cum Mavelikkara—Reserved—Sch. Castes): Sir, the way in which you have explained the scope of discussion of my amendment makes me think that it is so restricted that there is no point in my saying anything more on that par-

[**Shri Velayudhan**]

ticular subject. At the same time, I may point out to you that certain new factors regarding preventive detention have come up. In my State about 200 people were arrested last week, most of them under the preventive detention legislation.

Mr. Speaker: After the Select Committee's report?

Shri Velayudhan: I do not know for certain—perhaps it might have happened during the time of the Select Committee itself.

Mr. Speaker: Let him be sure as to facts.

Shri Velayudhan: I am not sure of the facts, but I would like to speak on this...

Dr. Katju: May I, with your permission, Sir, add one sentence on the point of these officers acting.....?

Mr. Speaker: Order, order. I am not concerned at present with the merits of the action of the officers. I am concerned only with the admissibility of these amendments. At this stage we need not go into that question.

Dr. Katju: I only wanted to state what we did in the Select Committee. That point was considered and the Select Committee came to the conclusion that section 15 of the Act protects an officer who only acts in good faith. We considered that was quite sufficient. If there was any officer who was acting in bad faith he can be prosecuted.

Shri Seshagiri Rao (Nandyal): The powers of Parliament to enact the Preventive Detention Act are derived from Lists I and II, but all these powers are circumscribed under article.....

Mr. Speaker: Order, order. He is going into the merits. What I want to know from him is this: Is he in a position to show that the Select Committee acted in such a manner that there is a case for recommitment of the Bill to the Select Committee? That is the point. Whether a particular point is held in favour of an hon. Member or not is immaterial, but the question is whether the matter has been fully considered.

Shri Seshagiri Rao: The Select Committee has of course amended the existing clause and said that within five days the detenu must be supplied the grounds. But there is one other right which the detenu has under the Constitution, namely, the opportunity

to make a representation. There are therefore two obligations, only one of which, the Select Committee has discharged. The other one has not been considered at all.

Mr. Speaker: I do not think a case has been properly made out for allowing this dilatory motion.

Shri Veeraswamy (Mayuram—Resigned—Sch. Castes): It was agreed on the floor of this House that when the Select Committee considers this Bill it can make changes in the parent Act. The hon. the Prime Minister said so. But the Joint Select Committee did not consider the parent Act of 1950. Not even one clause of that Act seems to have been taken into consideration. Therefore, in my opinion, it is necessary that this Bill should be circulated for eliciting public opinion thereon.

Mr. Speaker: I am not concerned with the merits, but from the Select Committee report and the minutes of dissent it appears clear that the main Act was thoroughly gone into by the Select Committee. Whether it agreed with the views of the hon. Member or not, it went into the parent Act. Therefore, I do not see any ground made out for allowing this dilatory motion at this stage.

Shri Madhao Reddi (Adilabad): I have also a motion for circulation. I want to ask one question. Is it the pleasure of the Chair to suspend rule 97(2) of the Rules of Procedure?

Mr. Speaker: I do not propose to go out of the way. There is no occasion, or substantial reason, for it.

Shri H. N. Mukerjee (Calcutta North-East): I also have a motion for circulation. In the first instance I submit that you may be pleased to reconsider your decision regarding interpretation of rule 97(2), because I feel that particularly in regard to motions of this description it is fair to the House that you interpret this rule as liberally as you should. In the second place, I think that the report of the Joint Committee is a kind of document which makes it imperative that it should be circulated for eliciting public opinion. This report is accompanied by as many as five minutes of dissent and in regard to the point which has been mentioned already about the authorisation of the Joint Committee to go into the parent Act, it seems to me to be the case that as far as the minutes of dissent are concerned, the provisions of the parent Act were not really gone into with

that kind of seriousness which was expected when the House by unanimous motion required the Select Committee to go into the parent Act as well. In the minutes of dissent also there are so many very distinct, concrete and objective proposals made in order to make this Act somewhat less objectionable than it is, and all those suggestions, it seems, were simply ruled out by the majority in the Joint Committee.

Besides, the report of the majority of the Committee is couched in such terms that it shows a complete indifference to the arguments advanced with so much care in the minutes of dissent by the representatives of different political parties as well as by independent Members of Parliament. In view of this particular character of the report of the Joint Select Committee and in view of the directive of the House which was so enthusiastically acclaimed when the Prime Minister intervened in regard to the discussion of this proposition, I feel it is only fair to the House as well as to the country that the report of the Select Committee goes to the country for eliciting public opinion. Let the people have an opportunity of going into the arguments made out by the dissenters from the majority from different points of view. Thereafter, I am sure Parliament will be in a position to understand the real implications of the Bill as it is going to be passed at present. I submit with all respect that the report of the majority of the Joint Select Committee has been drawn up not only without due care for the interests of the citizen but also without any real understanding of the significance of the measure which is under discussion. The minutes of dissent show a very wide, a very distinguished and a very learned exposition of different points which could have been incorporated in the measure in order to make it less pernicious than it is. In view of that, it ought to be circulated for eliciting public opinion.

Shri M. A. Ayyangar (Tirupati): I was the Chairman of this Committee. It is very wrong to say that we did not consider any of the points that were brought forward. We had been in the habit of recording the minutes of the proceedings from day to day and next day they were circulated to the members. In those minutes the individual names of members who sought to bring forward certain amendments have also been noted. If my hon. friend Mr. Hirsh Mukerjee means that merely because the whole

Act has been sent to the Select Committee, therefore it is tantamount to saying that every clause of that Act according to his lights ought to be amended, then the Select Committee did not perform that function. Otherwise, it only means that a chance was given to the Select Committee and to those Members who were anxious to get even the parent Act amended suitably to make representations there. We did allow more than ample opportunity. There was not a single gentleman there who ever raised an objection that we were hustling through. I am not letting out a secret when I say that I received encomiums for the manner in which I conducted the deliberations and they came from all sections. Therefore, no hon. Member, to whichever party he may belong, will say that ample opportunity was not given. If you, Sir, permit these minutes of the proceedings to be given to such of the hon. Members as want to read them—because it is supposed to be an official document—they will immediately find that not one of the points that have been raised was not noticed there but they were discussed at length and threadbare. All these hon. Members were there. Under these circumstances, I submit this is a dilatory motion.

Then again, Sir, you will please remember that only in cases where the Select Committee has so modified the Bill that it is necessary for the public to know the reasons or the views of Members of Parliament necessitating the modification, the Select Committee itself recommends that such a Bill may be circulated for eliciting public opinion. We have made so many improvements. Unless it is the desire of my hon. friend that those improvements should be lost and should be once again removed from the original Act. I do not see any reason why this Bill must go to the country at large. This is a purely dilatory motion and I hope you will not allow it to be discussed. So far as amendments are concerned, they can be tabled and the House will have an opportunity to consider them.

Shri S. S. More: I was one of the members of the Joint Select Committee. Of course, I can in fairness say that we discussed almost all the points. But there was one point in which we did not receive the necessary satisfaction and that point was raised by Dr. Kunzru.

Mr. Speaker: Order, order. The proceedings of the Select Committee are supposed to be confidential and the hon. Member should not mention

[Mr. Speaker]

any member's name in connection with any matter.

Shri S. S. More: Some of the members of the Advisory Boards who had gone into the different cases ought to have been examined by the Select Committee.

Mr. Speaker: Order, order. He is referring now to some specific points which, in his opinion, as also in the opinion of some other Members, the Select Committee did not take into consideration to his satisfaction, meaning that they did not agree with his conclusions. That is something different from saying that the Select Committee did not consider the points at all. In fact the hon. Member himself conceded that all the points were taken into consideration. His point now appears to be that in one or two points the Committee did not agree with his conclusions. That does not make any difference so far as the admissibility of this motion is concerned.

Shri S. S. More: May I have an opportunity to explain?

Mr. Speaker: That will be in the course of the debate. If on a relevant amendment discussion is allowed that point can be raised. The Deputy-Speaker has already pointed out how the motion is dilatory. The Select Committee itself in the concluding paragraph of its report says: "The Committee think that the Bill has not been so altered as to require circulation". There have been alterations; but they are not material alterations.

I do not accept these motions to be in order and the Bill will now be for consideration before the House.

Shri M. S. Gurupadaswamy (Mysore): I have got an amendment.

Mr. Speaker: Which amendment?

Shri M. S. Gurupadaswamy: That the Bill be withdrawn from the House.

Mr. Speaker: He can vote against the Bill and give effect to his amendment.

Dr. P. S. Deshmukh (Amravati East): May I rise to a point of order? In the minute of dissent appended to the report of the Select Committee, signed by Messrs. Sundarayya and Gopalan—it has probably escaped your notice—this Act has been described in as many as four places as a "black Act". I do not know if there are any instructions so far as the use of language in minutes of dissent is concerned, but it will

probably be as well for you to lay down certain rules and direct that there should be a certain amount of restraint observed in writing minutes of dissent. I do not wish to refer to any other passages some of which, at any rate, are rather strongly worded. I do not know whether it is proper.

The reason why I am raising this point of order at this moment is that I do not believe there are any directions laid down so far and it would be as well to do so now so that there might not be instances of similar nature later on. It may be permissible to call a piece of legislation as "a black Act" in the course of a speech in the House. Whether some hon. Members could be allowed the use of such language in the course of a minute of dissent is a matter for examination and it would probably be necessary to check those tendencies at this early stage.

Incidentally, I would also like to draw your attention to the fact that one of the members of the Select Committee has really appended a note of assent and called it a note of dissent. I refer to the minute of Diwan Chaman Lal. How far that is permissible should also be examined. These are the two points which I would like to bring to the attention of the House.

Mr. Speaker: I have not gone through the dissenting minutes with the purpose of finding out what expressions in it are parliamentary or unparliamentary. The hon. Member has made a point which I agree requires consideration and he may invite my attention to other unparliamentary expressions that may be contained, not only in the minutes of dissent, but even in the report of the Committee and I shall be glad to consider and see whether I should expunge them or not.

Shri H. N. Mukerjee: May I at this stage rise on a point of order? I find that Rule 97(1) says:

"After the presentation of the final report of the Select Committee on a Bill, the Member in Charge may move:

(a) that the Bill, as reported by the Select Committee, be taken into consideration:

Provided that any member of the House may object to its being so taken into consideration, if a copy of the report has not been

made available for the use of members for two days, and such objection shall prevail, unless the Speaker allows the report to be taken into consideration."

We got this report on the night of the 30th July and two full days have not passed. This being a document with so many dissenting minutes, it certainly requires a good deal of digestion.

Mr. Speaker: I had that rule in mind and, in fact, in the Business Advisory Committee, I believe this point was touched. Then Members wanted to be assured that they would have sufficient time for tabling amendments when the House proceeds with the clause by clause reading. The point of the rule is that they must have sufficient time to table amendments. I said that if the Business Advisory Committee was agreed—let me here repeat that that Committee consists of Members representing all sections in the House—I was prepared to waive notice under that rule and the discussion might take place. This is being done with the agreement of all sections of the House and, therefore, the point of order really does not arise.

Let us now proceed with the further discussion.

Shri N. C. Chatterjee: When the Prime Minister made his announcement on the floor of the House that the Joint Committee was going to consider not merely the few clauses of the Bill, but that the principal Act and every section and clause of the Act would be open for consideration we thought, it was a genuine gesture. You know, Sir, that the Members of the Opposition were very reluctant to go to the Select Committee. But that statement of the Prime Minister dispelled to a large extent the atmosphere of suspicion and we went there with high hopes. We thought, not merely that the few clauses of the Bill would be considered there, but that there would be a dispassionate consideration of this, much-criticised and retrograde features of the Act, and that we shall be able to purge this Act of its very unsatisfactory provisions.

Our hopes were frustrated. It seems to me that there was somebody more powerful than the Prime Minister of India—possibly the Whip, we do not know. We effected some very minor amendment's in the Bill, but when we came to the Act, I am sorry to say that each and every one of the suggestions for improvement and amendment was regularly turned

down. There was somebody working behind. Not one, not even Dr. Kunzru's amendment, not even Acharya Narendra Deva's, nor ours was accepted.

I say in all seriousness that this House is on its trial; the Select Committee was on its trial; this Parliament, the first real Parliament elected on the basis of adult suffrage, is on its trial. We thought we would be able to face the country by doing something to purge this pernicious Act of some of its most unsatisfactory and retrograde provisions. We placed before the Committee some reasonable suggestions made by the Civil Liberties Union. Firstly the All-India Civil Liberties Union has been pointing out that it is nothing but a parody and farce of a hearing. There is hardly any hearing.

What is it that we are fighting for? It is not fair for the Home Minister to say "You are trying to sabotage and torpedo this Act". It is not our intention. We went there as responsible men to get some facts.

Shri P. T. Chacko (Meenachil): On a point of order, Sir. Is the hon. Member in order in referring to what all took place in the Joint Select Committee? He is giving even the names of certain persons.

Mr. Speaker: He is not going, so far as I am able to see, into the details of the matter but is only generally describing the position that they tabled a number of amendments and none of them was accepted. I think he can legitimately make that grievance. He will not go into the details of it. He knows it, I believe.

Shri C. R. Narasimhan (Krishnagiri): Can he characterize it as a farce?

Mr. Speaker: He should not have done it. But I do not think the word is unparliamentary altogether.

Shri N. C. Chatterjee: What is it that you are objecting to? We as responsible and reasonable men thought that possibly on the floor of the House, with people sitting in the public galleries, it will not be proper to expect that the Home Minister would give us all the details which would justify the continuance of this much criticized measure. Look at the Statement of Objects and Reasons. The hon. Minister says:

"The primary reason for the enactment of this legislation was to protect the country against activities intend to subvert the Constitution and the maintenance of law

[**Shri N. C. Chatterjee**]

and order or to interfere with the maintenance of supplies and services essential to the community. Attempts to do so, though considerably reduced in tempo, have not ceased and it is considered essential that the powers conferred by the Preventive Detention Act should be continued."

We wanted facts. We expected some figures. I am not using the language of law, but the onus, the burden was clearly on the Government, on the hon. Minister to make out a case where this kind of thing was going on, where subversive activities were going on. Therefore we wanted some material. We pressed for some materials. None was given. We got no facts, no figures. In the placid atmosphere of the Select Committee we expected some tangible evidence. Nothing was forthcoming. Therefore we were handicapped. We thought that as this Parliament was on its trial we should be able to do something really to bring it in conformity with the spirit of the times. What is it that we are fighting for? We are continually saying that it is against the postulates of a civilized system of government to detain a man without trial, not to give him a real charge-sheet, not to give him adequate opportunity of hearing.

I appeal to this House even today, I appeal to Parliament to consider, in the year of Grace 1952, in Independent and Free India, under this Republican Constitution of which we are proud, with the high-sounding Preamble guaranteeing social justice and individual liberty, is it not fair at least that we should have those safeguards, those privileges given to the detenus which they enjoyed in war time under Regulation 18B of the Defence of Realm Regulations? That was the main stand we took. We were pressing, we pressed an amendment which stood in the name of Pandit Thakur Das Bhargava. That was nothing improper, nothing extraordinary. The amendment was in these words, that the detenu should be given....

Mr. Speaker: Order, order. He should not refer to the detailed amendments, which amendments came in whose name and so on. It is not in order to refer to those proceedings of the Select Committee. At the most he can say that an amendment of this type came up.

Shri N. C. Chatterjee: Very well, Sir. That amendment was already before this House. That had been circulated.

10 A.M.

We pressed that there should be given three essential attributes, namely, a fair hearing, formulation of the charge, and an independent judiciary and a right to plead the case by counsel or lawyers of the choice of the detenu. It is an amazing statement. I have great respect for my hon. friend Dr. Kajju. I did not say I was ashamed of him I told him I am amazed at his statement and at this stage of my life I have to hear his plea: "For Heaven's sake do not give the detenu a lawyer, that will finish him". Come with me to the Supreme Court. There are Judges who are very anxious to try to go out of their way to help the detenu. No detenu except possibly one in a thousand can present his case properly, even if the Judges are willing, sympathetic, attentive and anxious to help. The greatest tragedy—I appeal to your experience, to the experience of every lawyer Member of this House—the greatest tragedy that can befall a man is to be a litigant pleading his own case before any tribunal! After all it is a tribunal. You may call it a quasi-judicial tribunal, but it is after all a tribunal. We have got on it a High Court Judge and two other Judges. There are three Judges. Is it possible, is it feasible, is it practicable that a detenu will be able to put forward his defence properly? It is impossible. We know it cannot be done. Go to any High Court or to the Supreme Court. Any day when *habeas corpus* petitions are heard, the judges find the detenus impulsive, they have no sense of relevancy, materiality, cogency, they do not understand that hearsay evidence cannot be adduced. I am not thinking of technicalities of law. But there are fundamental maxims which must govern all proceedings where some kind of a semblance of justice is maintained. The Judges have said "You better stop, we will get a counsel" and that counsel would plead for him. Is it possible that before three Judges the detenu—some of them may be illiterate or may have no training in law—will be able to put forward his case? I do enter my emphatic caveat against the statement made by the hon. the Home Minister that the lawyer will be a nuisance, a handicap and will spoil the detenus. He will do nothing of the kind. It is his choice. If he says that he cannot himself do it, for Heaven's sake give him this elementary right, the right which you gave to a murderer, a saboteur, a traitor to the

country, to defend himself through a man of his own choice. That is all that we are pleading for.

[MR. DEPUTY-SPEAKER in the Chair]

In England they did it. Mr. C. K. Allen, one of the greatest authorities, who was himself a member of the Advisory Board in England, said that even in England it is impossible for the detenus to really represent their cases before the Advisory Board. The language is this. I am quoting from Mr. C. K. Allen's book *Law and Orders*:

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

We know that the Home Minister has been good enough to accept one suggestion of ours, that there shall be a High Court Judge. Of course he has added an ex-Judge also. I am in difficulty in saying anything against ex-Judges of High Courts!

Dr. Katju: I have got very high opinion of ex-Judges.

Shri N. C. Chatterjee: But what I am pointing out is this. You have these three Judges. But even there you know Sir Walter Monckton was the Chairman of the Board in England. And Sir William Norman Birkett, one of the greatest Judges England has produced, was Chairman of the Board. And he says it is impossible for the detenus to really represent their cases. Remember the standard of education, the standard of literacy, the equipment in public life and the best traditions of England. Even there it is said that the detenus cannot present their cases, where the proceedings are conducted in the English language. There also, Advisory Boards have in case after case stopped them and sent for counsel.

One or two instances were appended in our minute of dissent. . . .

Dr. Katju: On a point of order, Sir. Is not my hon. friend making a grave reflection upon the judiciary that they are unable to understand the cases without the assistance of the Counsel?

Shri N. C. Chatterjee: It is not a question of specific cases. What was 124 P.S.D.

Dr. Katju doing for 40 years in the different courts?

Dr. Katju: I told you I ceased to argue cases at the end of my career.

Shri N. C. Chatterjee: It is a libel on the Allahabad High Court and I hope some lawyers here will protest the Judges there.

From the statements of responsible Ministers in Parliament it will be seen that the detenus are given facilities for the purpose of presenting their cases. You have the statements with you already.

"The English practice will be seen from the statements of responsible Ministers in the British House of Commons—Home Secretary (October 31st, 1939)—again predecessor in office of Dr. Katju, ex-Governor of Bengal.

Dr. Katju: I am sick of quotations.

Shri N. C. Chatterjee: Because they are very inconvenient to you, I know. I quote:

"The Advisory Committee have before them all the evidence which is in the possession of the Secretary of State. But the Advisory Committee call in any person who, in their opinion, may be able to assist in elucidating the matter with which the Committee have to deal."

We pleaded that at least the Advisory Committees should have all the materials which is in the possession of the Government. Even that was not accepted. Then we said that the Advisory Committee should be allowed to call any person who in the opinion of the Judges may be able to assist the Committee with which the Committee have to deal. Solemnly our friends in the Committee turned it down. Are you going to tell the people of India that you are putting this Act on the statute book? In the years 1941-42 when England was in the throes of a terrific war, when her existence was in danger and the foundations of her State were in jeopardy, when her cities and towns were bombed, Sir John Anderson could allow it; Sir Walter Monckton could allow it; Sir Norman Birkett could allow it; I ask what has the poor detenu done? What crime did he commit? When Congressmen were detained, when lovers of liberty were detained under the Criminal Law Amendment Act and Regulation 3 of 1818, they were very loud in their protestations; we were fighting for freedom from political bondage and we wanted to sweep away the existing repressive laws in order to secure the fullest

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development of human personality. Do not commit the mistake of thinking that you can eradicate or suppress Communism by this kind of preventive detention. The British imperialists also thought that they would crush the Congress through this Preventive Detention Act, but they could not do it. They could not suppress the liberty movement. You will also not be able to do it. This is not the way to do it.

I have my fundamental differences with the comrades who are sitting on the other side. But still I do not think this is the way to eradicate Communism. You are really giving these people a handle; you are doing the greatest disservice to India by acting in this manner. Look at the way you are treating them. We were then preaching that an independent India will build up a real commonwealth, a real republic, that justice shall be done, where the frontiers of despotism shall be pushed back, where the frontiers of liberty shall be extended and there shall be no one who shall be deprived of liberty without trial, without an opportunity to defend himself before an honest tribunal.

What does Dr. Katju say to that? He is saying that "this is a model Bill". It is a wonderful Act. This is a wonderful Bill which the Congress Government has today brought out and they are proud of it. I think they ought to be ashamed of it. What is it that you are going to say? I will give you three Judges with one High Court Judge or an ex-Judge but I will not give you a lawyer. I will not even give you a chance of having a representation or your defence or a statement written out by one who knows; I will not even give you a chance of consulting some lawyer for the purpose of preparing your case, even if it is a case of an alibi; I will not allow you to call any witness or cross-examine witnesses. These three handicaps Dr. Katju is removing. No lawyer, no examination of witness in support of the defence, no cross-examination of the police informer or informant who supplies some information to the executive officer, district magistrate or his "wonderful" additional magistrate or the Commissioner of Police. In the Uttar Pradesh there are 52 wonderful district magistrates—each one an ideal and a model.

You know there have been abuses of this kind; you know gross abuses of this type. We know that the Supreme Court and other High Courts have released detenus because they

were convinced that this Act has been abused. Why was it abused? It was abused because it was left to the subjective satisfaction of one man, however well-equipped he may be. Will you allow him to arrest and then give him a chance of a fair trial? Detain him if you have some reasonable satisfaction, if you have some real information, but then immediately thereafter give him a chance of defending himself. What is the harm there? He is behind the prison bar; he cannot commit any prejudicial act. When he is behind the prison bar, why not give him a chance of defending himself of proving the incorrectness or the *mala fide* of the case against him. We pleaded that at least the detenu should have all the materials which you have placed before the executive officer. That was turned down.

When you are defending yourself properly how do you expect the detenu to defend himself if you do not give him a chance of knowing what the materials are on which the district magistrate or the additional district magistrate had ordered his detention. That is only fair; that is only minimum justice; that is only the barest justice. We also strongly protested against the continuance of this measure for two years. Our appeal—my appeal and those who are with me—was and is "extend it for one year". Why should you have it for two years. Come up before Parliament, convince us next year that conditions exist which make the continuance of this measure justifiable. Take Parliament into your confidence. Simply because of climatic reasons Members of Parliament may be under some handicap to consider this measure properly, therefore you have it for two years; have it for 20 years, so that Parliament will not have further trouble with this Act. Do not take away the Parliament's right. Parliament will be doing the greatest disservice to itself and will be committing a breach of trust if it allows a longer period than one year. After all power corrupts and absolute power, when granted to these officials, is liable to be abused. Therefore, I say that our amendment and our suggestion which was negatived was not properly negatived.

What do you want? It is no use the hon. Home Minister trying to ridicule our suggestion. We suggested the deletion of some words and sections. We said that the scope of the "prejudicial act" should be restricted to a reasonable degree. Please do not expand the scope of abuse. There was

nothing improper. Our suggestion was: "delete foreign relations". What is it? Why should you put a man behind the prison bar on suspicion that he may say something or do something which may imperil some foreign relations with some other countries. We know it was only meant for only one country and there is absolutely no necessity for it. It is our right, it is our duty; it is the duty of every citizen to speak out his mind if he thinks that something has been done in Pakistan or in another State which is detrimental to our interest, to the economy of India and to the self-respect of India. It is our right to do so. I say "delete it". You have read the comment of Pandit Kunzru; he is not an extremist nor a Communist; he is a sober, seasoned man and he pleaded for it. It is not that I alone pleaded for it, but it was turned down. To whatever we suggested the answer was peremptory, an unequivocal and unanimous 'No' from the majority. That is our fate.

We also suggested, for Heaven's sake, in India today, have a law on the same footing as was the law in England; do not entrust this unfettered discretion to one officer, or to one police officer however eminent he may be. We are going to trust the hon. Dr. Katju with the exercise of this power. We are going to take the risk of entrusting this subjective satisfaction to every Home Minister in every State in India. We said, for Heaven's sake, do not give it to any district magistrate or additional district magistrate or police commissioner. That is the English statute.

The English statute differs from our statute in three ways. Firstly, it is restricted to one particular emergency, that is war. Never during peace time have they had it. They repealed it; it died a natural death at the end of the war. Secondly they never gave the power to a district magistrate or county magistrate or any inferior officer. They gave it only to a responsible Minister of the Cabinet, a man in whom the country has confidence, Parliament has confidence and whose satisfaction is of some value. Thirdly, even there, the Home Minister can act only when he has reasonable grounds to believe that the person sought to be detained—I think I am quoting the language properly—the person sought to be detained was recently concerned in some prejudicial acts. Then and then only he can exercise the power. That was the suggestion that we made; that is the suggestion that we are making now. Do

not turn it down because the Opposition has put it forward. For Heaven's sake consider it on its merits. We say, take this responsibility yourself; entrust it to responsible Ministers. But, tell them that they cannot act unless they are satisfied that the prospective detenu was recently concerned in some prejudicial act or in any instigation or preparation for violence. I am only suggesting this. There is nothing unreasonable, nothing improper in our suggestion.

Dr. Katju said these are people who wanted to sabotage the Bill. Nothing of the kind. It is not a fair statement; I never expected it of him. What we wanted is that this Act shall come into operation in any State or any part of a State in India where the Central Government in its wisdom will think that the conditions justify the application of this extraordinary statute. Can they not believe themselves? We are giving the power to the Central Government. Issue a notification in the Gazette any time you like. Do not extend it to the whole of India all at once. Do not allow all the district magistrates in all the districts in all the States of India to exercise powers under this Act. We have been told that in certain States no action has been taken. Not one detenu has been kept behind the prison bar. Obviously it is not necessary there. We feel that it is only a just, fair and reasonable suggestion: only have it in those areas where the emergency demands the application of this emergency measure. You cannot stand up and say against your own Statement of Objects and Reasons which says that there are parts of India where it is not at all needed and there is no question of the application of this Act.

We made various other suggestions. I do recognise that small changes have been made. What are the wonderful changes that have been made? One is that each order of detention has got to be approved by the State Government within 12 days instead of 15. After three hours of passionate pleading, the hon. Minister conceded three days. I was lucky. The second is that the grounds must be disclosed to the detenu within five days of detention: a small mercy and I am thankful to him. The third is that each case must be referred to an Advisory Board within 30 days instead of 42 days. We are obliged for this small mercy again. Then, there shall be a Chairman of the Board, who will be a High Court Judge. Lastly, the executive officer has got to forward to the State Government all the materials that he has against the person detained. One thing I should

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point out in all fairness. The only gain which we have achieved is that there shall no longer be a repetition of the renewal of the first detention order exactly on the same grounds for which the man was detained. Dr. Katju saw the force of the argument. Therefore, a fresh detention order must be now issued on the happening of fresh facts and not the old grounds.

I still maintain that unless you radically alter the statute, this Act shall be a standing slander on India's right to self-rule. It is a great imputation on our capacity for democratic self-government. We have been passionately pleading that we shall remove all these statutes when we get freedom. After five years of freedom, you are solemnly re-enacting all those laws. You are still continuing to have this power to detain without a fair opportunity of trial. We are still prepared, and we were all along prepared, to consider the case of continuance of this measure where such a case is made out. Nothing was done. The hon. Minister was kind enough to mention certain facts and figures here. That shows that in 1241 cases the Advisory Boards have ordered release, that is, in about 28 per cent. of the cases, the Advisory Boards have released the detainees. Does it not show that in some cases, at least in a good number of 1241 cases innocent men were rounded up? You have got to act on suspicion. How can you possibly say that this man is a potential criminal, a potential saboteur? You know there is no question of your going to a court. The grounds are non-justiciable. You cannot invoke the jurisdiction of any court. You cannot do anything in a court of law. That position still continues. The onus which was primarily on the Government was not discharged.

The black spots—I will not call or use the term "Black Act"—in this Preventive Detention Act are still there. One: The detenu is not going to be supplied with all the material which the State has against him. I ask you in all seriousness to delete this provision. It is only a rudimentary canon of fairplay that what you have got against him and what the Advisory Board has got against him should be placed before him. Two: There will be still in a sense *ex parte* hearing of the case. There will be no chance to cross examine and no chance to lead evidence. From our experience we can say that a majority of the detenus will be under a great handicap. In India, having regard to the situation and the

standard of literacy or illiteracy, it is absolutely impossible for them to do justice. Three: We also urged, at least to bring our law into conformity with the English war-time law and put it on that basis.

I appeal once again before I sit down. Let us read the signs of the times. Let us do something to make the common man feel and be convinced that he is not a mere tax-payer, that he is not a mere blind recipient of all your orders, but that he has got a self, that he has got a personality which contributes to the making of the orders and also colours the nature of the orders. That is what we wanted. Then, he will have the supreme satisfaction of feeling—he may be hungry, he may be under many distresses, economic and otherwise—that he has not been denied justice. His deepening frustration will be removed. There will be real response. We can then face the public and tell them that those who are in authority today—Members of the Government who fought—fought not merely for freedom in the political field, but also for the enthronement of individual liberty—while they are in office, they are not going to cast to the winds all the cherished principles which they preached, and that they are going to practice, at least some of them, in free and independent India.

Dr. Rama Rao (Kakinada): I happen to be one who has enjoyed only one fundamental right, the fundamental right to detention without trial, and as a result of that detention and as a result of that terror regime in jails, I have been kept away even from coming to this House till recently. And now, in spite of all Dr. Katju's sweet arguments, I know I may not be able to come to this House again not because I have any motives, but just because I will exercise the same right of agitation against this Government as I did before, and I am likely, under this Preventive Detention Act, to be detained again.

Before I proceed further, I will read only one sentence from my detention order:

"He was a staunch Communist worker. After the Chief Communist leaders went underground, he had been directing the Communist campaign in Ramachandrapuram Taluk. He presided over a number of Communist meetings in Ramachandrapuram Taluk, and had been exhorting Communist

minded workers to agitate for lifting the ban on the Communist news paper *Praja Shakti*."

Shri B. Shiva Rao (South Kanara—South): May I ask from which document the hon. Member is reading?

Dr. Rama Rao: The detention order served on me by the Government of Madras. I was detained not for asking people to break any law or any order, but to agitate and bring pressure on the Government of Madras to remove that unlawful ban on *Praja Shakti*. *Praja Shakti* was a daily from Vijayawada which the Madras Government banned and suppressed. Of course, the fundamental rights give us so many freedoms, freedom of expression, freedom of public speech and all that, but when I spoke from a public platform of which the whole record was there with the Government, they could have prosecuted me for any unlawful statements I had made. But at the public meeting, I exhorted for the lifting of the ban.

Is there any time limit for the speech? I am speaking slowly owing to the after-effects of detention. I am feeling weak.

Mr. Deputy-Speaker: What is it that the hon. Member wants before he proceeds?

Hon. Members: Is there any time-limit?

Mr. Deputy-Speaker: Let him go on as he likes.

Dr. Rama Rao: I will read further:

"He organised a large procession on 'May Day' on 1st May, 1948 from Ventur to Ramachandrapuram."

In the first place, it is not a fact. It is untrue. In the second place, it is perfectly lawful. There is no section 144 or any other section banning that procession:

"The procession went about shouting objectionable slogans like 'Congress Government should be overthrown', 'Police should be rooted out'."

I do not know what is exactly meant by "Police should be rooted out" and whether the processionists shouted such slogans, and it does not say how I was responsible for that:

"He instigated the workers to defy orders under section 144 Cr.P.C. at Pandalapaka, Kurmapuram and Ventur in Ramachandrapuram Taluk."

First, it is false. Secondly, the order itself does not show that I defied the order or any such thing:

"Under his support, the Communists openly announced that they would open a conference at the Taluk Ryots Assn. at Edida on 4/5th June, 1948 in spite of orders under section 144 which were in force in that village."

Even then, it does not show that they defied the order. Again I repeat I had nothing to do with any of these meetings. Even till this date I have not gone to that village Edida.

Here are certain statements made: some of them are absolutely lawful activities, others absolutely false, but my point here is that I had no opportunity to prove that any of the facts were false, and there was no need for the police to prove that any of these statements was true.

Now, the present Bill before us practically gives the same power to the police; and places me in the same helpless position. You make certain statements. Of course, these are all vague, and subsequent judgments of the High Court showed it and according to those judgments I could have been set at liberty. But till now, if they make a specific statement that on such and such a date this Dr. Rama Rao did certain things, I am helpless to prove it is false.

I will give one instance. In 1941 I returned from the General Hospital, Visakhapatnam, after a major gastric operation. There was a conversation between the local medical officer and the sub-divisional magistrate. People sometimes become famous by the operations they have to undergo. During the conversation, the doctor mentioned to the sub-divisional magistrate that I had undergone such and such an operation. The sub-divisional magistrate was surprised. He said: "What was he not in town?" "No, he returned only three days ago." "It is good you told me. I was about to sign a detention order against him on the ground that he received an underground Communist 20 days ago at such and such a playground". And for two months before that I had been in the General Hospital. This happened by accident. The sub-divisional magistrate told him: "I received information that he received

Mr. Deputy-Speaker: Is the hon. Member feeling feeble or too weak to stand?

Dr. Rama Rao: I shall just manage. After this I may not have this trouble again.

Mr. Deputy-Speaker: In which case I would allow him to sit and speak.

Dr. Rama Rao: Thank you very much, Sir.

Mr. Deputy-Speaker: Or he can come to one of the front benches.

Dr. Rama Rao: I am very much obliged.

Mr. Deputy-Speaker: On that account, it need not be too long.

Dr. Rama Rao: I will be very brief if not for your sake, at least for my own sake.

I was mentioning a case in which I escaped detention very narrowly by almost an accident. If that doctor had not met that sub-divisional magistrate on that date, probably in another four or five days I would have been detained. And I had absolutely no chance of proving the fact that on such and such a date I was lying as a patient in the General Hospital after a major gastric operation.

Shri B. Shiva Rao: May I ask what was the date of this particular incident?

Dr. Rama Rao: This refers to 1941. My point is not that Dr. Katju sent me to prison at that time. The fundamental fact is there. I had no opportunity of disproving a statement made against me on which I was likely to be sent to prison. In fact, this detention order in which the only fact is about the . . .

Mr. Deputy-Speaker: What is the date of particular detention order referred to?

Dr. Rama Rao: There are a number of detention orders. I was first detained on 24th June, 1948. Subsequently, so many orders have been issued, but the fact remains that I was in prison on the same grounds, for more than three years.

Mr. Deputy-Speaker: That is removed by the recommendations of the Select Committee. On the same grounds no further detention order can be served.

Dr. Rama Rao: I am a man who has suffered, and I know how these things are carried out in practice. It is true the same grounds will not be supplied. I may be released and one week or ten days after that, they may give me a number of other grounds, that I handed over an atom bomb to

some body—if not so suppose they say: "Three days ago, he handed over ten revolvers to such and such a person". There is absolutely no chance for me to prove that it is a downright lie. My point is that you are going to use, you have used, both the Congress Government and the British Government have used the law for certain political purposes. At least the British had this saving grace that they used it during war time, during a great emergency. But now there is no emergency in the country, and yet you are still using the same Act, and you are now seeking to extend it.

I am not for a moment going to believe that after two years this Act is going to stop. It is going to continue as long as this Government is in power. And they are going to use it not merely against any possible revolution, but against all opposition, and are going to use it as a blanket power. They are creating an atmosphere of lawlessness and irresponsibility amongst the officers so that they need not satisfy any rules of procedure, they need not satisfy any law, and that they can arrest and detain a person and send him to prison as to the Bastille, during their pleasure. Of course, all the other rules practically do not count for anything. It is not only the district magistrate that can do so, but even the lowest police officer may send a person to prison if he is pleased.

I can quote you a number of instances where people have been sent to prison for reasons other than political ones also. For instance in Vizianagaram, there was an advocate who was a Congressman. But he did the mistake of appearing on behalf of labour unions on payment before labour tribunals and boards, and unfortunately he won every case against the mill-owners, and so naturally the mill-owners got angry with him and did something by which he was sent to prison. Though he was a known Congressman, and was well-known to several Congress people, it took four to six months to get him out of the jail, just because he was detained under certain charges which were absolutely false but which he had no chance of disproving. In my own place, one advocate appeared on behalf of people who were kept in prison under section 151 of the Indian Police Act, and because he was able to bring out those people from jail on bail, the police authorities, the local Hitlers got angry with him and sent him to prison with a number of false charges for which he had to be in jail for nearly two years. I know of a large number of

cases, where for reasons connected with village factions, village parties were sent to prison because one particular party was in the good books of the local police officer who could therefore send the other party to jail on any number of charges.

My submission is that we must protest against the sense of lawlessness that has been created among the police and local authorities. In Andhra for instance, there was absolutely no rule of law during 1949, 1950 and part of 1951, because the police officers had the freedom to arrest any one, and send him to jail. Not only that, it led to the further freedom of harassing people, torturing persons and even murdering them. I know of a number of such cases also. In Pithapuram two Communists were arrested in a certain village four to five miles east of Pithapuram and were taken away and hundreds of people had seen them and thousands knew that on that particular evening these two Communists were arrested, but the next morning they were killed on a road west of Pithapuram. Then the usual statement came that an exchange of fire took place between the armed Communists and the police, two Communists died while the others escaped. This sort of statement you will find dozens of times in the old copies of *The Hindu* and *The Indian Express*: "Exchange of fire between armed Communists and the police—two Communists died, others escaped", and never a policeman injured. Of course, sometimes it is not in a mango-garden, but in a forest

Shri Thanu Pillai (Tirunelveli): Is this all relevant to discussion of the Bill now?

Dr. Rama Rao: Yes. Sir, my submission is that it is perfectly relevant, because there is a feeling of lawlessness among the police officers, because they need not satisfy the rules of ordinary law.

Mr. Deputy-Speaker: What the hon. Member evidently has meant is this. He might as well have wanted to say that the scope of the present discussion is only this much. The Bill has emerged from the Select Committee, and the Committee has done what it ought to have done. So we should not go into any other matters of policy or general matters concerning the lawlessness of police officers, etc. except in so far as they have a bearing on what the Select Committee has done or must have done.

Shri A. K. Gopalan: My submission is that.....

Mr. Deputy-Speaker: The hon. Member knows how to bring them in.

Shri A. K. Gopalan: What I wanted to say was this. Though these things are mentioned, they are not unconnected because there are so many amendments which have been given notice of, and which seek to say that there must be some principle behind all this detention, and it is as the basis for these amendments, that the hon. Member is now trying to bring out all these cases.

Mr. Deputy-Speaker: But hon. Members who speak, must have an idea of relevancy too. Other hon. Members can certainly try to bring them together and interpret in a different way. Of course, I do not attribute any motives to anybody.

Shri B. Shiva Rao: My submission is that even if you permit references of this kind, you will kindly ask the hon. Member to give the dates of these alleged occurrences.

Dr. Rama Rao: I give this offer to Mr. B. Shiva Rao. . . .

Mr. Deputy-Speaker: There is no question of challenging anybody here. Whenever any statement is made by any hon. Member on one side, the other side must be able to answer that.

Dr. Rama Rao: If I cannot give the exact dates, these are there on record, and I will give the further offer for Mr. Shiva Rao to come to Pithapuram and see. . . .

Mr. Deputy-Speaker: We have been accustomed to this kind of challenge and offer. Whatever is said here on the one side or the other must, as far as possible, be definite and specific, so that it can be answered by the other side. A general statement of policy is a different matter, the question of law is a different matter, but so far as particular facts are concerned, and specific allegations are concerned, the time, placed date, district, persons etc. must be given, so that the other side may be able to refute them or admit them.

Shri B. Shiva Rao: May I make one observation here, Sir? I am not asking for the precise date of any occurrence, but I think it is necessary that the hon. Member should specify the year in which it occurred, because only a few minutes ago, he mentioned an incident, which on an inquiry from myself, he said had occurred in 1941.

Mr. Deputy-Speaker: As far as possible these facts should relate to the period after 1947.

Dr. Rama Rao: This happened in 1950, and I may submit that I do not ask for any inquiry, judicial or public, into this. If the hon. Member Mr. Shiva Rao himself goes to Pithapuram and inquires from Congressmen themselves and then he says that "I do not find any proof of these things", and if he is satisfied that my statements are substantially wrong, I am prepared to resign from this House. Not only this, I am going to give you further instances also, and I shall place the whole list of cases before the hon. Member, and let him go to Pithapuram and satisfy himself. He need not satisfy me or the House, but if he is satisfied that my statements here are substantially incorrect, my resignation will be in his hands.

Why I am saying all this is because instead of establishing a rule of law, you are establishing a rule of lawless law. Not only are people detained without any trial, but an atmosphere is created of lawlessness. In 1948, one Mr. Mayurat Shankaran was arrested in Malabar, and the next day he was handed over to the jail authorities in a hopeless condition of injuries, and in a day or so he died. It was the hon. Member Mr. Kelappan who was at that time a very important Congressman, who made a statement to *The Hindu* bringing out all these facts. The detenu was tortured in jail while in police custody, and as a result in a day he died. How did the police get the courage to behave in this lawless manner? Because there was this lawless law.

Mr. Deputy-Speaker: I am afraid the hon. member is going into the principle of the Bill. The Bill is there with the principle having been accepted. It was sent to the Select Committee, and it has emerged now from the Select Committee. The scope of the Bill is therefore narrow. If the hon. Member wants to say that an opportunity should be given to the detenu to go before the Advisory Boards and make these complaints, then that is one matter, and if arguments are advanced, they must have a relevancy. But if any suggestions are to be made that this Bill may be amended or that such and such a thing was not done by the Select Committee, that is another matter. But all this talk about the general question of lawlessness etc. goes to the root of the matter that the Bill is not to be there. The hon. Member may reserve all this at this stage.

Dr. Rama Rao: This should be used only in an emergency and should not be used as a normal law. The suggestion that only when the President or the Government declare a state of emergency this should be used was rejected by the Select Committee. I was in Cuddalore Jail detained on what I consider to be absolutely false and unlawful grounds. I was there beaten, robbed of my articles. I was shot at and my health was broken. All these because I had addressed a public meeting asking people to agitate against the ban on

Mr. Deputy-Speaker: In what year?

Dr. Rama Rao: 1949. Now, several false statements were made against us, that we went to the jail offices with certain demands, that we refused to go, we used sticks and stones and all that. If the hon. Member, Mr. Shiva Rao, would go to the Cuddalore Central Jail and see the place of firing and beating where two of our comrades died on the spot and one lost an eye and another became permanently lame and see the mark made by the shot which was aimed at me, on an electric pole there and if he then says that my statement is untrue, I am prepared to resign. We were helpless in detention; we could not do anything.

Pandit Thakur Das Bhargava: Gurgaon: Was any enquiry made?

Dr. Rama Rao: Certainly not. Two hundred of my comrades, went on hunger strike for 27 days asking for an inquiry. No inquiry was made, unless you call it an inquiry when the district magistrate came there and asked the man who was guilty of this murder and went away, without seeing us or our memorandum. We definitely asked for an inquiry, though we did send the memorandum to the Government, and naturally it must have found its way to the wastepaper basket. Two hundred of us were on hunger strike for 27 days just asking for an inquiry. I think I must give some facts to the House.

Dr. Lanka Sundaram: Was it published?

Dr. Rama Rao: Not at all. There was no inquiry, no report and false statements were published. One thing more. On the previous day on some lame excuse, our interviews were stopped and our letters were cut off for one month, so much so that for one month we could not see any of our relatives or send letters. We

could not give any publicity to this. The next day we were going in a procession. Processions were then quite lawful and common. Processions were usual and the jail authorities never objected to them, not even to that procession on that day. We practically completed it. When we came to the last stage, the superintendent was outside the gate—of course most of the hon. Members know about jail except one or two who spoke as if they did not know. It was a double gate. Warders with arms, rifles and lathis were kept inside the gate. Only the superintendent was outside. If we had seen them with arms and lathis, there, we would have stopped the procession. If we had received a word that they did not want the procession to proceed, we would have stopped, because we knew in what temper the superintendent was. On the previous day he was thrusting his revolver on the chest of my leader, Mr. Gopalan. We knew he was out to shoot us. So we would not have gone there; we want to achieve Communism, not to die in jail like rats. So the next day, when we were going in procession, without warning, without even giving us an inkling that they were ready for some mischief, he pounced upon us. About 100 yards from the area.....

Shri B. Shiva Rao: I am reluctant to interrupt the hon. Member on a point of order. May I know if all these details are, strictly speaking, in order at this stage of the discussion of the Bill.

Shri A. K. Gopalan: The hon. Home Minister explained the jolly and happy conditions inside the jail when he went to see some friends in jail when he was Governor. He said they were happy, they had newspapers and all other things were supplied and so on. The hon. Member is only explaining the other side that the hon. Home Minister did not see.

Mr. Deputy-Speaker: It is not that every statement made by the Minister ought to be replied to, unless there is a positive suggestion either for amendment of this Bill or that the matter was not considered by the Select Committee. Every hon. Member may have his own experience in jail—both on this side and on that side, under one Government or another Government. Therefore, it will be endless. Let the hon. Member come to the point.

Dr. Rama Rao: Since they are not likely to suffer under this Bill and

since we have suffered, I must tell them. I am just reminded of an incident when Pandit Motilal Nehru went to consult a physician and then he was telling a story; the physician was getting restless and finally asked Pandit Motilal Nehru: "What is your present trouble" and Pandit Motilal Nehru replied: "My present trouble is that I have a physician who has no patience to hear me". Of course, I cannot say the same thing to this House.

Shri C. R. Narasimhan: Can the jail administration be discussed here?

Dr. Rama Rao: It is this lawless law.....

Mr. Deputy-Speaker: I do not want to keep the debate prolonged by such statements. Some of the hon. friends in the Select Committee wanted various kinds of concessions in the jail administration, their allowances and so many conveniences, comforts etc. inside the jails. It is possible for them to say that so far as a man is put into a jail, he ought not to be forgotten. When such serious incidents occur in jail affecting some of the detenus, there must be some safeguards. It is not wrong for him to vent out his feelings here and then say such and such a thing ought to be done. It is the duty and responsibility of every Government—State or Central—before it exercises its powers under this Detention Act to see that the man is safe and healthy and that every precaution is taken inside the jail. I do not want to shut it out. Hon. Members will bear with that. But I would not like repetition of all those sorrowful and sickening stories. One incident is enough.

Dr. Rama Rao: I would only add that this is the sort of terror regime in jails. It broke down our health completely.

Mr. Deputy-Speaker: What is the remedy?

Dr. Rama Rao: The remedy is that it must be used only as an emergency and not as normal law which now the present Bill wants.

Mr. Deputy-Speaker: So in an emergency these murders in jail are allowed? I am not able to follow the argument of the hon. Member.

Dr. Rama Rao: At least it will be limited and that is all I want to submit. So this lawless behaviour of the police, where they looted and hundreds of women.....

Mr. Deputy-Speaker: We are now going into another story. It is true. I did not expect every hon. Member to know the details. I would only urge upon hon. Members to bear this constantly in mind: What is the Bill that was referred to the Select Committee? How has it emerged from the Select Committee? What are the points in the minutes of dissent which require consideration? These are the points on which the hon. Member must concentrate.

Shrimati Sucheta Kripalani (New Delhi): If he makes a constructive suggestion.....

Mr. Deputy-Speaker: I do not know how far the case is.....

Dr. Rama Rao: I will not trouble you, Sir.

Mr. Deputy-Speaker: There is no question of troubling. I must regulate the debate in the House. I am anxious to hear the hon. Member as much as possible; only he must be relevant.

Dr. Rama Rao: Coming to the point, this authority to detain a person should not be left to an executive officer like a district magistrate who in the ultimate analysis is the police inspector, but it must be restricted, at least as a brake, as suggested in the minutes of dissent, to the Home Ministers at the Centre and in the States. Otherwise, what happens is that the freedom given to the sub-inspector is misused. This lawlessness on the part of the police creates a situation where the people are compelled to take law and order in their own hands. Just because there was no law and order in the country and custodians of law and order went about raping and murdering, several incidents happened wherein people took law and order in their own hands. But the Party in Opposition has been blamed for so many unlawful and violent acts. This black Act—about which our friends are very sensitive—this black Act gives that power of lawlessness into the hands of the lower executive. Therefore, I submit it must be restricted at every stage. It should be used only in an emergency, and it must be used only by the Home Ministers at least whom we can expect to use it with caution and care. It should also be used very sparingly.

Shri B. Shiva Rao: So many eminent lawyers have taken part in this debate, both for and against this measure, that I felt the point of view of a layman would not be out of

place, especially of one who served on the Select Committee, who listened very carefully and attentively to all the discussions that took place in the Select Committee and weighed each proposal made for the amendment of the Bill by various members of that Committee. I must say I was greatly disappointed with the speech of my hon. friend, Mr. Chatterjee. He first said that the majority in the Select Committee said a "peremptory no" to every proposal that emanated from members of the other groups. That that is an unfounded allegation is borne out by the report of the Select Committee itself. Later he modified this statement, and he grudgingly acknowledged, ridiculing them at the same time, that "some small changes" had been introduced. Speaking this morning, the Home Minister explained the main changes that have been incorporated in the Bill; as a result of the labours of the Select Committee, and incidentally referred to the provisions of the principal Act in order to indicate the nature and the magnitude of the advance made. In view of the speech made by the last speaker, I think it would be relevant to refer very briefly to the changes that have been made in the application of the principle of preventive detention during the last four years. The Home Minister made certain casual references to that aspect of the case, and I propose to go into a little more detail than he did.

11 A. M.

Broadly speaking, preventive detention has passed through four stages during the last four years; and I maintain that at each successive stage there has been, on the one side, increasing restraints placed on the discretion of the executive, and, on the other, increasing safeguards provided for the detenu. Most of the criticisms that have been levelled against the principal Act and the report of the Select Committee might have been valid during 1948 and 1949. The last speaker misunderstood the point of my interventions and he seemed to think that I challenged the accuracy of his statements. That was not my object. I wanted to point out that many of the things to which he objected, and very rightly objected, took place, some of them before 1948, and all of them in either 1948 or 1949. I labour the point because it was only in 1950 that Sardar Patel brought the Central Government into the picture so far as the principle of preventive detention is concerned.

It is easy, sitting in this House, or even outside, in 1952 to be critical of

various acts of the administration in 1948 and 1949. 1948, need I remind the House, was the year in which the great tragedy took place in Birla House? We know there was a good deal of searching of hearts at various levels of the executive, both at the Centre and in the States, whether that tragedy could have been averted by more vigorous action, by greater vigilance on the part of the executive. In 1948, as an independent Republic we were a few months old, and inevitably the administration had to face the serious dislocation caused by partition. Many States, because of large-scale retirement of senior officers, were compelled to put junior and even inexperienced officers in charge of districts; and I have no doubt, not only from statements made here, but from judgments of the High Courts and even of the Supreme Court, that in a number of cases executive officers acted hastily or on insufficient grounds. But let us not forget the other side of the picture: where junior officers placed in responsibility, because there was no one else to take their place, were faced with issue like this, were they to err on the side of the security of the State or on the side of the liberty of the citizen? They took the safer course and resorted to policies and actions which later, in some cases at any rate, did not bear the scrutiny of the High Courts. And who can blame them for acting in that manner in a very difficult situation? That, as I said, was the first phase, in 1948 and 1949, when cases of preventive detention were not referred to Advisory Boards.

It was in 1950, in the early part of 1950, that Sardar Patel brought this measure in this House in the light of experience gained in the previous two years. At that stage Sardar Patel felt that he could not go further than he did in providing more safeguards for detenus. The Home Minister referred to the fact that at that time, under the principal Act of 1950, though Advisory Boards were constituted, only in a very limited number of cases was reference made to those Boards: Cases connected either with the maintenance of supplies or essential services or of detention of a foreigner. I have taken the trouble to find out precisely what was the proportion of cases that were referred to the Advisory Boards under Sardar Patel's Act of 1950, and the answer I have got is very significant. Not more than two or three per cent. of those cases were referred to the Advisory Boards. In cases where a detention order was made for reasons connected either with the defence of India or the security of India, or the

maintenance of public order, there was no provision in that Act for reference to an Advisory Board. It was open to the Government to review such cases in consultation with a Judge, or one qualified to be a Judge, of the High Court. But even there Mr. Chatterjee complained that the Home Minister gave no facts and figures to support the proposition that in 1950 the executive acted with a certain measure of restraint and circumspection. I have figures here before me, also obtained from official sources, which are of interest and relevancy in this connection.

It was in July 1948 that the Central Government made an attempt for the first time to obtain the figures of detenus from all States, but until a month or two later they could not obtain the figures from many of the Part B and some of the Part C States. Mr. Gopalan said in his speech on an earlier occasion that according to his information there were 15,000 cases of detention at the peak of the moment. That figure is wide of the mark. The highest was about 8,000 at any time.

Shri A. K. Gopalan: Including Hyderabad or excluding Hyderabad?

Shri B. Shiva Rao: 8090 on the 15th April 1950 and this includes according to my information which is based on an official statement all States, Part A, B and C. Anyhow, I will have that point checked.

Shri Nambiar (Mayuram): I want to know the total number so far dealt with under the Preventive Detention Act, not the figure on a particular date.

Mr. Deputy-Speaker: This is not question hour and the hon. Member is not giving replies to questions. According to his own data, he is giving the figures.

Shri Nambiar: But the clarification must be correct.

Mr. Deputy-Speaker: There is no harm in his stating his figures. Mr. Gopalan said it was 15,000 and the hon. Member is saying that it is only 8,000.

Shri B. Shiva Rao: In the first half of 1948, I may repeat, these were the figures available with the Government of India, but in the second half of 1948 the highest was 4,800 detentions in September of that year. In April 1949 the number rose to 5,400. Later it rose to 8090 and then there was a gradual policy of release, although there was no reference to Advisory Boards. The number dropped to 7,500.

[Shri B. Shiva Rao]

In November 1949 and then there was again a slight rise and in April 1950 the figure was over 8,000. But after the summer of 1950 the number of detenus diminished considerably and at the end of 1950 it had dropped from 8,090 to 3,200. That was the second phase of the application of the principle of preventive detention immediately on the Central Government coming into the picture.

Sardar Patel's successor, Shri Rajagopalachari, introduced an amending Bill in February of last year, and the result of that amending Bill was that the working of the principal Act was considerably liberalised so as to require the reference of all cases of detention to three-member Advisory Boards. That point is of particular significance, and I repeat it because Mr. Chatterjee was not here a few minutes ago, but he has now come into the House. Under the principal Act of 1950, 98 per cent. of the cases of detention were not referred to Advisory Boards, but after the amendment of the Act in 1951 all cases were to be referred to three-member Advisory Boards. Mr. Chatterjee made the point that as a result of such reference to Advisory Boards over 1,200 cases of detention were found to be on inadequate grounds and those detenus were released. I must confess that I am not able to grasp the significance of that statement. On the other hand, I should have thought that a fair-minded critic would have given credit to the Government of India for having had the fairness to refer all those cases, which previously had not been so referred, to Advisory Boards and for acting so promptly and so generously on the advice of these Boards. It was also provided in the amending Bill that in any case where the detenu so desired he could be heard in person. There was further an express provision enabling the Government to release detenus on parole.

Again, let me come to the other aspect of facts and figures. I said a minute or two ago that the number of detenus at the end of 1950 stood at 3,200. By the end of May 1951 the number had dropped to 2,100. At the end of August 1951 it was below 1,900. Figures were given by the Home Minister at an earlier stage of the debate, detailing month by month the releases of detenus since the beginning of this year, and at the end of May 1952 the number of detenus was 990 in the whole of India. This background is necessary to appreciate what I said at the beginning, namely, that many changes have been incor-

porated in the Bill as a result of the labours of the Select Committee and the first thing that any fair-minded person would readily concede is that the Bill has been considerably improved by the Select Committee.

There has been a good deal of complaint. Mr. Chatterjee said that unfettered discretion has been placed in the executive officer who passes the order of detention in the first place. He did not choose to point out that that officer hereafter must place all particulars bearing on any detention order before the State Government for its final approval and obtain that approval within twelve days. Under the old Act, he was expected to submit to the State Government only those materials which bore on the necessity of the order, in other words, materials which in his opinion justified the passing of the order.

Another important step taken as a result of the labours of the Select Committee is that the State Government, after giving its approval to a detention order, should communicate it as soon as may be to the Central Government for information. I would like to point out to the House that taking this amendment with section 13 which authorises the Central Government to revoke a detention order, the amended measure as it is now before the House gives the Central Government a much larger measure of authority and influence to ensure that the provisions of the Act are applied with due circumspection and restraint.

Another new clause that has been added ensures that the Chairman of every Advisory Board should be a person who is or has been a judge of a High Court. The period within which the reference to an Advisory Board should be made has been reduced from six weeks to thirty days.

Another point of importance—and this Mr. Chatterjee was candid enough to acknowledge—is that once a person has been detained and has served his period of detention a fresh order can be passed against him only on the basis of fresh facts. Therefore, I maintain that the result of the work of the Select Committee, taking in one-sweep as it were the various Acts that have been in operation, both Central and State, has been a very considerable advance in favour of the detenus. This Bill, if placed on the statute book would, I submit, for all practical purposes be both fool-proof and knave-proof. I make this point because critics of this measure have indulged in a good deal of criticism and have

pointed out many unsatisfactory features in the administration of this Act, practically all of which relate to the first period of 1948 and 1949, since which time this measure has been changed beyond recognition. They have been flogging not only a dead horse, but a horse which died more than two years ago and they have had to exhume the bones of that dead horse in order to flog them on the floor of this House.

I have another complaint against the Members of the Opposition who have been indulging in criticism against the various provisions of the Act and the manner in which it has been administered. Mr. Gopalan read out, when he made a long speech, from this volume *Civil Liberties in India*. Unconsciously I hope, he gave the impression to the House that he was quoting from the actual texts of the various detention orders which were passed by the Madras Government under the Maintenance of Public Order Act. I took the trouble of obtaining a copy of that volume. It is a very interesting volume, and it is also very interesting to observe what use Mr. Gopalan made of this volume. Appendix No. I from which he read, does not contain the actual texts of any of the detention orders. It is in many cases a summary in three or four words prepared by Mr. S. Krishnamoorthy, Secretary of the Madras Civil Liberties Union, indicating the nature of the charges under the Maintenance of Public Order Act.

I will read just two or three of the summaries which were prepared by this gentleman to indicate the one-sided and the thoroughly mischievous nature of these summaries. One man is supposed to have been detained for participating in a mill strike; another man, because he appears in a red uniform; a third man is supposed to have been detained because he attacks Government's food policy; a fourth man because he spends his time reading Communist literature. And then, Sir, may I come to Mr. Gopalan himself.

Shri A. K. Gopalan: I read out the whole thing about the man who was arrested for wearing a red shirt and a white pyjama.

Shri B. Shiva Rao: I will have something more to tell Mr. Gopalan before I finish. I now come to Mr. Gopalan himself. I am prepared to place abundant material before the House to indicate the utterly irresponsible and mischievous nature of this sort of thing which has been bandied about on the floor of the

House and my hon. friend has given the impression that these are textual reproductions of detention orders.

Shri A. K. Gopalan: I had the book with me and I clearly stated that it was a summary of the detention orders. I did not say that I was reading from the actual detention orders.

Mr. Deputy-Speaker: The hon. Member, Mr. Shiva Rao evidently wants to remove any doubt or misapprehension that might have been created in the minds of hon. Members. The impression that was left in the mind of several hon. Members was that wearing a red shirt and white trousers was all the charge against the detenu; whereas Mr. Shiva Rao wants to say that it was only one of the several other charges.

He may be allowed to proceed.

Shri A. K. Gopalan: Even if it was only one of the several other charges, that charge alone, wearing a red shirt and a white pyjama, makes the other charges illegal.

Shri B. Shiva Rao: I can see my hon. friend becoming very uneasy....

Shri A. K. Gopalan: I am not at all uneasy. I have got a bundle of detention orders which I shall read out to you.

Shri B. Shiva Rao: May I seek the protection of the Chair, Sir? We listen to hon. Members opposite patiently.

Mr. Deputy-Speaker: Let me regulate the debate. It is not unparliamentary if an hon. Member speaks with force and emotion. According to Mr. Shiva Rao the hon. Member is feeling uneasy—that is his reading.

Shri B. Shiva Rao: Let me deal with my hon. friend himself. He said he had a copy of his own detention order in front of him, but he chose to read the summary. I am reading from the report of the proceedings of the House on that day:

"Mr. Gopalan: The main grounds of detention are: 1947: ex-President of the Kerala Congress Committee; Resigned from the Congress Party; stood as a Communist candidate in Calicut; collected Rs. 8,000 for Communist party funds; demanded an enquiry into the conduct of corrupt officials and black-marketeers; condemned the Congress people for running after jobs, and so on."

[**Shri B. Shiva Rao**]

There is one little sentence which he did not want to read.

Mr. Deputy-Speaker: Is the order against Mr. Gopalan wholly extracted there?

Shri B. Shiva Rao: I am reading a passage from Mr. Gopalan's speech in which he has indicated the grounds of his detention. After all he knows his own grounds of detention very much better than anyone else. He created the impression in the House that what he was reading from this volume represented a fair summary of the grounds of detention given to him by the Madras Government.

Shri A. K. Gopalan rose—

Shri B. Shiva Rao: Let me proceed; I protest against this sort of interruption.

Mr. Deputy-Speaker: So far as facts are concerned, if an hon. Member says that is not what he said, I think he must be given an opportunity to explain.

Shri B. Shiva Rao: I am coming to the explanation. My hon. friend is so uneasy that he does not want me to proceed.

Mr. Deputy-Speaker: My recollection is what is reported in the speech is from his own detention order which he read in extenso.

Shri B. Shiva Rao: I will satisfy you in a minute, Sir, because I have here the full text of the detention order against Mr. Gopalan and I want you and I want the House to judge how far the summary that he read out and which he wanted the House to understand as a fair summary is correct. I am reading from Mr. Gopalan's own detention order issued by the Chief Secretary to the Madras Government, on the 9th of December 1948. I hope you will allow me a few minutes, because it is a point of some importance:

"Mr. Gopalan is one of the accredited leaders of the Communist Party in Malabar. The Communist Party has of late launched a campaign of utter lawlessness in Malabar, committing dacoities in out of the way places, assaulting innocent persons, forcibly snatching fire arms from licence-holders and intimidating the public in many ways.

In 1946 Mr. Gopalan incited the Mapalas of Eranad"—you and I know very well what explosive

atmosphere can be created in Malabar and particularly in Eranad—"Mr. Gopalan incited the Mapalas of Malabar to precipitate a communal revolt in furtherance of the party's plan to create widespread unrest and was arrested and proceeded against under section 107. He exhorted the Police to go on strike and to disobey the orders of their superiors when dealing with strikes sponsored by the Communist Party."

I have not the least objection to place the whole of the document on the Table of the House. I do not want to take the time of the House. (Interruption).

"Speaking at Alathur on 3rd November, 1947.....

Shri A. K. Gopalan: If the whole charge-sheet is placed on the Table of the House, I am not against it, Sir.

Mr. Deputy-Speaker: The hon. Member himself is giving way. Various extracts were read by the hon. Member, Mr. Gopalan, on this side from various detention orders trying to make it appear that the grounds of detention were so absurd that any honourable man could be arrested and detained. So far as I can understand, the intention of the hon. Member, Mr. Shiva Rao, is to show that the grounds are not such harmless things as have been made to appear but more serious things. If he wants to refer to them, let him do so. I find that hon. Members start something and then collapse and put it to the Chair to intervene between the troubles here! I allowed Mr. Gopalan to read certain things. I have no objection to Mr. Shiva Rao reading certain other things. If I find that it is irrelevant I will tell him so.

Shri A. K. Gopalan: I am not against his reading the extracts. The whole charge-sheet may be read. I am not against it.

Shri Feroze Gandhi (Pratapgarh Distt.—West cum Rae Bareli Distt.—East): On a point of information, Sir. When Members of the Opposition are speaking, the Speaker does not allow any of us to make any interruption. We have to keep our mouths shut. May I know whether you intend to follow the same practice? When Members on this side speak, all the time there is interruption.

Mr. Deputy-Speaker: Certainly I will not allow any hon. Member to

interrupt. But the hon. Member himself ought not to invite interruptions!

Shri B. Shiva Rao: Sir, if truth invites interruptions I cannot help it. But I must in all fairness place the facts before the House, the actual grounds of detention in the words in which the order was communicated to the hon. Member.

Mr. Deputy-Speaker: Let him read.

Shri B. Shiva Rao:

"Speaking at Alathur on 3rd November 1947 he incited disaffection amongst the ranks of the Police suggesting that the policemen should do only six hours duty. * *

Speaking at Mannarghat on 10th November, 1947, he said that Sub-Inspector—"Sir, I shall omit the name—"so-and-so was going to create Hindu-Muslim riots and that the Collector and the Deputy Superintendent of Police had made use of this Sub-Inspector to prepare the scene for British rule to come back.

On 16th November 1947 at Talikkara he held out a threat that if the Sub-Inspector of Nadapuram was to continue his ways he would have to face the same fate as Sub-Inspector Kuttu Krishna Menon who was killed in the course of a rioting a few years back."

Dr. Katju: That is soft language!

Shri B. Shiva Rao:

"Speaking at Tellicherry on 18th November, 1947, he incited the public against the Malabar Special Police by alleging that they were responsible for several atrocities and threatened them with dire consequences when the Communists came into power at a future date."

I am sorry that my hon. friend Dr. Syama Prasad Mookerjee is not here. Oh, he has come.

"Speaking on 5th December, 1947, he incited the public against Head Constable Ananda Kurup, advocating that he should be killed like Sub-Inspector Kuttu Krishna Menon."

My friend comes in at a very convenient moment.

"He (Mr. Gopalan) spoke in contemptuous terms of the Government of India and said that it consisted of reactionaries like Syama Prasad Mukerjee,

R. K. Shanmukham Chetty and Baldev Singh who were responsible for the communal riots in the country."

These are the actual grounds of detention communicated to Mr. Gopalan by the Madras Government from which he sought to create the impression in the House that he was giving a fair summary. It may be of passing interest...

Dr. S. P. Mookerjee: Please read the whole of it.

Shri A. K. Gopalan: The matter was decided by a court and I was acquitted in all the three cases to which he referred. When a case has been decided upon in court, is it in order...

Mr. Deputy-Speaker: We are going into what followed.

Shri A. K. Gopalan: I was acquitted.

Mr. Deputy-Speaker: The hon. Member, Mr. Gopalan, said that many of the charges were apparently so absurd that no charges could be made. It is another thing for the courts to come to the conclusion that particular charges have not been proved. We are in the initial stage now. Possibly the hon. Member may come to some more cases decided by the courts. There is a saying in my part of the country. "As soon as a Reddy or patil comes, once again the purana must be started". Merely because Dr. Syama Prasad Mookerjee has come in, should it be repeated once again?

Shri B. Shiva Rao: Sir, I will not start the purana once again—not the whole of it.

Mr. Deputy-Speaker: Yes, not the whole of it.

Shri B. Shiva Rao: It will interest the House to know that when Mr. Gopalan read out this summary from this volume regarding himself, he omitted one little sentence. The House will be interested to know the manner in which the summary was made, that Mr. Gopalan objected to the appointment of Mr. R. K. Shanmukham Chetty and Dr. Syama Prasad Mookerjee. That one sentence he did not read out to the House when he read out the summary. Of course I can understand...

Mr. Deputy-Speaker: What is the objection?

Shri B. Shiva Rao: ...the idea being that Dr. Syama Prasad Mookerjee has passed through a certain reformation and is a good little boy.

Dr. S. P. Mookerjee: What is the point? The police said that Mr. Gopalan said that Syama Prasad Mookerjee was an undesirable person in the Cabinet.

Mr. Deputy-Speaker: There is unfortunately some unnecessary misunderstanding created. The hon. Member evidently was reading, before Dr. Syama Prasad Mookerjee came in, from the authentic copy that was obtained from the Madras Government regarding the grounds of detention of Mr. Gopalan. Then he said that a reference was made even to such hon. Members like Dr. Syama Prasad Mookerjee as reactionaries in the Government.

Dr. S. P. Mookerjee: So far as I could gather, in the grounds of detention which were supplied it was mentioned that the police said that Mr. Gopalan said that so-and-so was reactionary. Mr. Gopalan said he did not say it, and that was proved. That is the sort of grounds on which people are detained.

Mr. Deputy-Speaker: The hon. Member is now reading the grounds that were submitted to the detenu. He has not yet come to the next stage of the decision of the court.

Shri B. Shiva Rao:

"In one of the speeches Mr. Gopalan said that if the present state of affairs continued, many incidents like the Jallianwala Bagh would be repeated in the history of the country. He also stated in one of his speeches that he told the Collector (of Malabar) once that if the Communists were to come to power they would dig a trench and bury those belonging to the Malabar Special Police".

This is the kind of...

Shri Nambiar: Cock and bull stories.

Mr. Deputy-Speaker: I have repeatedly asked hon. Members not to be so impatient. They lose their case by showing such impatience. It does not give them an advantage. I shall see to the best of my ability that there is no interruption unnecessarily, so far as hon. Members on either side are concerned. Let not the thread of it be disturbed. It applies to both sides.

Shri B. Shiva Rao: Sir, I shall leave Mr. Gopalan alone with the statement on the grounds of order given to him by the Madras Government. My only purpose was to indicate that in giving this House summaries of such orders, they should at least be fair and

indicate what were the grounds which were communicated to them.

In the course of the debate the Home Minister put a straight question to hon. Members sitting opposite and said: Will you give a categorical assurance that you will abjure violence, then there will be no need for an Act of this kind on the statute book. And Mr. Hiren Mukerjee went into a long and very eloquent passage about people rising up in arms, people suppressed for generations and so on, and he said: If there is murder, if there is some bloodshed, after all it is like the prick of a thorn on a rose bush.

The other day Mr. Gopalan read a certain extract from the judgment of Justice Mack of the Madras High Court and he referred to it with approval. I too will quote a judgment given by Justice Mack and it was on a bail application case before the appellate side of the Madras High Court. It is dated the 3rd of November 1951. Mr. M. V. Sundaram and 42 other Communists in the Ramanathapuram conspiracy case appealed to the High Court for bail and this is what Justice Mack said on behalf of his brother judge and himself:

"The accused were charged with conspiracy with the object of overawing the Government by criminal force and acts of violence between January 1949 and June 1950..."

Shri Nambiar: On a point of order, may I say that this case is sub-judge as the case is pending in the High Court and any reference to that is not justified.

Shri B. Shiva Rao: The bail application is complete.

Mr. Deputy-Speaker: So far as the bail application is concerned, the subject has been disposed of.

Shri B. Shiva Rao: The first accused, Mr. Sundaram had filed an affidavit before their Lordships and in the judgment Justice Mack observed:

"This application for bail has been supported by an affidavit by Sundaram, the first accused"—

I am quoting the words of the Judge:

"With rather an astonishing attempt to explain and justify throwing of bombs included in the overt acts alleged in pursuance of the conspiracy."

One paragraph in the affidavit stated the following and I am quoting from the judgment:

"The unprecedented repression let loose by the Government on the members of the Communist Party had resulted in the members of the party resorting to these acts."

His Lordship said that this was an astonishing line of defence for the user of country-bombs and explosives in self-preservation—whether of the individual or party is not clear.

He added and again I am quoting from the judgment:

"It was a very disturbing feature of this application. It could be regarded in fact as an invitation to the courts themselves to uphold and justify the use of bombs by a political party or its members which under no circumstances whatsoever could possibly be tolerated or justified. The affidavit reveals the existence of a most subversive doctrine seeking to justify resort to the use of bombs, explosives and all kinds of violence as self-defence against the alleged repression of the Government."

The last speaker complained that in Andhra, whereas the armed Communists were killed by the police, the police would not obligingly stand in the way of the bullets released by the Communists; and that is another act of repression on the part of the Government, I suppose!

Let me go back to Justice Mack's judgment:

"A further disturbing feature manifest in the present trial is the facility with which the members of the Communist Party abscond when wanted in connection with cases against them and successfully evade arrest for long periods. The *modus operandi* plays fast and loose with the entire criminal machinery of the law, holding up cases indefinitely and results in absconding accused having to be tried over and over again in separate trials. It is extremely difficult to absolve the Communist Party organisation from responsibility for this technique. It is a reasonable inference that the organisation is aware where the accused absconding in the present case are."

I do not want to take more time of the House, but Mr. Chatterjee in the 124 P.S.D.

concluding portions of his speech said "Parliament is on its trial". I entirely agree with him that Parliament is on its trial. Whether the Bill should be put on the statute book, what should be its provisions, what should be its duration—these are not questions which are answered by the Prime Minister or the Members of his Government. These are questions which can be answered satisfactorily only by Members sitting opposite.

Dr. S. P. Mookerjee in one of his most eloquent passages in his last speech dramatized a certain incident in this House more than 20 years ago: that Pandit Motilal Nehru was sitting where Shri Gopalan was sitting and Vithalbhai Patel was sitting where you are sitting at present and he said that Pandit Motilal Nehru denounced the principle of preventive detention with all the vigour of which he was capable. That is perfectly true. At that time may I suggest to Dr. Mookerjee that the method of the ballot box was not open to the Swarajist Party. Entrenched on these Benches was insolence in all its might. The slogan at that time was: "Let the dogs bark but the caravan marches on". Is that the situation at the present moment?

Mr. H. N. Mukerjee threw a challenge at us and said: Why does not the Prime Minister or any member of the Congress Party contest the election in any part of the country? Why did we miss that opportunity six or eight months ago? They speak glibly of the millions of India, but for whom they speak? Dr. Mookerjee spoke of the millions whose views he reflects on the floor of the House. I looked at the results of the General Elections. There are not many millions. Dr. Mookerjee's party represents not even one million; not even half a million; it is 268,000. The Congress Party got 38 million votes out of the 52 million and that is the support behind this measure. If Mr. Chatterjee asks: How long is this law going to be on the statute book, I again repeat, the answer can be furnished not by Members of the Government sitting here but by the Members sitting opposite.

Shri Sarangdar Das (Dhenkanal—West Cuttack): On this occasion I have no desire to go into the details of the Bill. As I said on a previous occasion, I as well as my party were opposed to the very principle of it. I went into the Select Committee to see if the provisions of the Bill as well as the parent Act could be moderated and brought nearer to the fundamental principles of democracy, namely, personal liberty.

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As my colleagues have already stated, we failed to convince the majority. It has been mentioned that certain improvements have been made and it has been said in such a way as if we were the beggars and our friends opposite were generous enough to give us something.

I wish to point out particularly about other countries where democracy is of a longer duration. Take, for instance, the United States of America, where I happened to live three decades ago and I lived there for over a decade. At that time, the Communist Party was not born, but the anarchists were bug-bears for the Americans. They had, in their immigration law, which may have been changed now, not mentioned the Communist Party. But, every immigrant who went from foreign countries had to say on oath that he did not believe in anarchism. In that way they were screening the anarchists and keeping them out of the country. In spite of that, some people became anarchists. There was a good deal of propaganda by their leaders all over the country and they preached anarchism and said that the Government should be changed by force. But, you will be surprised to know that there was no action taken. Their audiences were few. No action was taken in initiating proposals for a preventive detention law because that is absolutely against the fundamental rights of freedom of speech, and freedom of association enunciated in their Constitution. The principles of their Constitution are so sacred even to the ordinary man in the street that no Government ever dares to encroach upon those rights. Yet, anarchism would not spread there.

Since then, things have changed. From the reports that I read in the papers and books coming from that country, I find that to every American whether he is in the Government or a private citizen, Communism is like a red rag to a bull. Communists and Communism will subvert the American way of life. That is why they see red everywhere. Yet, as you know, Sir, there is no Preventive Detention Act. Lately, there have been Communists who, as spies for Russia, have delved into atomic secrets. Some of them were caught selling them to Russia. Even then America has not initiated any Preventive Detention Act. They have other laws by the due process of which they punish them. In that way Communism does not spread. The people who are anxious to protect their civil liberties are in such a position that Communism does not grow there.

Similarly, recently in Japan, the Constitution that was promulgated, I believe it is after the American pattern, because American occupation forces under General MacArthur were doing everything to introduce American democracy into Japan that had gone through all kinds of authoritarian rule. In that Constitution, there is no provision for a Preventive Detention Act. Recently there were riots against Americans. Some Japanese friends who came to India, only a few days ago, assured me that those riots were engineered by the Communists and perhaps some North Koreans resident in Japan. But, there is no preventive detention. Under the ordinary law, the leaders of such disruptive forces are taken in hand, they go to the law courts and there they are suitably punished.

So it is in the United Kingdom and I do not think it necessary for me to repeat all that, because the provisions and judgments in the United Kingdom have been often quoted here and I cannot improve on them.

In our country, if we go into the genesis of the Preventive Detention Act, we find that in Hyderabad, after the Police Action and after the defeat of the Razakars, trouble was created there by certain elements, which, I am bold to say, owed allegiance to another an extra-territorial power. However that may be, because of that trouble and because of the disturbances in the neighbouring Andhra country, the Preventive Detention Act was rushed through by the late Sardar Patel when he was the Home Minister. The impression was given at that time that it was a temporary measure. When our friends opposite say that the present Bill has many improvements that the original Act did not have, and that the number of detentions has been decreasing from 1950, I wish to present another aspect of this decrease. Does it not show that the trouble that was started, that was rampant in Hyderabad and the Andhra country in 1949-50 has subsided? All over the country, barring Hyderabad—the case of Saurashtra is mentioned now—barring these two places, there is no case for this Act to handle any disruption. There is no disruption.

Mr. Deputy-Speaker: I am afraid the hon. Member is going back to the second reading stage. The House has accepted the principle that this Bill is necessary and also sent to the Select Committee. Is it necessary to touch upon the parent Act now? What the

Select Committee has done, what the Select Committee has not done, that would be the subject matter at this stage.

Shri Sarangadhar Das: May I submit, Sir, that just now Mr. Shiva Rao went back to the past. I am trying to prove that the Act is not necessary and then I shall come to the second stage to show how the Act has been abused and so I will have to go back.

Mr. Deputy-Speaker: Mr. Shiva Rao referred to the cases of detention and grounds, etc. It had been alleged that the Act had been abused, that there must be something like a judicial tribunal. He said that the Act had not been abused, these were the grounds, the grounds had been quoted in part, that all the grounds had not been fully placed before the House, that only a portion had been placed and so on. That is quite relevant. There is no good going back to the parent Act now.

Shri Sarangadhar Das: I am going back only to this extent, about the beginning of the Act in 1950. I am not going back any further than that. What I mean to say is this that although the Home Minister and the speakers on the other side have always repeated in their speeches that this Act is not intended against any political party, but from all the speeches here as well as elsewhere, it is evident that the Communist Party is the target (*An hon. Member*: No, no,) but I also agree with you that it is not the Communist Party alone but all political parties that oppose the Congress that are the targets. This is my point. I will give you.....

Mr. Deputy-Speaker: I am not going to allow this, whatever the hon. Member may feel. This is going back once again to the principle of the Bill. Whether it was to be accepted or not was discussed at length at the consideration stage, and if it was not acceptable, it could have been thrown out. The House has accepted the principle. All that the hon. Member can now say is that some of the rigours of the Bill may be removed, some other amendments may be made, or some improvements effected. That is all that is open to any hon. Member at this stage.

Shri Sarangadhar Das: I am coming to that.

Mr. Deputy-Speaker: There is no good coming to that in a dilatory manner like that.

Shri Sarangadhar Das: It is not a dilatory manner.

Mr. Deputy-Speaker: I will not allow any reference to the principles.

Shri Sarangadhar Das: On a previous occasion I was not allowed to speak, and now after giving me a chance...

Mr. Deputy-Speaker: I am sorry on the previous occasion he had no chance to speak. He cannot refer to all that now.

Shri Sarangadhar Das: I am not referring to that incident. I am coming to the point where the Act still needs some improvement, particularly that the Act should not be applied all over the country. It is not necessary. In order to prove that I have to give some of the incidents that have not been mentioned here.

About two years ago, this Act was applied in Assam in connection with a bye-election to the seat of the Chief Minister Shri Bardoloi when he died. Because the Socialist Party was contesting there, some four or five days before polling, there was a raid to arrest the R.C.P.I. people who were taking shelter in Assam. It was my Party that had informed the Assam Government that the R.C.P.I. were forming pockets in different places in Assam, and they should be watched, but nothing was done, but the Act was used in rounding up Socialists and Socialist sympathisers in that constituency due to which the Socialist Party lost and the Congress won.

Some Hon. Members: Absolutely false.

Shri Biju Ram Das (Barpeta): Absolutely false. I come from that constituency. I was member of that constituency for 15 years. There was not a single arrest of any Socialist.

Shri Sarangadhar Das: I do not want to be disturbed. I am here to speak. You can speak afterwards.

An. Hon. Member: He is uneasy now.

Shri Sarangadhar Das: Talk about uneasiness here, there is uneasiness on the other side rather.

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The same way it is being applied against inconvenient men in the trade union movement. In Bombay today there are about five or six trade union leaders under detention. There is one De Mello, a very powerful man and now Secretary of the Bombay Dock Workers' Union. He was named by my party as a candidate in that dock area, and in the month

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of August before nomination papers were to be filed, he was spirited away. He is still under detention in Bombay jails. If a man organises trade unions, and if there is a rival trade union trying to monopolise, then if the subedars of the Central Government, the Chief Ministers, find the man inconvenient, they clap him in jail under the Preventive Detention Act. Many a time challenges have been given and it was discussed in the Bombay Council lately, but the Chief Minister said that he is a dangerous man. Well I ask, if he is a dangerous man, if his Union demands that he should be tried in a law court, why is he not tried? That is why I say this Act is being used in order to oppose all Opposition whether it is Communist, Hindu Maha Sabha, Socialist or any other party. Any party that is opposed to the Congress is *persona non-grata* to my friends opposite and consequently the Act has to be used, because in the law courts, the cases cannot be won.

There is another instance in Orissa. Although the Preventive Detention Act was not on the statute book then, the Public Maintenance of Order Act which was in existence in some of the States was used against a Socialist worker who had gone among the tribal people. His movements were restricted. He was given notice to appear before the superintendent or the deputy superintendent of police and give his programme of tour. If he changed that programme, he must go back to the superintendent or deputy superintendent of police, although he might be 15 or 20 miles away, inform him, get his sanction and then alone could he start his new programme. This is another Act in line with the Preventive Detention Act that came later, which was used to stifle opposition. Fortunately for me, I was in that area when this order was passed on this Socialist worker. It was said the Adivasis, the tribal people, are excitable, and there should be no party propaganda among them. I went all over that area, many of the tribes that live in the Keonjhar district, and found them the most peaceable people. I saw one case in a village where this Socialist worker had helped the villagers to initiate a school. As our Governments do not establish any schools, a public organisation goes and initiates a school there, and they were building a little mud-house which was stopped by the police saying that the Government orders were such that they could not build this school for the ignorant village people. On

the one hand, we have ignorance all over the country. Our Education Ministry says we must remove this ignorance within ten years or twenty years, whatever their Five Year Plan is, and when we go to the State Governments, there is no money to establish schools, and when some public organisation with a little bit of money wants to put up a school, it becomes the Socialist Party's school, consequently it must be stopped, prevented. That was done in the district of Keonjhar. I know of other instances which I do not want to say because they are similar.

Shri Syamnandan Sahaya (Muzafarpur Central): Was the school closed under the Preventive Detention order?

Shri Sarangadhar Das: It was under the Orissa Public Maintenance Order, similar to the Preventive Detention Act, the elder brother, that was born before.

Pandit Thakur Das Bhargava: In what year?

Shri Sarangadhar Das: Although I have said that I do not see the necessity for this Act, it is being enacted this time for a longer period up to the end of 1954. We tried to have a shorter duration for the Act, so that Parliament may get facts and figures if necessary and review it from time to time, and then decide whether to prolong it or to stop it. But that also failed. My contention is that in the name of suppressing Communism and the Communist Party in India, the party that is now in power, and which is now well-known to be the supporters of vested interests, the supporters of the *status quo* of Indian Society...

Shri Syamnandan Sahaya: Where are the vested interests? They have been completely abolished.

Shri Sarangadhar Das: To maintain the *status quo* of our society, that party says to us "We know everything well. Whatever we say you must carry out, so that there cannot be any change in the structure of our society." It is not law and order, it is not peace and tranquillity that is really behind the mind of the mover of this Bill.

When you take into consideration the way it has been abused, I also have to point out another thing. If the Communist Party in the Telengana and in the Andhra areas created these troubles and these disruptions.

I ask what was our police and magistracy doing there: During the last four or five years, our police and our magistracy all over the country have become incompetent and inefficient. I should like to ask this question today, now is it then that although Laik Ali was put under house arrest instead of in jail, and now is it that although a very high officer of the police, such as the Deputy Inspector-General of Police or some other high officer was guarding the House, he did not know about the escape of Laik Ali till two days after he had departed? That is why I say, our police, and our C.I.D. are not watchful. I may recall here what an American writer, Mr. John Gunther who wrote a book on Asia said in this connection. He said that last time he was going through India, the Home Member or the Home Secretary of the British Government had said: "This time when Congress wants to do anything or wants to have *satyagraha* or cause any trouble during the war, we have their numbers. We have the number of every leader, every sub-leader, and every sub-sub-leader, and every village-worker, and we will nab them in 24 hours." I recollect that when I was in jail under detention, and I felt that the British at that time were very efficient, in getting at everybody. But what is our police doing today? When there is some trouble in any place in Orissa or in any other State, and when it comes to the top, they get at those people who have sheltered these disrupters and harass them and put them under detention. Instead of improving the efficiency of the police, and getting at the proper officers in the proper places, what is Government doing? What the Governments in the States are doing is simply to cover up their inefficiency and incompetency through this Preventive Detention Act so that any one who criticizes Government and becomes a little inconvenient in any place where the Opposition Party begins to grow and the Congress begins to wane, may be hauled up under this Act which could be applied to him or against any party to which that person belongs.

I have also other cases that have happened recently. Dr. Syama Prasad Mookerjee had mentioned a case in Ajmer. I have here signed declarations by M.L.As., M.P.s., many municipal commissioners etc., who have pleaded for him and said that he is not guilty of the charges that have been framed against him. A large number of journalists also had signed there, because the person concerned was a journalist himself. (Interru-

ption) The hon. Member can say what he wants to say after I have finished.

They have all pleaded for him...

Shri Jwala Prashad (Ajmer North): May I know the names of the M.P.s?

Shri Sarangdhar Das: Two M.L.As. Mr. Arjun Das, Mr. Parasuram, one M.L.A., Mr. M. L. Bang, and other persons, municipal commissioners, advocates, medical practitioners, journalists etc....

Shri R. K. Chaudhury (Gauhati): May I know whether by M.P., medical practitioners are meant?

Shri Chattopadhyaya (Vijayavada): Or does it mean 'Major Poet'?

Shri Sarangdhar Das: It is some political jealousy under which the party has kept under detention the people from the Opposition. When famine conditions prevailed in Hissar, in Punjab, my party was asking the people to protest against it, and to go to the district magistrate or the deputy commissioner to represent their grievances. But there two people have been detained just a few days ago. (Interruption) From all this, you will see that it is the Communist Party which is using violence. I know that. But the Socialist Party does not.

Ch. Ranbir Singh (Rohtak): Will the hon. Member cite the names of the persons who have been detained?

Shri Sarangdhar Das: The Socialist Party believes in constitutional agitation, in performing *satyagraha* to fight any evil that is before us. It is all peaceful. (Interruption) By fasting they do not take the liberty of others. They are free to fast as they please. That is a personal matter.

Under these circumstances, how is it possible that these men who do not belong to the Communist Party are detained? It is just simply detaining every inconvenient man or woman who happens to belong to some Opposition party. And finally I put it before the House that although in the Select Committee we had given our notes of dissent, the amendments were rejected by the majority, that is, the Congress Party—about 30 of them. You must consider, Sir, whether there is such a necessity now to have this Act to cover the whole country. Barring Hyderabad and Saurashtra, there is no trouble anywhere. (An Hon. Member: Rajasthan) In Rajasthan it was incompetency. Since Rajasthan was formed, I remember the way the villagers killed a magistrate and some police officials in Karauli, when Sardar

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Vallabhbhai was living. That sort of thing you cannot throw at us without looking inwards and finding out what they have been doing. Because these disruptive elements are abroad and they can kill a magistrate, a law that was never known is being introduced. I know Rajasthan politics, I know what was happening in Rajasthan before the elections, I know some of my friends in Rajasthan, very dear friends, who were wanting to disfranchise the rulers. I was one who was unwilling to subscribe to it. I said I have not worked for the Rajas or Maharajas. I worked for ten years after giving up my industrial career to end feudal rule. Feudal rule is now ended. But the Raja or Maharaja is just as much a citizen as I am. However, my friends from Rajasthan were trying to win over the people by disfranchising the Rajas and Maharajas. That is not the way of democracy. What happened in Rajasthan? It is no use my telling here now, but I can say in short that with most of the States that were merged or formed into Unions, Congress organisations began to peter out from that time. There was no Congress work among the masses and consequently, the vacuum was filled by any other party that happened to be there. So my friends cannot give the instance of Rajasthan. I say no other State, except Hyderabad and Saurashtra, is disturbed and the Act should be applicable only to those two States and nowhere else until there is apprehension of imminent danger and the Central Government or the President declares that there is a disturbed condition in a certain area, and then only can Government take action.

Swami Ramananda Tirtha (Gulberga): I have to participate in the discussions at a stage where the principle of this enactment has been agreed to. I, therefore, do not want to go into the merits or otherwise of the necessity of enacting this legislation. I have been listening to the speeches of some of the Members and I thought it was necessary for me to say what I feel in the present context.

Do not consider us to be so mean as to feel that no Opposition should be allowed under a democratic regime. That is not at all the intention. We are wise enough to know that democracy cannot flourish except under the criticisms of the Opposition. It would be uncharitable on the part of the Opposition to say that this measure is directed against the Communists. Not at all. It is only directed against

those elements, sections, individuals, who resort to violence, who resort to certain acts which are directed against the very fundamentals of the Constitution. I am not afraid of the Communists. Why should I? Because it is after all people who will decide whether they would like a particular order, economic or otherwise. I need not be afraid of any school of thought. Enough for us that we believe in a particular ideology, preach it and we shall convert the people to our own point of view. Therefore, the law that is being promulgated should not be construed to be a hit against the Communist Party.

My friend, Mr. Sarangadhar Das, has quoted certain instances. I have had the pleasure of working with him some years back, and I feel if there is any genuine grievance against the use or misuse of a particular law, it has to be voiced. But to feel that this law is being promulgated to crush the Socialist Party: I think it would be the greatest error on the part of any democratic Government to try to suppress any political party with the force and strength of the bayonet. We know Communism cannot be crushed by bayonets. We know that, but it is also clear that no society, no social order, no economic order can be ushered in or allowed to be ushered in at the point of the bayonet. That is all the purpose of this Act. I, therefore, appeal to my friends who differ from us not to cast aspersions and say that we want to crush you. Who are we to crush you? It is not bayonets that crush ideologies, as I have said. After all this democratic regime I do call it a democratic regime in spite of all the objections raised against it; it is a democratic regime—if at all this democratic regime is to survive, we know it is by bettering the lot of the people and not by promulgating such an Act. That we do realise. But I say we are passing through a period of transition and looking to the past. I have the boldness and the courage to say that the situation is still fluid. I do not know what situation may arise a two months hence. I am not a poet and I am not going to quote any verses here, but I can say that certain developments are taking place, certain incidents are being fostered, and we do not know where this is going to end.

Something has been said about Hyderabad. I do not want to dilate upon that subject. I do not want to say anything about Telengana also because the past is unhappy, and let us bury the past. There were atrocities on the part of the police in a particular context which was also atrocious.

So let us forget that. But today why should we not feel reassured that there will be no recurrence of violence? Is it too much to expect this of any political party? The right of vote is there and I do not think that those of us who are sitting on the Treasury Benches feel that for all times, as the proverb goes—*धावत् चन्द्र दिवाकरय*—we are going to occupy these Benches. Well, democracy works through jolts and changes, let it take its own course. But when a mentality is being created that it is the bayonet and the sten gun and recourse to violence that will change the social or the economic order, it is our duty to tell the people that it is not going to pay. I believe the purpose of this Act is not to hit any political party. I would humbly submit that in Hyderabad so far as I know no such hit has been given under a popular regime and it will not be given in future. I can assure my friends about that. But there are certain democratic practices and conventions, methods and ways. If they are followed I do not think that the Home Minister of this Government would ever feel the necessity of putting into execution any of the provisions of this Preventive Detention Act. An argument has been advanced that this Act should be applied to particular parts of India only. I do not know what parts are entitled to its application. My friend, Mr. Sarangadhar Das said that Hyderabad may be considered as a suitable place. My friends of the opposite section who differ from Mr. Sarangadhar Das would say that it is not at all necessary in Hyderabad. So, it is the whole situation that you visualise and the country as a whole that you consider, and when you feel that it is necessary to prevent recurrence of such subversive and violent activities, the Act becomes applicable to all the parts of India. In what parts it will actually operate depends upon the situation.

I would humbly submit to the Home Minister that the misgivings being entertained by friends on the other side are because there were certain misuses, wrong uses to which such Acts were directed, and it is our duty to remove those misgivings, to do away with them, and to reassure our friends that this Act is not directed against any political party, be it the Communists, the Hindu Mahasabha, the Socialists or any others. I would in all humility submit that as democrats we have to see that every party has the freedom to propagate its ideas democratically and that no such liberty is suppressed.

One word more and I shall have finished. I know that India is passing

through a critical period. There is a clash of ideologies and it is bound to be there because the world is in such a stormy atmosphere. But it is also equally true that the storm and the excitement and the turmoil can be pacified only by bettering the lot of the people. That is a positive approach and with that positive approach if we proceed I am sure the day will not be far off when this Preventive Detention Act will not be found necessary in this land of ours.

I hope I have put before the House what we on this side feel about this enactment. It is an extraordinary legislation, no doubt, but it is necessary, and the sooner the necessity for such an enactment goes the better for all of us because then we shall feel that in India there is not any activity which may go against the very fundamentals of the Constitution.

Shri Seshagiri Rao: I will not speak on the principle of the Bill because hon. Members who preceded me have spoken on it at length. There are four fundamental rights that have been conferred under the Constitution of India on the detenus, namely, firstly, the right of enquiry before an Advisory Board, secondly, that the detenu must be able to get the grounds of his detention "as soon as may be", thirdly, that he must be given the earliest opportunity to make a representation, and, fourthly and more important than all these, that the maximum period of detention should be given in the Act. The peculiar feature of this Preventive Detention Act is that it contains verbatim the exact words that are found in the Constitution. Article 22(5) of the Constitution says:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

How far these two mandatory provisions have been followed in this Bill is an important point. In section 7 of the Act it says:

"When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made and shall afford to him the earliest opportunity of making a representation....."

[Shri Sarangadhar Das]

Vallabhbhai was living. That sort of thing you cannot throw at us without looking inwards and finding out what they have been doing. Because these disruptive elements are abroad and they can kill a magistrate, a law that was never known is being introduced. I know Rajasthan politics, I know what was happening in Rajasthan before the elections, I know some of my friends in Rajasthan, very dear friends, who were wanting to disfranchise the rulers. I was one who was unwilling to subscribe to it. I said I have not worked for the Rajas or Maharajas. I worked for ten years after giving up my industrial career to end feudal rule. Feudal rule is now ended. But the Raja or Maharaja is just as much a citizen as I am. However, my friends from Rajasthan were trying to win over the people by disfranchising the Rajas and Maharajas. That is not the way of democracy. What happened in Rajasthan? It is no use my telling here now, but I can say in short that with most of the States that were merged or formed into Unions, Congress organisations began to peter out from that time. There was no Congress work among the masses and consequently, the vacuum was filled by any other party that happened to be there. So my friends cannot give the instance of Rajasthan. I say no other State, except Hyderabad and Saurashtra, is disturbed and the Act should be applicable only to those two States and nowhere else until there is apprehension of imminent danger and the Central Government or the President declares that there is a disturbed condition in a certain area, and then only can Government take action.

Swami Ramapanda Tirtha (Gulbarga): I have to participate in the discussions at a stage where the principle of this enactment has been agreed to. I, therefore, do not want to go into the merits or otherwise of the necessity of enacting this legislation. I have been listening to the speeches of some of the Members and I thought it was necessary for me to say what I feel in the present context.

Do not consider us to be so mean as to feel that no Opposition should be allowed under a democratic regime. That is not at all the intention. We are wise enough to know that democracy cannot flourish except under the criticisms of the Opposition. It would be uncharitable on the part of the Opposition to say that this measure is directed against the Communists. Not at all. It is only directed against

those elements, sections, individuals, who resort to violence, who resort to certain acts which are directed against the very fundamentals of the Constitution. I am not afraid of the Communists. Why should I? Because it is after all people who will decide whether they would like a particular order, economic or otherwise. I need not be afraid of any school of thought. Enough for us that we believe in a particular ideology, preach it and we shall convert the people to our own point of view. Therefore, the law that is being promulgated should not be construed to be a hit against the Communist Party.

My friend, Mr. Sarangadhar Das, has quoted certain instances. I have had the pleasure of working with him some years back, and I feel if there is any genuine grievance against the use or misuse of a particular law, it has to be voiced. But to feel that this law is being promulgated to crush the Socialist Party: I think it would be the greatest error on the part of any democratic Government to try to suppress any political party with the force and strength of the bayonet. We know Communism cannot be crushed by bayonets. We know that, but it is also clear that no society, no social order, no economic order can be ushered in or allowed to be ushered in at the point of the bayonet. That is all the purpose of this Act. I, therefore, appeal to my friends who differ from us not to cast aspersions and say that we want to crush you. Who are we to crush you? It is not bayonets that crush ideologies, as I have said. After all this democratic regime I do call it a democratic regime in spite of all the objections raised against it; it is a democratic regime—if at all this democratic regime is to survive, we know it is by bettering the lot of the people and not by promulgating such an Act. That we do realise. But I say we are passing through a period of transition and looking to the past. I have the boldness and the courage to say that the situation is still fluid. I do not know what situation may arise a two months hence. I am not a poet and I am not going to quote any verses here, but I can say that certain developments are taking place, certain incidents are being fostered, and we do not know where this is going to end.

Something has been said about Hyderabad. I do not want to dilate upon that subject. I do not want to say anything about Telengana also because the past is unhappy, and let us bury the past. There were atrocities on the part of the police in a particular context which was also atrocious.

So let us forget that. But today why should we not feel reassured that there will be no recurrence of violence? Is it too much to expect this of any political party? The right of vote is there and I do not think that those of us who are sitting on the Treasury Benches feel that for all times, as the proverb goes—*वाद् चन्द्र दिवाकरय*—we are going to occupy these Benches. Well, democracy works through jolts and changes, let it take its own course. But when a mentality is being created that it is the bayonet and the sten gun and recourse to violence that will change the social or the economic order, it is our duty to tell the people that it is not going to pay. I believe the purpose of this Act is not to hit any political party. I would humbly submit that in Hyderabad so far as I know no such hit has been given under a popular regime, and it will not be given in future. I can assure my friends about that. But there are certain democratic practices and conventions, methods and ways. If they are followed I do not think that the Home Minister of this Government would ever feel the necessity of putting into execution any of the provisions of this Preventive Detention Act. An argument has been advanced that this Act should be applied to particular parts of India only. I do not know what parts are entitled to its application. My friend Mr. Sarangadhar Das said that Hyderabad may be considered as a suitable place. My friends of the opposite section who differ from Mr. Sarangadhar Das would say that it is not at all necessary in Hyderabad. So, it is the whole situation that you visualise and the country as a whole that you consider, and when you feel that it is necessary to prevent recurrence of such subversive and violent activities, the Act becomes applicable to all the parts of India. In what parts it will actually operate depends upon the situation.

I would humbly submit to the Home Minister that the misgivings being entertained by friends on the other side are because there were certain misuses, wrong uses to which such Acts were directed, and it is our duty to remove those misgivings, to do away with them, and to reassure our friends that this Act is not directed against any political party, be it the Communists, the Hindu Mahasabha the Socialists or any others. I would in all humility submit that as democrats we have to see that every party has the freedom to propagate its ideas democratically and that no such liberty is suppressed.

One word more and I shall have finished. I know that India is passing

through a critical period. There is a clash of ideologies and it is bound to be there because the world is in such a stormy atmosphere. But it is also equally true that the storm and the excitement and the turmoil can be pacified only by bettering the lot of the people. That is a positive approach and with that positive approach if we proceed I am sure the day will not be far off when this Preventive Detention Act will not be found necessary in this land of ours.

I hope I have put before the House what we on this side feel about this enactment. It is an extraordinary legislation, no doubt, but it is necessary, and the sooner the necessity for such an enactment goes the better for all of us because then we shall feel that in India there is not any activity which may go against the very fundamentals of the Constitution.

Shri Seshaigiri Rao: I will not speak on the principle of the Bill because hon. Members who preceded me have spoken on it at length. There are four fundamental rights that have been conferred under the Constitution of India on the detenus, namely, firstly, the right of enquiry before an Advisory Board, secondly, that the detenu must be able to get the grounds of his detention "as soon as may be", thirdly, that he must be given the earliest opportunity to make a representation, and, fourthly and more important than all these, that the maximum period of detention should be given in the Act. The peculiar feature of this Preventive Detention Act is that it contains verbatim the exact words that are found in the Constitution. Article 22(5) of the Constitution says:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

How far these two mandatory provisions have been followed in this Bill is an important point. In section 7 of the Act it says:

"When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made and shall afford to him the earliest opportunity of making a representation....."

[Shri Seshagiri Rao]

They are the same words, "as soon as may be", as are found in the Constitution. What is intended in the Constitution is that a certain time-limit should be given so that the authorities may not say that the reasonable time is a month or two months. The Select Committee has rightly come to the conclusion that not more than five days at the latest should be given. The time-limit is important because the detenu must have the earliest opportunity to make the representation. What is the opportunity that is going to be given? The important point is that within a week or three or four days the detenu must be taken to the State Government so that he may make the representation. What is the earliest opportunity? Is it only giving him some pencil and paper? Or is he going to be taken to the State Government? Under the Constitution, the only important right which a detenu has is of making representations to Government and also the right of enquiry by the Advisory Board. This is not clearly defined in Section 7 and the same phrase "earliest opportunity" is used. Is it one month or two months? Especially when the order is going to be followed by a reference within twelve days, he must be given the earliest opportunity to appear before the State Government and express his case.

I am not inclined to support the representation of a detenu by a legal practitioner. Article 22 (1) says:

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice."

But 22 (3) says:

"Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention."

Therefore, as long as the Constitution remains as it is and is not amended, representation by legal practitioners is not possible. It would be against the Constitution. But I want to know whether by liberalising the provisions this right can be conferred upon the detenu.

One new provision that has been made is that a fresh detention can only be made if certain fresh facts are brought to light. But what would be the position if certain facts are brought to light when the man is in detention? Could he be detained again on the basis of those facts? I want to have clarification on this point.

Shri Altekar (North Satara): As a legal practitioner for the last thirty years and also as a student of law and the philosophy of law, I would like to state that the civil law of a free nation is the reflection of the behaviour and culture of the society and the sections of society in that nation, and the criminal law is the reaction of the State towards the behaviour and culture of the society or sections of society in that nation. When it is said that we are enacting a black law or that this Preventive Detention Act is an unusual Act, we have to take into consideration the objective conditions in the country. If you simply sit in a room like a philosopher or a professor of law and lay down how the law should be, what the individual rights should be and how they should be protected, without any relation whatsoever to the behaviour of the sections of the society in the nation, then you will be doing a thing which is entirely unconnected with the objective conditions in that nation. I beg to point out that when we are enacting this Preventive Detention Bill and certain provisions are made therein, we do so because of the necessity imposed by conditions that obtain at present. When it is stated that in the Select Committee certain proposals were made and that they were not accepted, I beg to submit that the whole attention to this Bill has been given by taking into consideration the conditions that obtain in the country and, as a matter of fact, the utmost concessions have been given and the clauses that are now before the House after return of the Bill from the Select Committee are such as are necessitated by the circumstances that obtain today. When various demands are made by the Opposition that the detenu should have the help of a legal practitioner when the case comes up before the Advisory Board or that all the facts available to the Government should be given to the detenu, it ultimately comes to this that there should be a regular trial and nothing more and nothing less. The only question is whether the circumstances that obtain today can permit such a facility, that is, whether we can rule ac-

cording to the normal law. I beg to submit that the provisions are such as are necessitated by the circumstances of the time.

There is a great obsession in the mind of the Opposition that this Act is intended to crush political opponents. There is nothing of the kind. If you look at the various parts of the country during the last few years, you will find that a sort of technique, a mechanism, a method has been employed by some anti-social elements that makes it almost impossible to bring the culprits to book. It is impossible to maintain peace and order and tranquillity through the ordinary law of the land and the provisions envisaged here are necessary for this purpose.

In certain districts of Bombay State, the villagers come and say that there is no regular rule by the Government in their area, because crimes and murders are committed; arson and looting are indulged in. An ordinary person finds it difficult to lead a peaceful life. The difficulty is felt when it is stated that there should be witnesses; there should be cross-examination; there should be the help of a pleader and so on. For, these villagers are living under such terrorism that they are unable to come forward and state what is actually happening. They come to you and say: "These acts have been perpetrated. Please do not mention our names, but somehow or other bring the offenders to book." When the people concerned are themselves so much terror-stricken, you can imagine how difficult it would be for witnesses to come and state what has happened. I shall just state how these people behave. I have nothing to say with respect to any political party. I only speak of certain anti-social elements who want to thrive, by preying upon the common man. They have got unlicensed arms; they form themselves into a gang; and the victims are so terrorised that when the police come they are afraid of giving any information. The witnesses too are afraid of coming forward and giving evidence.

Another technique which is usually resorted to by these culprits is to efface altogether any trace of evidence that may be available. I will just cite a few cases that happened after the elections. In a certain village there was a person, a patil, who was said to be a Communist. He was kidnapped. No one knows where he is. There was another person who stood as a candidate on the Socialist ticket. He was kidnapped by three persons with unlicensed arms. They are known to be

criminals. No one knows where the kidnapped person is. A friend of mine who also happens to be a friend of that Socialist says that both these persons have been done away with and as a matter of fact they will never see the light of the world again.

The technique that is usually followed by these persons is this. They take the victims to a very distant, remote and secluded place. They cut him to pieces and these pieces are thrown into the deep waters of a river where great fishes eat them away. So, there will not be any trace of the victims. Such persons we have to deal with; such persons have to be brought to book. The poor villagers are not in a position to raise their little finger, or even their voice, against these persons. They are very much afraid on account of the atrocities committed by them. They are afraid to seek the help of the police and the magistracy. They say: if we seek the aid of the police or the magistracy, the next day our houses will not be there; we do not know where we ourselves would be.

We have, therefore, to root out these unsocial elements who, as a matter of fact, are having a rule of no law in several villages. Here in this House we hear sermons on civil liberties and individual rights, and the protection of rights of a detenu. It was said that the detenus should be given legal aid, that he should be allowed to lead evidence and also that he should have the right to cross-examine witnesses. I submit that on account of the rule of terror that obtains in several of the villages, no witnesses would come to give evidence. In these circumstances we have to see whether the rights of such persons who are a menace to society, and who, as a matter of fact, if I may use a strong word, are preying upon society as ferocious animals, are to be protected. If we give legal help and the right of cross-examination to such detenus who are behaving in this manner, no witness would come forward to give evidence.

Shri B. S. Murthy (Eluru): On a point of order, Sir. The hon. Member used the words "ferocious animals" and immediately referred to detenus.

Mr. Deputy-Speaker: So long as he has not referred to any hon. Member here, he is in order. He thinks they are all in the nature of animals. We have not evolved from that stage.

Shri Nambiar: There are ex-detenus here.

Mr. Deputy-Speaker: The ex-detenu is an hon. Member of this House now.

[Mr. Deputy-Speaker]

he is no longer a detenu. Many hon. Members on the other side of the House too are ex-detenus.

Shri Altekar: I myself am an ex-detenu.

I am only speaking of persons who are a menace to any civilised society. I do not at all refer to any political party, or persons holding particular ideologies. I am only pointing out that such precautions and such measures are necessary for the purpose of maintaining peace and tranquillity in the country. If there is no such measure it will be absolutely impossible to catch hold of such persons and bring them to book. That is what we are actually experiencing in the Bombay Presidency for so many years. Here are the figures I have with regard to Bombay Presidency.

On the 28th February 1951 there were only 21 political detenus and 66 criminal detenus; on the 21st August 1951 30 political detenus and 94 criminal detenus; on 29th February 1952, 34 political detenus and 146 criminal detenus; on 30th June 1952, 29 political detenus and 214 criminal detenus.

An Hon. Member: What is meant by criminal detenus.

Shri Altekar: Persons who have been detained for committing criminal acts like arson, murder, dacoity, etc., and whose previous history shows that they have indulged in such crimes.

I submit that unless there is such a measure, there will not be any peace and tranquillity in the country. What people actually say is not that there should not be such an Act, but that it is not being used properly and sufficiently. They ask: why are you so much restrained in using it against such persons.

So far as these persons are concerned, I may say that many of them are persons who are not connected with any political party or opinion. They are anti-social elements and their activities have got to be curbed in an effective manner so that such crimes may not take place again. When afflicted persons come to us they say: unless you are in a position to bring these persons to book you have no right to rule the country. When we ask them who these people are they say that they come near you; sometimes move round you. But you

do not know them. You go only by their outward appearance. They are not like the *Rakshasas* of *Ramayana*. They appear to be ordinary persons, but as a matter of fact we know exactly how they behave and what they do. I am reminded here of an incident in *Ramayana*. Rama, after Sita was kidnapped, was going in search of her and was moving towards the South. He then came near lake Pampa. Having come there he saw a white bird with tall legs, a long beak and white feather (An Hon. Member: Not a white cap?) and he said to Lakshmana: "Oh, Lakshmana, see on the bank of this Pampa this white bird; he appears to be a saintly one—

पश्य लङ्घमणं पंपायां बकः परमधार्मिकः ।
रानेमुञ्चति पादान्नं प्राणिनां वधरांक्षया ॥

He lifts his toe gently and paces forward very slowly so that no insect may die underneath." When these words of Rama were heard by a fish in the lake, that fish is reported to have said:

सहवासी विजानानि सहवासि विचेष्टिनम् ।
बकः कि वर्षने राम येनाह तिष्कुलिक्ष्यते: ॥

"Only an associate knows the behaviour of his comrade, Rama, what praise are you bestowing upon this white bird who has totally annihilated my family!"

So, when such sort of persons are there moving in society and the ordinary law is not sufficient to catch hold of them, to curb their activities and to bring them to book, we have to enact measures that will as a matter of fact enable the Government to prevent such sort of crimes happening, to prevent such atrocities being committed. And we can do this by the measure that is before the House. I submit that the measure that is before us and that is being enacted by us has given almost all the concessions that could be given so that the individual liberty of the detenu or his rights may be protected to the extent that they can be protected. The other alternative before us was to drop the measure altogether and to have recourse to the ordinary laws and say let there be any sort of chaos in society and let the lives of millions of people be subjected to the atrocities and tortures of some anti-social

elements. Are we going to do that? That is the question before us. If we are to maintain peace and tranquillity in the country, if we are to maintain the civil liberties of millions of people in this country, if we are to maintain that the social life of the vast number of villagers that are dwelling in the lakhs of villages in this country should go on smoothly and peacefully, then such a measure as is being enacted here is absolutely necessary, and we have enacted only such provisions as are necessary for the purpose of bringing these persons to book.

I submit that if we look at the Bill as it has emerged from the Select Committee it can be seen that we have, as a matter of fact, while considering the main Act, given four concessions to the Opposition's demands. Originally, section 7 was not in any way sought to be amended. But when a demand was made by the Opposition we agreed to make an amendment. What was originally provided in section 7 was that the grounds may be made known to the detainee as soon as may be. When there was a demand that a specific time should be put in there, we agreed and we have put in "as soon as may be, but not later than five days from the date of detention". That was the concession that has been given.

1 P.M.

Then in section 8 it was asked what should be the composition of the Advisory Board.

Mr. Deputy-Speaker: Is the hon. Member concluding?

Shri Altekar: No. Sir, I shall require another fifteen or twenty minutes.

Mr. Deputy-Speaker: Then he may continue in the afternoon.

MESSAGES FROM THE COUNCIL OF STATES

Secretary: Sir, I have to report the following two messages received from the Secretary of the Council of States :

(i) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States at its sitting

held on the 31st July 1952, agreed without any amendment to the State Armed Police Forces (Extension of Laws) Bill, 1952, which was passed by the House of the People at its sitting held on the 15th July, 1952."

(ii) "I am directed to inform the House of the People that the Code of Criminal Procedure (Second Amendment) Bill, 1952, which was passed by the House of the People at its sitting held on the 11th July, 1952, has been passed by the Council of States at its sitting held on the 31st July, 1952, with the following amendment :

'That in clause 7 of the Bill at the end of clause (a) of the proposed section 132A of the principal Act, the words "so operating" shall be added.'

I am, therefore, to return here-with the said Bill in accordance with the provisions of rule 126 of the Rules of Procedure and Conduct of Business in the Council of States with the request that the concurrence of the House of the People to the said amendment be communicated to the Council."

CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL

Secretary: Sir, I beg to lay on the Table of the House the Code of Criminal Procedure (Second Amendment) Bill, 1952, which has been returned by the Council of States with an amendment.

RESERVE AND AUXILIARY AIR FORCES BILL

PRESENTATION OF REPORT OF JOINT COMMITTEE

The Minister of Defence (Shri Gopalaswami): I beg to present the Report of the Joint Committee on the Bill to provide for the constitution and regulation of certain Air Force Reserves and also an Auxiliary Air Force and for matters connected therewith.

The House then adjourned till Half Past Three of the Clock.

The House re-assembled at Half Past Three of the Clock.

[MR. SPEAKER in the Chair]

PREVENTIVE DETENTION (SECOND AMENDMENT) BILL.—contd.

Shri Altekar: I was dealing with the question of the amendments that were effected in the sections of the original Act and which were not previously amended in any way by the original Bill that is here before us. I dealt with the amendment that is effected in section 7 of the original Act and that now...

Shri Feroze Gandhi: There is no one there on the Treasury Benches.

Shri Gadgil (Poona Central): I am representing for the time being.....

Mr. Speaker: I do not think I could permit a private Member to represent the Government. (Interruption) It is not a question of a point of order. It is a point of propriety.

Babu Ramnarayan Singh (Hazaribagh West): They do not deserve to be there.

Shri Altekar: In the original section 7 of the Preventive Detention Act the words were "as soon as may be", but the Select Committee have substituted the words "as soon as may be but not later than five days from the date of detention". There is only a period of five days that is given to supply the grounds to the detenu from the time that he is detained.

Further in section 8 wherein the composition of the Advisory Board is given, the present amendment reads us follows:

"The appropriate Government shall appoint one of the members of the Advisory Board who is or has been a Judge of a High Court, to be its Chairman, and in the case of a Part C State, the appointment to the Advisory Board, of any person who is a Judge of the High Court of a Part A State or a Part B State shall be with the previous approval of the State Government concerned."

Mr. Speaker: Order, order.

Shri A. K. Gopalan: As we are discussing a very important Bill, I suggest the House may be adjourned for two minutes till somebody from the other side is present in the House. We fear that the absence of Members on the Treasury Benches is an indication that they do not want to hear even what we want to say. We feel that this discussion is a very

important one. It is taken for granted that the Bill will be passed and that what ever we say is something that is not to be heard.

Shri G. H. Deshpande (Nasik—Central): On a point of information, Sir. Is it the privilege of the Opposition to criticise and then to remain absent when one is being replied to?

Mr. Speaker: Order, order. Such repartees will not help a proper discussion. I myself wanted to say that whatever the business outside which any individual Minister or the Minister responsible may have, it is necessary to remember that no engagement outside can be higher or of greater importance than his presence in this House. It is no excuse, as the hon. Member Mr. Gadgil suggested that there is a Select Committee, that there is this Committee and that Committee. At least, I personally feel that the absence from the House of the responsible Minister is perhaps not giving the House the attention and the respect that it is entitled to. I can understand reasons for absence in case of illness or sudden difficulties, but certainly not any other engagement.

As regards the point which the hon. Member is making, I do not think we need go to the length of attributing that they do not want to hear. I do not think that the matter is so serious as that. It is the usual way in which affairs are carried on unfortunately in our country. Nothing beyond that. Of course, we have now one hon. Minister from the Government who will be taking notes. I do stress the point that the Minister must be present in the House.

Dr. Katju: I am very sorry, Sir. I was just detained by two minutes.

An Hon. Member: Better late than never.

Mr. Speaker: During the absence of the hon. Minister—his absence may have been quite accidental—a suspicion crept in, in the minds of the Opposition particularly, that it was not the desire of the Government to hear what they had to say. Of course, I have disillusioned them so far as I could. I also expressed the view that whatever other engagements the Ministers may have outside, their presence in the House is an engagement of the highest type. There may be causes such as an accidental fall or the motor-car not working and all that is excusable but otherwise it is in a sense, though not intended, slighting the House.

Dr. Katju: On a point of personal explanation, there was a very valid excuse and so far as my anxiety to hear the speeches of the other side is concerned, it is intense, though I anticipate what they will say.

Mr. Speaker: I do not want to go into that chapter. I may say that I made that remark because Mr. Gadgil pleaded there was a Select Committee in which the hon. Minister was present and perhaps his case was rather judged adversely because of the pleading of his advocate...

The Minister of Works, Housing and Supply (Sardar Swaran Singh): That is why in the preventive detention advocates are prevented.

Shri Altekar: I am dealing with the amendments that are made in the sections of the original Act and which were not sought to be amended by the Bill that is placed before us.

As regards section 8 in the original Bill there is no such provision that there should be any Chairman and that Chairman should be a High Court Judge or who has been a High Court Judge, so that he will be a man of great judicial experience and he will bring to bear his mind upon that question and would give all possible legal facilities and all possible judicial consideration to the subject. That is the reason why this important amendment has been made and it has been accepted. I may say that in pursuance of the Prime Minister's statement that the whole Act may be reconsidered, this important provision has been made in this section. That no important change has been made in the original Act is rather a statement which, of course, is beside the mark. That is the least I can say about it. Even in the case of Part C States where there are no High Courts, the Chairman to be appointed will be a High Court Judge from either a Part A or Part B State and then in a small State like Coorg it will have a Board which will have as its Chairman a High Court Judge from a Part A or B State. So this is a very important amendment that has been made and cannot be so lightly overlooked.

Then we have also made an amendment in section 9:

"In every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 8 the grounds on which the order has been made

and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3."

So far as the other sections are concerned, formerly the time that was given was six weeks; now that has been reduced to 30 days. The whole procedure has been expedited. Another change that has been effected is that along with the report of the officer, he has to send certain papers that were formerly not necessary to be produced. The exact wording of the amendment is: for the words "have a bearing on the necessity for the order" the words to be substituted are: "have a bearing on the matter". That is a very important change. The sub-section says:

"When any order is made under this section by a district magistrate.....he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter....."

That is the present amendment. Formerly, the words were: "in his opinion have a bearing on the necessity for the order". So that, if, according to the opinion of the district magistrate or officer who had made that order it was not necessary to send those papers, he could withhold them. Now, by this amendment, all the papers and all the documents that may be in his possession which relate to that matter, which have a bearing on that matter have to be sent irrespective of the fact whether he thinks them to be necessary or not. This is a very important point. Much criticism was levelled by the Opposition that some papers may be withheld and that the Board will not be in a position...

Mr. Speaker: I may invite the attention of the hon. Member that all these points were made by hon. Minister while moving the Bill and now the hon. Member is practically repeating the same thing. I may also further remind him that though in matters of legislation, there is not strictly any time limit, I believe the House is practically of the view that speeches should not exceed 15 to 20 minutes. Otherwise, a large number of hon. Members will never get a chance of speaking or giving their views on this Bill. The hon. Member

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has already taken 20 minutes. He may now conclude his remarks with just such things as are necessary for the conclusion.

Shri Altekar: I shall only point out one important point that was not referred. That is in connection with section 10, sub-section (3). Formerly the wording was: "or to appear by any legal representative". Now the amendment is, for the words "legal representative" the words "legal practitioner" shall be substituted. So that, what he is prevented from doing is, he cannot have a legal practitioner to support him; but, if in the opinion of the Advisory Board, it seems necessary that he should have some legal aid, possibly he would be given the legal aid of a person who is not a legal practitioner; but possibly of a retired Judge or some other person who could help the detenu on legal points. This is an important change.

I shall now conclude by saying that in case of emergency, the district magistrate alone can act, and if he is not so allowed to act, possibly there will be a frustration of the whole Act. Therefore, the power has to be given to him and as a matter of fact, his order has to be approved by the Government afterwards. All these amendments have been effected in such a way that under the circumstances, the detenu is given the fullest possible opportunity to have as much aid as possible and a sort of summary trial is provided. That is the farthest extent to which we can go and that has been done. The difficult conditions obtaining in various parts of the country have rendered this Act necessary. To call this a black Act or a stinking Act is to take into consideration only the Act and not the deeds that are behind or the methods which are being followed by the anti-social elements. The thing is that they feel the stink of the halter of the assassin. They feel the stink of the idoform and iodine but not of the executioner, but not of the axe lacerating and the putrefying wound that is there. They feel the stink in the hall of the surgeon, but not that in the den of the marauder. They feel the stink of the measures that are being taken against the most anti-social elements, but not that of the hundreds of murders and the corpses that are putrefying all over the country for so long a time. What is needed is an all-round effort, a co-operative effort of all the sections in the country; and if they all co-operate, this lawlessness can be put an end to. But, if instead of condemning the black acts and

stinking acts, we only condemn the measures that have been rendered necessary today, that is not a proper way of approaching this problem.

Shri Nambiar: This Bill which has been discussed for so many days here, has now come from the Select Committee. We first hoped that the Bill would be withdrawn and we demanded or rather requested the majority party to withdraw it because it is an obnoxious law which can never find a place on the statute book of any democratic country in this world. But, unfortunately, the hon. Minister and the majority party refused to take that stand. Then, they said that they would try their best to see that the parent Act itself is allowed to be discussed if any considerable improvements could be made. Unfortunately, from the minutes of dissent we understand that the parent Act was not greatly touched, but only very small improvements were made, with regard to certain items such as reference to the Advisory Board within 30 days instead of 42 days and so on. Practically, no improvement worth mentioning has been made in the Act. Therefore, we certainly oppose the Bill totally. You may say, here is a Bill before the House, how can you oppose. We once again request the hon. Minister to withdraw the Bill and the hon. Members to request him, to persuade him to withdraw the Bill. That is my attempt. Why I say so is this. In the parent Act, in section 3, it is said:

"The Central Government or the State Government may—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to..." That is very vague.

"(i) the defence of India..."

Anything can be brought under this. Any speech made about the foreign policy of this Government by any Member outside can be said to be prejudicial to the defence of India or that "it is prejudicial to the relations with foreign countries". Anything can be brought under that.

It goes on: "relations with foreign powers or the security of India". "Security of India" is a very vague term. I need not emphasize it, because anybody can understand that any act can be said to be detrimental to the security of India, however,

small it may look, because in the various detention orders passed, I can quote that very small, flimsy reasons are advanced to detain persons. This morning, when the question was discussed, the hon. Shri B. Shiva Rao said there are certain allegations against Mr. A. K. Gopalan. He said that that portion was not read out by Mr. Gopalan whereas the other portions which looked very light were only gone into. I can quote you cases where if you go through the entire detention order, there is no justification whatsoever to detain the person under the reasons given there. But that is being done. Therefore, what I submit is that "security of India" is a very wide and vague term; anything under the sun can be brought under it, and it can be said "this is against the security of India, and therefore he has to be detained."

Again, it says "maintenance of supplies and services essential to the community". I can speak with some authority on this matter because I was connected with the Railway labour movement in the South. From 1947 onwards whenever any action was contemplated by the Railwaymen, I was the first fellow to be detained. There was a strike in Golden Rock in the South Indian Railway in 1946. As Secretary of the labour union I had something to do with it. I organised the strike. I have got the right to do it under the Constitution. Ever since 1946, if any action is contemplated by the Railwaymen throughout India, if I am available, I will be booked and kept under detention, but I was not available for some time, therefore they could not do it.

An Hon. Member: "U. G.", underground.

Shri Nambiar: That is a quite different issue. If I am available, I will be the first person to go to jail. If it so happens that a strike is contemplated in the north west frontier or in East Punjab or West Bengal or anywhere in India, the first man to be booked would be myself. That is the position. I can prove the facts with the detention orders. And not only was I detained several times, to show what happened inside the jails, I want to demonstrate to you how my hand is bent today. In all humility I say here you can see, Sir, this is the hand which was fractured in the Vellore Central Jail while under detention. You see the bend of the hand. I was a member of the Madras Legislative Assembly from 1946 to 1951, and in the course of five years

of my membership, for 2½ years I was in the Vellore Central Jail as a detenu. And during the period I got my hand fractured for the simple reason that I resisted, saying that I must be given the allowance of Rs. three promised. First it was said: "you will be given Rs. three allowance per day so that you may live". Then it was reduced to Rs. 1/8/- by the Madras Government, and so we protested. We said we wanted to go on a protest strike, and while on hunger strike, we were forcibly put in lock-up. One day, I said: "I cannot go to the lock-up because during the lock-up period if anything happens inside while on hunger strike, I will die". For that reason I was lathi-charged and put into the lock-up in which my hand was broken. I ask: Can the Government deny it? So, I was lathi-charged inside the Vellore Central Jail and my hand was broken.

And today they want to pass the same Act, the same obnoxious law, under our very nose and they expect us to be very quiet, peaceable, good-talking boys. They cannot expect us to be like that, because we are ourselves the victims. We have paid, I have paid them with my blood and they want to abuse this Act, and they want to abuse not only this Act; they want to say that they are justified because the whole electorate is behind them; they are in a majority, the majority is passing the Bill, therefore the whole electorate agrees to it. But I humbly submit today: Will any hon. Member of the Congress benches go to the public today on the issue of preventive detention? Will he resign? I will resign my seat and challenge him and defeat him. Let us then not pass the Bill. Do not do it now. Tell the people and go to the people outside on the issue because we have every grievance. This is an Act which every one of the Opposition is afraid of, because this Act is intended to stifle Opposition political parties. Any party other than the Congress they do not want to tolerate, and they want to take advantage of this situation saying that in some part of the country there is some calamity. Therefore, they want everyone to be threatened with action under this Act. That is the reason why I submit that this is an obnoxious law. The very clause of it says that anything can be brought under it.

Not only that. While under detention in the Vellore Central Jail as a member of the Madras Legislative Assembly, I wanted to communicate with the hon. Speaker of the Assembly. My letter addressed to the hon

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Speaker was withheld. They said : "Under Rule 11 (4) of the rules framed under section 4 of the Preventive Detention Act, no detenu has got any right to correspond if it is considered to be harmful or objectionable to the security of the State." So, my letter to the hon. Speaker of the Madras Legislative Assembly requesting him to take me to the Assembly to attend it was considered to be objectionable and the jail superintendent withheld the letter. So I had to go to the Madras High Court and the Madras High Court passed an order saying that this is unheard of in any country and immediately directed the jail superintendent and the Chief Secretary to the Government of Madras to send all my correspondence to the hon. Speaker. So they went to that extent. They would not allow any representation to Government for our maintenance. They would not allow even this letter addressed to the hon. Speaker while I was in detention in the Vellore Central Jail, and today when we speak about the conditions of the detenus, Dr. Katju says that the life of two crores of people in Bengal is nothing like that of the life of the so-called detenus—they are given Rs. three a day, they are well-treated. But I would request him that if it is so good, let him go to detention for one month. I am prepared to go for one year. Let him be detained for one month. He will be locked up at nine o'clock. The warden will come, and willingly and very humbly he will get into the lock-up, and he will be locked up, and the next morning he will come out, and his letters to his wife and children will also be withheld by the censor. Let him undergo all that.

There is no use of thus talking piously to us now when he is the Home Minister sitting on the Treasury Benches. He speaks so eloquently about the life of the detenus, about the money that they get and the happiness, but we do not want that happiness, nor do the people care to have happiness inside the jails.. If their happiness which he wants to create inside the jail is a model one, then the peace he is going to have in this country will be the peace of the graveyard. Of course, these two things must have bearing and connection with each other. Therefore, let us not talk of this vague and illusory happiness of a detenu.

Though we oppose the very idea of detention tooth and nail, we also suggest that even with regard to the treatment that you are going to give to the detenus, you are so conservative.

You will not give them even enough food. You will not give them lock-up-free nights. While in the Vellore Central Jail, we made so many applications that we might be allowed to sleep outside in the summer days. They would not allow. Even the bulbs were removed from the rooms. That is the position.

Mr. Speaker: I do not want to interfere. I can understand the feelings of the hon. Member, but I should like to invite his attention to the fact that the subject under discussion now is not the administration of the Vellore Central Jail, but the Preventive Detention Act.

Shri Venkataraman (Tanjore) : Nor even his biography.

Mr. Speaker: Order, order. I think he has sufficiently illustrated by his own case as to why people feel the difficulties of the working of this Act. What he said is quite relevant. I am not prepared to say it is irrelevant. But, as we have had a self-denying ordinance of speaking within a certain limit, I advise him to come to the Preventive Detention Bill, rather than go into the Vellore jail incident now. Otherwise, he will not get the time.

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Shri Nambiar: The rule-framing authority is handed over to the executive. When it was suggested by the Members of the Select Committee that some improvements on the life of the detenus should be made, even that was not accepted. That is why I have been saying that something should be done towards them. Even granting that there are some unfortunate men in this country who are going to be detained, give them at least better food, and better living conditions inside the jail. This point was raised by some hon. Members of the Select Committee, but it was not heeded to by them.

The third point which I want to deal with is about the right of detention of a Member of a Legislature or Parliament. This question was also raised by me in the Madras Legislature as also before the Madras Government. I took the whole case before the Madras High Court. The Judges of the Madras High Court said that the immunity from arrest was a point which has to be decided later on. And that question was not pressed by me at that time. My case was that Members of Parliament or Legislatures should be allowed to attend Parliament

sessions even under detention, and that they may be escorted from the jail to the Parliament House where they can exercise their legitimate functions as the representatives of the people. This point was driven home to them, and the two hon. Judges, although they differed on the question of immunity of arrest, upheld my first point that the case should have been referred to the Privileges Committee of the Madras Legislature. They said, "This is wrong, this case should have been referred to the Privileges Committee." On this point, both the Judges agreed, but on the immunity question they did not. Anyhow, the whole point was settled, because I was released by the High Court, and I could not press my point any longer.

I have given an amendment also which seeks to provide that all Members of Parliament should have immunity from arrest, and even to this the Select Committee did not agree. My second point was that even granting that they should not have this immunity and that they might be detained under this Act, they should at least be taken to Parliament House while Parliament is in session. The third point which I stressed was that even if such arrest were to be made, it should be done under the orders of the concerned Home Minister. If he is a Member of Madras Legislature who is arrested, then the Home Minister of the Madras Government, and in the case of the Member of Parliament, the concerned Home Minister, that is, the Union Home Minister should pass the orders of detention and the arrest should be made under his instructions only. I suggested that for the following reason. Supposing the Trichinopoly district magistrate finds that I am doing something which is harmful in the interests of the security of the State, then he can detain me within that district, but he has no limits beyond that district, but my being a Member of Parliament, my duties and privileges inside Parliament and my rights etc. cannot be decided by the Trichinopoly district magistrate, because he cannot think about them. They can be better understood only by the Home Minister here. My submission is that only the Home Minister has got the right to apply his mind to the question of detaining a person and considering the justice or otherwise of doing such a thing. Therefore, I submitted that in the case of a Member of Parliament who is to be arrested in the Madras State, let the Union Home Minister issue the instructions and let the Madras Government arrest me under those instructions; and if it is a Member of a State Legislature, let that State Government arrest him

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under the orders of the State Home Minister. Even my amendment to this effect was negatived in the Select Committee. Why I requested was because under Regulation 18B in England, the procedure was that only the Home Minister has got a right to arrest a Member of Parliament. And here in India according to article 105 of the Constitution, we are entitled to have all the privileges and rights of the Members of the House of Commons of the United Kingdom. If it is so, then every right and privilege that an hon. Member of the House of Commons enjoys has been guaranteed to us, but with regard to detention, it has been provided that a district magistrate can arrest me. I asked why have these two things contradictory to each other? The answer was that the rule in England was that the arrest can be ordered by the Home Secretary as happened in Captain Ramsay's case, but here the rule is that the district magistrate can arrest anybody, and that therefore I come under this category. Then I said: "What about my right and privilege as a Member of the Legislature which has been guaranteed under the Constitution in article 105?" It has been provided there in that article, and no district magistrate can violate that right which is given by that article. The answer came: "One article provides also for preventive detention; therefore you come in the category mentioned under that article. Therefore, the other right is gone." I submit that on a reasonable interpretation of these two articles, any man will come to the conclusion that we have not got the rights and privileges guaranteed to the Members of the House of Commons because the preventive detention laws are that anybody can be arrested by the orders of a district magistrate. Therefore, I say that this point may be taken into consideration not only in its technical and legal aspects, but also from the wider political angle.

I have tabled an amendment which seeks to give immunity to Members of Legislatures and Parliament from arrest. I have given my case also that we have a right to that immunity. In the United Kingdom Regulation 18B was passed during an emergency, during the war-time. It was therefore a war-time legislation. But we are not having a war-time Legislation here. Captain Ramsay's case was considered in the light of the whole situation, and he was considered to be a spy in the camps of Oswald Mosley which was a fascist organisation, therefore the Privileges Committee did not go into the whole question of the issue of immunity of arrest, because he was considered to be acting against the

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defence of the country. If it is so here, let them say so. Let the hon. Home Minister issue the order himself and say, "Mr. Nambiar, or Mr. so and so, who is a Member of Parliament must be arrested because he is considered to be acting against the defence of the country under such and such a rule", and arrest me or even crucify me. That is then quite a different issue. When there is no such allegation against us, how can a district magistrate simply arrest us and put us in jail?

Even granting that there is the need for a detention, why cannot we be allowed to go and attend Parliament session? When we were detenus we were taken to the Supreme Court under police escort—I myself had come to the Supreme Court in this building in connection with my case when I was in detention—to appear before the Judges, and inside the court, we were not handcuffed, but outside the police were waiting, and as soon as we came out of the court, the police again caught me and put me into their van. Supposing a Member of Parliament who is detained, goes inside Parliament and speaks there his speeches inside the House cannot be considered as a breach of the security of the State or the maintenance of law and order, because we are privileged to talk here; and we can speak anything here within the rules, because we are privileged. If an act of any Member of Parliament is considered to be prejudicial to the security of the State or against the interests of the nation, I submit that he may be taken under police escort up to the gates of the Parliament Hall, and the police can wait outside, while he may be allowed to discharge inside his duties which he owes to the electorates. It is said even in the Preamble of the Constitution, "We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens..." Actually the 35 crores of people do not come and do the thing. It is their representatives that exercise that right. How can that sovereignty be exercised if the representatives are not allowed to have their say? Sovereignty of the people cannot be exercised except through the representatives through whom their right is exercised. Therefore, if a Member of Parliament can be detained, why cannot he be allowed to attend Parliament while it is in session and thus discharge his duties which he owes to his electorate, and also the sovereign right of the people which is guaranteed to them by the very

Preamble of the Constitution. The Preventive Detention Act provides that any citizen can be brought under that Act, and be detained. But I submit that there must be a difference so far as the Members of Legislatures or Parliament are concerned, because they have got an extra responsibility as representatives of the people and they should be allowed to talk inside the Legislatures or Parliament and take part in the deliberations there. Otherwise, the whole thing is wrong.

My humble submission that the Members of Parliament should be allowed to take part in the deliberations of the House does not mean that I allow or agree with this detention. We demand that we should get immunity from arrest and, granting that that immunity is not allowed, we should not be deprived of the right to represent the people inside the House. Therefore, I think I have made out my case clearly, and considering the rights and privileges conferred under the article of the Constitution and considering the moral and legal responsibility that the Government has to discharge towards the electorate, we must be allowed, the Members of Parliament or Legislatures must be allowed, even if they were to be arrested under the provisions of the Preventive Detention Act, to discharge this duty. Why I am taking this particular case is that Mr. Deshpande was arrested and detained in the Delhi jail when Parliament was sitting. I do not know whether Mr. Deshpande wanted to come and attend the session; I did not go through the whole case. But if he so desired, granting that there was a detention order, there must be a provision that he must be allowed to take part in the proceedings of Parliament. But that was not done in Mr. Deshpande's case. That is why I have my own fear that in future we are not going to get it. Therefore, I make this humble submission and with these observations, with these appeals and requests also I oppose the Bill in toto and from the very beginning, and if by the majority, by the brute majority they pass this Bill, let them at least, in fairness to the people, once again think it over. This is my appeal.

पंडित मुनोहर दत्त उपाध्याय (विला प्रतापगढ़—पूर्व) : जो विधेयक इस समय हमारे सामने उपस्थित है उस के सम्बन्ध में उन माननीय सदस्यों के अतिरिक्त जो इस

के सिद्धान्त के विरुद्ध ही विवात करते हैं और जिन्होंने अपनी बहस भी इस के सिद्धान्त के विरुद्ध की है उन के अतिरिक्त और जिन्होंने सदस्यों ने इस विषय पर अब तक इस सदन के सामने जो कुछ पेश किया है, उन में मैं जहां तक समझ सका हूँ, एक विषय बड़े महत्व का है। प्रायः सभी सदस्यों ने यह तो स्वीकार किया है कि जहां तक होम मिनिस्टर का ताल्लुक है, चाहे वह हमारे केन्द्रीय सरकार के हों और चाहे वे प्रदेशीय सरकार के हों उन से पह आशा नहीं की जाती है कि वे कोई ऐसी बड़ी गलती करेंगे या इस कानून का दुरुपयोग करेंगे और जहां तक ऐडवाइजरी बोर्ड (Advisory Board) का सम्बन्ध है उस के विषय में भी मुझे ऐसा सुनने में नहीं आया कि किसी को, चाहे इस पक्ष के हों, चाहे विपक्ष के हों, किसी सदस्य को कोई संगीन शिकायत हो। मेरी समझ में ऐडवाइजरी बोर्ड के सम्बन्ध में तो कोई भी शिकायत नहीं होगी। तो शिकायत जो है वह प्रायः जिला मजिस्ट्रेटों के या उन के नायब जिला मजिस्ट्रेट जो होते हैं, उन के सम्बन्ध में तो सुनी गयी और जितना बड़ा खतरा इस कानून से बताया गया वह प्रायः इसी सम्बन्ध में या कि ऐसे अफसरों के हाथ में इस कानून को डाल देना जो उस का दुरुपयोग करें गलत होगा। जितने केसेज (Cases) भी हमारे सामने पेश किये गये, इन सब का अर्थ यही होता है चाहे वह एक हो या हजार हों इन सब का अर्थ यही होता है कि इस कानून का दुरुपयोग उन अफसरों के द्वारा किया जा रहा है जिन के ऊपर लागू करने के लिये यह कानून छोड़ दिया जाता है। तो ऐसी स्थिति में विशेष रूप से हमारा एतराज उन के अतिरिक्त—जैसे मैं ने पहले निवेदन किया जो कि सिद्धान्त के खिलाफ ही विश्वास करते हैं या बहस करते हैं उन के अतिरिक्त—सब से

बड़ी एतराज की बात, सब सेंबडी आपत्ति, जो हमारे साथियों को हुई है वह यह है कि अपनायों के द्वारा इस कानून का दुरुपयोग हो सकता है जैसा भूतकाल में होता आया है। मैं इस से बिल्कुल असहमत नहीं हूँ। यह ही सकता है कि कहाँ कहाँ दुरुपयोग भी हो और यह भी हो सकता है कि भूतकाल में दुरुपयोग हुए हों। बहुत से केसेज बताये गये, बहुत से केसेज तो ऐसे बताये गये जिन में लोगों ने अपनी आत्मकथा बयान की, जीवनचरित्र के सब किस्से सुनाये, और उस दौरान में जो बातें कही गयी, कहीं एक दो बात इधर उधर की कह करके बाकी जो और ग्राउन्ड्स (grounds) उन के गिरफ्तारी किये जाने के बारे में दी गयी थीं, उन को पूरा न बता करके अधूरी बातें की जिसे उन से कोई दूसरे मानी निकाले जा सकें। लेकिन ज्योंही उन की वे पूरी बातें हमें मालूम हुईं, तो जान पड़ा कि उन्होंने पूरी बातें नहीं बतलाई और वे बातें अधूरी थीं, उन का कोई अर्थ नहीं होता। बहुत से लोगों ने और भी किस्से ऐसे सुनाये जिन में जान पड़ता था कि यह जो इस तरह का हुक्म जारी हुआ है, उस से गिरफ्तारियां हुई हैं, वे बहुधा गलत थीं। दरअस्ल जैसी शक्ति इस सदन के दूसरे द्विसे से पेश की गयी है, मैं समझता हूँ कि अगर जैसी शक्ति बयान की गई है, दरअस्ल वैसी ही शक्ति हो, तो किसी को भी उस कानून के साथ सहमत नहीं होता चाहिये। परन्तु देखना वह है कि इस बक्त जो कानून लागू होने जा रहा है, जो विधेयक हमारे सामने है और सिलेक्ट कमेटी से वापस आ कर जो उस की मौजूदा शक्ति रह गयी है, जो उस का रूप अब हमारे सामने है, उस शक्ति में वह कहां तक हानिकर हो सकती है और यह खतरा जो जिला मजिस्ट्रेट के द्वारा या किसी ऐसे लापरवाह या अन्यायी अफसर के द्वारा हम पर आ सकता है, वह कहां तक हमारे

[पंडित मुनीश्वर दत्त उपाध्याय]

ऊपर लागू हो सकेगा। मैं आप से निवेदन करूँ कि अब इन तरमीमात और संशोधनों के बाद जो सिलेक्ट कमेटी में इस कानून में हुए हैं और वहां से जिस प्रकार निकल कर अब हमारे सामने आया है, उस में जिला मजिस्ट्रेट का या नायब मजिस्ट्रेट का क्या अधिकार रह गया है। अब उस को केवल इतना ही अधिकार है कि किसी शख्स के जिस को वह समझे कि वह ऐसी वेतनवानियां कर रहा है और जिस पर यह कानून लागू होता है तो वह उस के विरुद्ध गिरफ्तारी का हुक्म निकाल सकता है। गिरफ्तारी का हुक्म निकालने के बाद ही उस की गिरफ्तारी हो सकती है। एक रोज़ बाद हो, दो रोज़ बाद हो, मुमकिन है आठ रोज़ बाद हो, दस रोज़ बाद हो और यह भी मुमकिन हो सकता है कि पन्द्रह रोज़ तक न हो। इस कानून में जो मियाद रक्सी गयी है, वह यह रक्सी गयी है कि अगर उस के हुक्म निकालने के बारह रोज़ के अन्दर अन्दर प्रदेशीय सरकार का हुक्म नहीं हो जाता है कि यह जो गिरफ्तारी हुई है वह नियमित है, मुनासिब है और उस को डिटेंशन (detention) में रहना चाहिये, तो वह व्यक्ति बावजूद उस डिस्ट्रिक्ट मजिस्ट्रेट के हुक्म के बरी कर दिया जायगा।

आप गौर करें। माननीय मंत्री जी ने आप को बताया कि १२ दिन की मियाद है। मैं और भी इसे साफ करना चाहता हूँ। जैसा मैं ने शब्दों को पढ़ कर अर्थ लगाया है उस से मैं समझता हूँ कि चाहे कोई हुक्म गिरफ्तारी का हो मजिस्ट्रेट द्वारा, तो उस गिरफ्तारी के हुक्म के १२ दिन के अन्दर वह हुक्म प्रदेशीय सरकार द्वारा स्वीकार हो जाना चाहिये और अगर प्रदेशीय सरकार उस की ताईद करती है तब तो वह हुक्म रहता है और अगर प्रदेशीय सरकार उस हुक्म को

मंसूख कर दे तो वह हुक्म नहीं रह सकेगा और वह इन्सान जिस के सम्बन्ध में वह हुक्म है, अगर वह उस बक्त तक गिरफ्तार नहीं हुआ है तो वह गिरफ्तार नहीं किया जायगा, और अगर वह गिरफ्तार हो चुका है तो उसी दिन छोड़ दिया जायगा। तो यह कहता कि मजिस्ट्रेट को १२ दिन की मियाद मिल गई है और वह चाहे जिस को नाजायज तौर पर गिरफ्तार कर के बन्द रख सकता है, मैं समझता हूँ कि यह बिल्कुल सही नहीं है। १२ दिन से कम तो हर हालत में होंगे। ज्यादा से ज्यादा १२ दिन हो सकते हैं क्योंकि हुक्म जारी करने के १२ दिन के अन्दर ही ऐसा होता है। हुक्म जारी करने के मानी गिरफ्तार करने के नहीं हैं। हुक्म जारी करने के बाद ही गिरफ्तारी हो सकती है चाहे वह एक दिन बाद हो या दस दिन बाद हो या पन्द्रह दिन बाद हो।

इस कानून के अन्दर का सब से बड़ा बहर जो हमारे साथियों को दिलाई देता है भेरी समझ में वह जहर तो निकल गया। मैं नहीं समझता कि कोई भी ऐसा इस सदन में होगा जो यह समझे कि जहां यकायक घड़यंग पकड़ना पड़ता है वहां होम मिनिस्टर मौजूद हो सकते हैं या कोई दूसरे मिनिस्टर मौजूद हो सकते हैं चाहे वह प्रदेशीय सरकार का मामला हो या केंद्रीय सरकार का हो वहां हमिनिस्टर उपस्थित नहीं हो सकते। यह काम तो आप को स्थानीय अफसरों के द्वारा ही कराना होगा। यहां इस बात पर कुछ बहुत व्याख्या करने की आवश्यकता नहीं है। तब जब हम को उन अफसरान से काम कराना है तो थोड़ा सा बक्त तो उन के काबू में ज़रूर रहेगा, लेकिन मैं देखता हूँ कि वह अब कम से कम हो गया है ऐसी स्थिति में अब इस को बहुत खतरनाक नहीं समझा जा सकता कि अफसरान जिन के हाथ में यह अधिकार आ जायगा उन को यह

मीका होगा कि वह बड़ी ज्यादती कर सकें। मैं समझता हूँ कि वह ज्यादती का भीका अब इस में बहुत घटा दिया गया है। इस को अब और ज्यादा घटाने की गुंजाइश नहीं है। क्योंकि अगर इतना भी बक्तन न दिया जाय तो सारा मसाला प्रदेशीय सरकार के पास १२ रोज़ के अन्दर केसे पहुँचेगा और केसे उस सब पर बिचार करके हुम दिया जा सकेगा। मैं समझता हूँ कि यह समय ज्यादा नहीं है कम से कम जो समय लग सकता है वही दिया गया है। माननीय मंत्री ने आप को यह भी आश्वासन दिया है कि वह इस का प्रबन्ध करेंगे कि अगर वह केन्द्रीय सरकार का मामला हो तो केन्द्रीय सरकार के कोई मंत्री उस को देखेंगे और अगर प्रदेशीय सरकार का हो तो प्रदेशीय सरकार के एक मंत्री द्वारा वह जांचा जायगा। मैं नहीं समझता कि जैसी बातें अब तक हम करते आये हैं और जैसे व्याख्यान में ने सुने हैं उन को देखते हुए इस में कुछ और बहुत कसर रह जाती है। जहां तक मंत्रियों का सम्बन्ध है मैं समझता हूँ कि इस कानन का बहुत दुरुपयोग होने की सम्भावना नहीं है।

इस के अलावा ऐडवाइजरी बोर्ड की बात थी। कितने सून्दर ऐडवाइजरी बोर्ड थे यह इसी से साफ़ है कि उस के लिलाफ़ कोई खास शिकायत नहीं है। लेकिन इस में और भी संशोधन जो हमारे साथी चाहते थे और जिन की तजबीज़ हमारे माननीय सदस्यों ने की थी वह भी हो गये। मैं नहीं समझता कि अब इस से भी अच्छी कोई जांच कमेटी या कोई बोर्ड हो सकता है और इस से भी अधिक न्यायोचित आधार पर हो सकता है। जैसा कि यह ऐडवाइजरी बोर्ड बना दिया गया है।

बहुत से साधियों ने यह बात भी कही कि कानून का दुरुपयोग होता है और जो पुलिस

डिपार्टमेंट है उस के मारकृत यह दुरुपयोग होता है। मेरे स्थाल में जो भाई बकील या ऐडवोकेट (advocate) हैं उन से तो इस विषय में कुछ कहना ही नहीं है। और भी जितने माननीय सदस्य हैं वे भी इस को जानते हैं कि जैसा दुरुपयोग और ऐब्यूज़ेज़ (abuses) का ज़िक्र कुछ दोस्तों ने किया है वे से ऐब्यूज़ेज़ तो उस कानून के अन्दर भी होते हैं जहां गवाही होती है और व्यान होता है और फिर जिरह होती है और बहस होती है और उस के बाद अपील और निगरानी भी होती है। तो वहां भी हम देखते हैं कि कभी कभी गलत चालान हो जाते हैं और गलत गवाही पेश की जाती है और उस गलत गवाही के आधार पर लोगों को बड़ी बड़ी सजायें हो जाती हैं और कभी कभी फांसी भी हो जाती है। यह कहना कि चूंकि एक आध केसेज़ में या दस पांच केसेज़ में कानून का दुरुपयोग हुआ है इसलिये न अब हम इंडियन पीनल कोड (Indian Penal Code) रखेंगे और न क्रिमिनल प्रोसेस्डर कोड (Criminal Procedure Code) रखेंगे, कहां तक ठीक होगा। मैं नहीं समझता कि उस हालत में आप किस कानून से काम चलायेंगे और केसे देश का प्रबन्ध करेंगे। क्या हम यह कह सकते हैं कि चूंकि हर एक कानून का दुरुपयोग सम्भव है इसलिये हम अब कोई कानून रखेंगे ही नहीं। तो सही बात तो यह है कि जहां तक मनुष्य का सम्बन्ध है मनुष्यों में सब तरह के मनुष्य होते हैं। चरित्र में ऊँचे भी होते हैं और नीचे भी होते हैं। इसलिये यह नहीं हो सकता कि हम बिल्कुल ही शुद्ध कानून बना सकें जिन का दुरुपयोग न हो। जहां तक सम्भव हो सकता है वहां तक इस को शुद्ध बनाने की चेष्टा की गई है।

फिर जो शास्त्र गिरफ़तार किया जायगा उस को गिरफ़तार होने के पांच दिन के अन्दर

[पंडित मुनीश्वर दत्त उगाधायां]

उस को ग्राउंड्स जगर बता दिये जायें। हो सके तो उसी दिन बता दिये जायें। पांच दिन के आगे तो जा ही नहीं सकते। एक बात में महसूस करता हूँ कि अगर उस को और ज्यादा तक्सील बतलाई जाय तो वह ज्यादा खुबी से जवाब दे सके। तो जो एडवाइजरी बोर्ड है उस के पास तो सभ सही वाक्यात, फैक्ट्स एंड सरकमस्टासेज़ (facts and circumstances) सब जाते हैं और एडवाइजरी बोर्ड को डिटेन्यू (detenu) को तलब करने का और उस से सवालात करने का अधिकार है। तो सवालात के मानी ही यह होते हैं कि जो मसाला उन के सामने रहेगा उसी से सवाल कर के वह उस से जवाब लेंगे। तो यह सवालात करना एडवाइजरी बोर्ड के जिम्मे है। तो मैं नहीं समझता कि ऐसी हालत में किसी तरह का खतरा रह जाता है।

और जितनी तरभीमें इस दरम्यान में रखी गई हैं, जो जो सुझाव माननीय सदस्यों की ओर से सन् ५० से ले कर अब तक आते हैं करीब करीब सारे के सारे सुझाव हमारे इस कानून में आ गये हैं। और इतना साफ हो जाने के बाद इस की शक्ति अब कोई ऐसी नहीं रह गई है कि हम इस में कोई बड़ा खतरा महसूस करें।

इस के अलावा कुछ लोगों का यह सुझाव है कि जहां इस को लागू करने की ज़रूरत हो वहां इस को लागू किया जाय। आप देखते होंगे कि जहां ज़रूरत होती है वहां गिरफतारी होती है, जिन सूबों में ज़रूरत नहीं होती वहां गिरफतारी नहीं होती। तो जब सरकार पर यह काम छोड़ा जाना है और सरकार के ही जरिये से यह काम होने वाला है तो मैं समझता हूँ कि इस में कुछ और जोड़ने से कोई बहुत फ़र्क नहीं होगी।

मैं एक यह सुझाव देना चाहता था कि इस कानून को दिसंबर १९५३ तक ही रखा जाय और इस को सन् १९५४ तक बढ़ाया न जाय। लेकिन १८ जुलाई को इस सदन में मैं ने जो कला देखी उस के बाद मैं ने यह सोचना शुरू किया कि अगर यह कानून हर साल इस भवन में आयेगा तो हर साल यह कला देखनी पड़ेगी। इस लिये यही अच्छा है कि इस को दो वर्ष के लिये बढ़ाया जाय। इसी लिये मैं ने अपना पहला विचार छोड़ दिया। अभी मेरे एक दोस्त ने अपने हाथ में कोई चोट दिखलाई थी। मैं समझता हूँ कि यह सब कला जो हम लोग इस सदन में देख चुके हैं, उसी का अवसर अगर और कहीं आया हो तो चोट आई होगी। ऐसी बातों को कह कर यह कहना कि या कानून गलत है या बुरा है मैं समझता हूँ कि यह मुनासिब नहीं होगा।

जहां तक इस कानून के ज़रूरी होने का सवाल है आप की रुलिं (ruling) के पश्चात् में यह आवश्यक नहीं समझता कि मैं उस पर बहुत निवेदन करूँ। लेकिन इतना तो मैं निवेदन कर ही देना चाहता हूँ कि इस बक्त इस कानून की जितनी आवश्यकता है हमारे माननीय सदस्य जो उस तरफ़ बैठे हैं वह उस को महसूस नहीं करते। उन में से कुछ तो यही सोचते हैं कि यह हम पर लागू न हो जाय। मैं समझता हूँ कि यह विचार उन को छोड़ देना चाहिये क्योंकि वह इस तरह के लोगों के बास्ते नहीं हैं, वह किसी पार्टी (Party) के लिये नहीं है। वह ऐसे लोगों के लिये है जो अपनी कार्रवाइयां छुप कर करते हैं और संगठित रूप से ऐसा बढ़यत्र करते हैं जोकि समाज को नुकसान पहुँचे। अगर वह इतना ही सोचना शुरू कर दें तो मेरी समझ में जितनी बहस है और जितनी बातें हैं वह सारी की सारी जाती रहें। मैं ने अभी भी सुना, अभी एक

माननीय सदस्य बोल रहे थे तो मुझे यह लग रहा था कि वह समझते हैं कि अगर यह कानून पास हो जाता है तो पहला इन्सान हिन्दुस्तान में मैं होऊंगा जिस पर यह कानून लगेगा। तो जो शब्द यह समझता है वह हर तरह से कोशिश करेगा कि यह कानून न बने। लेकिन ऐसी कोई बात नहीं है। यह कानून ऐसे लोगों के लिये बना है जो बाकई समाज के विवरण सकते हैं।

अब इस पर मैं ज्यादा न कह कर एक दो मुझाव जो आवश्यक हैं वह देना चाहता हूँ। एक तो यह कि ऐडवाइजरी बोर्ड के सामने जो मामलात जाते हैं तो कानून में ऐसा प्रबन्ध होना चाहिये कि ऐडवाइजरी बोर्ड को सारे के सारे वाक्यात दिये जा सकें। उस के पास सब वाक्यात रहें जिन पर कि वह अपनी राय कायम कर सके और फिर अगर वह ज़रूरत समझे, किसी विषय पर आवश्यक समझें तो शहदत बुला सके, गवाही ले सके और खुद ही गवाही ले। यह नहीं कि किसी को मीका दे कि वह जिरह करे और बहस करे, बल्कि खूँ तूँ ताल कर ले। इतनी तरमीम तो अवश्य इस में हो जानी चाहिये। जितने वाक्यात उन के पास हों वह सब उस व्यक्ति को भी दिये जायं जो इस से सम्बन्धित है और उस से सारे के सारे का जबाब पूरे तौर पर ले लें ताकि कोई चीज़ बाकी न रहे।

आखिरी चीज़ में यह कहना चाहता हूँ कि जो ग्राउंड्स दिये जाते हैं उन की पूरी तफसील होनी चाहिये, पूरा व्यौरा होना चाहिये जिस से वह समझ सके कि उस के खिलाफ क्या मामला है और क्यों वह पकड़ा गया है। बस इतना ही मुझे निवेदन करना है।

ओ नव लाल शर्मा (सीकर): धर्में था। सिते राएँ न च वाधा प्रवर्तते। नायो धर्मयक्षं रमेराज्यं प्रशासति॥

माननीय अध्यक्ष महोदय के सामने विवेदक उपस्थित हैं 'निवारक निरोध' और इस के ऊपर विशिष्ट समिति की ओर से दिये गये निर्णय का भी हमें लोग अध्ययन कर चुके हैं। इस सब को देखने के बाद मेरा मन यह कहता है कि मत भेद रखने वाले जितने भी सज्जन हैं उन की भावना का पुनः समर्थन किया गया है मुझे प्रसन्नता है कि कांग्रेसी सदस्यों में से भी अभी हमारे पूर्ववक्ता महानुभाव ने चलते चलते अपने भाषण में यह कह ही डाला कि अमुक अमुक वस्तु, नजरबन्द की संरक्षा के लिये अवश्य होनी चाहिये। कम से कम उस को अपनी नजर-बन्दी का कारण बतलाने के लिये तो पूर्ण सुविधा दी जाय। हमारा यह कहना है कि इस बात के विरुद्ध चाहे हमारे कम्युनिस्ट भाईं कितना ही कहते रहें, चाहे हमारे और कितने ही सज्जन कहते रहें, किसी को गिरफ्तार न करने, अपराधी को दंड न देने से सर्वदा राज्य नष्ट हुआ करते हैं।

अदण्ड्यान्दण्ड्यनराजा दण्ड्यां इच्चाप्य
दण्ड्यन् ।

दंडीय को दंड न देना और अदंडीय को दंड देना यह दोनों ही राज्य के नाश का एक कारण हैं। जिस राज्य के अन्दर डंडा कमज़ोर रहेगा, जिस राज्य के अन्दर अपराधी के लिये, दोषी के लिये दंड का विधान न होगा, वह राज्य कभी उन्नति नहीं कर सकता, कभी आगे के लिये उस का जीवन निश्चित नहीं रह सकता। हमारा तो यह कहता है कि कम्युनिस्ट (Communist) क्या अगर कोई भी व्यक्ति राज्य के प्रति कोई अपराध करता है तो उस को भयकर से भयंकर दंड देना चाहिये। इस में किसी प्रकार का मतभेद नहीं है। मैं

[श्री नन्द लाल शर्मा]

यह भी नहीं समझता कि कम्युनिस्ट बन्धु यह चाहते हैं कि अपराधी को दंड न दिया जाय। केवल हमारा मतभेद है प्रिवेन्टिव डिटेन्शन (Preventive detention) से, जिस शब्द का अर्थ है कि उस पर किसी प्रकार का केस चलाये बिना, उस को किसी कोट (Court) के द्वारा, न्यायालय के द्वारा दंडित घोषित होने के पहले ही, उस को दंड में रखा जाय और अपराधी बनाया जाय। आप इस को ध्यान से मुनें (अन्तर्बाचा) रामराज्य की ओर में लौट कर आऊंगा।

Mr. Speaker: He may address the Chair. He need not mind the interruptions.

श्री नन्द लाल शर्मा: I am still addressing the Chair. मेरा यह स्थाल है कि हम इस सिद्धान्त के विरुद्ध नहीं हैं। वहां से हमारी कांग्रेसी बैचेज की ओर से यह कहा गया कि यदि हिंसात्मक नीति का परित्याग कम्युनिस्ट कर दें तो हम को इस की कोई आवश्यकता न पड़े। मैं समझता हूँ कि यदि केवल इतनी ही बात रह जाती तो सम्भवतः कम्युनिस्ट एक तरफ स्वयं रह जाते और बाकी के विरोधी दल बाले कभी कुछ बोल नहीं सकते। किन्तु यहां और ही बात देखने में आई। हमारे भगवान कैलास नाथ साहब का जिस समय त्रिशूल आया तो उन्होंने एक प्रतिज्ञा की कि कम्युनिस्ट, कम्युनेलिस्ट (Communists) और ब्लैक मारकेटियर्स (Black marketeers)।

एक माननीय सदस्य: और राजा।

श्री नन्द लाल शर्मा: राजे महाराजे वे सब कैपिटलिस्ट (Capitalists) के अन्दर आ जाते हैं। तो वह उस शूल को त्रिशूल के रूप में यह जो ओलिम्पस के पर्वत से चलने वाला वज्र है ...

एक माननीय सदस्य: कैलास पर्वत से।

श्री नन्द लाल शर्मा: भारत में ऐसा विषयान नहीं है। भारत में कोई प्रजापति त्रिशूल का प्रहार भारत पर नहीं करता। उस का प्रयोग त्रिपोली में जहां कि देवासुर संग्राम हुआ वहां ऐसीरिया के प्रदेश में असूरों में भले ही चलता हो यहां पर वह वस्तु नहीं चलती। इसलिये मेरा विश्वास है कि वह संशोधन स्वीकार होना चाहिये जिस में माननीय चैटरजी महोदय ने कहा कि गृह मंत्री को यह अधिकार होना चाहिये कि वह किसी के विरुद्ध गिरफ्तारी का आंदर निकाल सके। मैं समझता हूँ कि त्रिशूल यदि कैलासपति के हाथ में रह जाय तो वह जानते हैं कि कहां पर दंड देना है और कहां पर प्रजा को अमृत देना है और स्वयं विष खा कर रह जाना है, जिस के कारण कि उन का दूसरा नाम नीलकंठ है। परन्तु हर एक व्यक्ति जो उन के नीचे आये, सब के हाथ में त्रिशूल दे दिया जाय जो निश्चय ही इस बात का अनुभव नहीं कर सकते कि त्रिशूल का उपयोग कैसे किया जाय। कारण क्या है? सुदर्शन चक्र का चलाने वाला एक ही रहा। हर एक के हाथ में यदि सुदर्शन चक्र दे दिया जाता तो न जाने वह कितने चक्र हो जाते कि फिर आप जानते हैं कि “धर्म चक्र प्रवर्तनाय” की आवश्यकता ही नहीं पड़ती।

इसलिये मेरा निवेदन यह है कि हम इस बात का विरोध इस सिद्धान्त से नहीं करते कि कम्युनिस्ट या किसी दूसरे को अपराध करने पर भी दंड न दिया जाय। केवल विरोध है इस अंश में कि उस को बिना उस के दोष और अपराध को बताये और बिना उस को अपने दोष की निवृति का अवसर दिये कितने समय तक रखा जा सके। कम से कम जनतन्त्र के नाम से ऐसा नहीं होना चाहिये। हम कांग्रेसी महानुभावों की भावानाओं

का आदर करते हैं। यदि कम्युनिस्ट नहीं में भी और स्वयं कमा करें स्पीकर महोदय भी अगर राष्ट्र का विरोध करें तो प्रिवेटिव डिटेंशन ही क्या बस्तु है, भयंकर से भयंकर दंड देना चाहिये और वह दंड न देने से राज्य नहीं चल सकता। मेरी तो उल्ली यह शिकायत है कि कम्युनिस्ट बन्धुओं को दंड न देने से ही इन की शक्ति आज तक बढ़ी। मुझे याद है, मेरे साथ जेल में थे। अन्डे मिलते थे, केक (Cake) मिलते थे, मछली मिलती थी, मांस मिलता था, और जर्सी (Jersey) और पैर के लिये बढ़िया से बढ़िया जूते मिलते थे, और अन्त में फिर जगड़ा करते थे। कभी किसी को सन्तुष्ट नहीं पाया, मैंने पूछा कि ऐसा क्यों करते हों, तो कहते थे कि हमारा तो यह काम ही है कि किसी न किसी तरह से गवर्नमेंट को फेल करना। और हमारी यह डिमान्ड (Demand) है कि हमारे घर वालों को एलाउन्स (Allowance) दो। उस समय में ने यह शब्द कहे थे अपने। उन बन्धुओं से कि तुम तो जमाई बन कर आये हो, जेल थोड़े ही आये हो। मेरा यह विश्वास है कि अगर जेल के अन्दर उन के साथ इस प्रकार का जमाई का सा व्यवहार किया गया चाहे भयंकर से भयंकर अपराध किया हो राष्ट्र की शत्रुता का तो गवर्नमेंट कभी कम्युनिज्म (Communism) को हटा नहीं सकेगी। यहां कम्युनिज्म शब्द का यह अर्थ नहीं कि केवल साम्यवाद की भावना रखने वाले को मिटा दिया जाय। हमारे स्वामी रामानन्द तीर्थ महाराज ने कहा कि हमारा साम्यवाद सिद्धान्त से कोई विरोध नहीं है, हमारा तो केवल देश की शत्रुता से, राष्ट्र की शत्रुता से द्वेष है। मझे इस बात का खेद है कि श्री नम्बिआर का हाथ टूट गया, लेकिन हम समझते हैं कि उन्होंने वहां पर

बैसा ही कोई जगड़ा किया होगा जैसा वहां किया। तो यहां तो खेर हाउस था, लेकिन वहां पर जेल था, जेल वालों ने जगड़ा तय कर दिया होगा।

इतनी भावना रखते हुए मेरा आप से निवेदन है, सरकारी बैन्चेज से भी और अपने गृह मंत्री महोदय से भी निवेदन है कि इस बात को अच्छी तरह से सोचें। इस त्रिशूल का उपयोग वह अपने पास रखें अथवा अपने प्रतिनिधियों के पास रखें। आप के प्रति-निधि प्रदेशों के अन्दर रहने वाले जो दूसरे गृह मंत्री हैं वही हो सकते हैं: आत्मा बैजायते पुत्र। पुत्र ही अपना प्रतिनिधि हो सकता है, डिस्ट्रिक्ट मैजिस्ट्रेट नहीं हो सकता। होम मिनिस्टर का प्रतिनिधि होम मिनिस्टर ही ही सकता है, और कोई टाम, डिक और हैरी नहीं हो सकता है, हम लोग तो जाति की पवित्रता पर विश्वास रखते हैं इस लिये मेरा यह निवेदन है कि आप इस संशोधन को स्वीकार कीजिये।

मिनट आफ डिसेन्ट (Minute of Dissent) में जो भावना प्रकट की गई है सरकार द्वारा उस के अस्वीकार किये जाने की मुझे स्वेच्छा है। जब यहां हाउस में विश्वास दिलाया गया था कि बस्तुतः ऐक्ट के अन्दर आने वाली सभी बातों पर संशोधन उपस्थित किये जा सकेंगे, उन धाराओं पर मैं स्वयं तो कृच्छ्र कह नहीं सकता क्योंकि सिलेक्ट कमेटी में मैं तो था नहीं और मुझे पता नहीं कि वहां क्या हुआ, किन्तु उस के पढ़ने से पता चलता है कि उन संशोधनों को वहां किसी प्रकार से महण नहीं किया गया। इस लिये बस्तुतः जिस सिद्धान्त को हाउस में स्वीकार किया गया था उस सिद्धान्त को सिलेक्ट कमेटी में भी स्वीकार करना चाहिये था। और विरोधी दल

[श्री नन्द लाल शर्मा]

द्वारा उपस्थित किये जाने वाले सिद्धान्तों के संशोधनों को भी ले लेना चाहिये था। इस में विशेषकर ऐडवाइजरी बोर्ड (Advisory Board) के अध्यक्ष पद के लिये कहा गया कि हाई कोर्ट का जज होना चाहिये, हाई कोर्ट का कोई जज चाहे भूतपूर्व हो या वर्तमान, और पहले एक और शब्द या अर्थात् जो जज बनने की योग्यता रखता हो, जिस का अर्थ है कि दस वर्ष की प्रैक्टिस (Practice) जिस प्लीडर (Pleader) को हो जाय वह आ कर ऐडवाइजरी बोर्ड में खड़ा हो जाय और किसी आदमी को प्रिवेन्टिव डिटेनेशन रख दे, चाहे वह जज सरकारी पक्ष में हो चाहे न हो। इस विशेषक की जद में कोई पब्लिक का आदमी आ सकता है। हमारे बन्धुओं ने कई बार प्रश्न किया कि राजस्थान में क्या हो रहा है। मेरा राजस्थान से आया हूँ, राजस्थान की प्रिवेन्टिव का स्पष्टीकरण करना मेरा कर्तव्य है और मैं गृह मंत्री महोदय को यह बतलाना चाहता हूँ कि राजस्थान में जितनी बार भी प्रिवेन्टिव डिटेनेशन की बातें की गई हैं इन दिनों के अन्दर मुझे खेद है इस बात का कहते हुए कि उस में से बहुत अधिक पार्टी के दृष्टिकोण से ही की गई। और उस पार्टी दृष्टिकोण का फल यह हुआ कि वहां के हाई कोर्ट में हैविअस कार्पेंस करने के बाद वह लगभग सारे के सारे छूट गये। यह थोड़े दिनों की रिपोर्ट है जिस के सम्बन्ध में एक शिष्ट मंडल हमारे माननीय गृह मंत्री महोदय से भी मिला था, उस में कम से कम १५ आदमियों को डिटेन (detain) किया गया एक ही ग्राउंड (ground) पर, अर्थात् वहां के बातावरणकोविनुच्छ करने की भावना से। उन में से एक दो व्यक्तियों के पास पैसा या वह हाई कोर्ट पहुँच गये, उन्होंने रूपया खर्च करने वालों

को तो हैविअस कार्पेंस पर छोड़ दिया लेकिन बाकियों के पास पैसा नहीं था कि हाई कोर्ट में पहुँचे और अपने को छुड़ाने के लिये कोई प्रयत्न कर सके। इस लिये आप यह समझें अगर किसी भाग्यवान के पास पैसा होगा तो वह हाई कोर्ट तक पहुँच कर हैविअस कार्पेंस कर लेगा, लेकिन गरीब आदमी तो पहुँच नहीं सकेगा। उस का स्थाल कौन करेगा? बार टाइम्स (War times) के लिये इंग्लैंड आदि प्रदेशों में जो कानून बनाये गये हैं वह साधारण हालतों में भी भारतवर्ष में चलाये जायें यह दुर्भाग्य ही है और इस दुर्भाग्य को हमारे बच्चे फिर भी स्वीकार कर रहे हैं इस का हमें खेद है। मैं कहता हूँ कि इस को स्वीकार कर लेने के पहले अच्छा तो यह है कि अगर आप का दंड विधान, इंडियन पीनल कोड (Indian Penal Code) आप को पर्याप्त रक्षा नहीं देता तो अपने राष्ट्र की रक्षा करने के लिये आप उस दंड विधान का संशोधन करें। दंड विधान को संशोधित कर के जो केसेज उस में गवर्न (govern) न होते हैं उन के लिये इस प्रकार के सेक्शन (section) इस विल में लावें। यदि आप प्रिवेन्टिव डिटेनेशन के नाम से ही उन को करना चाहते हैं तो कम से कम सम्भवता के नाम पर, जनतंत्र के नाते, अपने विधान की कम से कम मान मर्यादा को कायम रखने के नाते आप को इतना अवश्य करना चाहिये कि डेटेन्यू (detenue) को आप बाकायदा बन्धन में तो पूरा रखें, किन्तु उस को अपने पक्ष की सफाई में कुछ कहने के लिये अपनी ओर से कानून जानने वाले को उपस्थित करने का अवसर दें। वह इस अधिकार से बंचित न हो। जिस समय आप गाया करते थे:

“बंदी इस कारागृह में
एक अभिनव ज्योति जगा दे
कड़ियों की झनकारों में
विप्लव की तान मुना दे।”

कल तक जो गाया करते थे “बंदी इस कारा-गृह में अभिनव ज्योति जगा दे” तो क्या सचमुच आज अभिनव ज्योति जगाने वाले मर गये? सम्भव है देश की रक्षा करने की इच्छा रखने वाले भी हमारे कांग्रेस बैंचों पर बैठने वाले महानुभावों को उन की नीति देशद्रोह की मालूम होती हो और वह यह समझते हों कि कांग्रेस की नीति के द्वारा देश को हानि पहुंच रही है, चाहे वह काश्मीर के सम्बन्ध में हो चाहे और किसी सम्बन्ध में, अगर वह यह समझते हैं और केवल आप से मतभेद रखने के ही कारण उन को जेल में ठंस दिया जाय और किर उन की सुनवाई न हो तो अनारकी (anarchy) में और क्या होंगा हम लोग नादिरशाही की कहानी सुनते रहे हैं, यह कौन सी शाही होगी इस का पता नहीं।

इसलिये मेरा कहना है कि मैं किसी कठोर बचनों का प्रयोग तो नहीं करना चाहता लेकिन इतना आवश्यक हूँगा कि यह न समझिये कि यह चक्र सफेद पर नहीं चलेगा। यह चक्र लाल पर नहीं काम कर सकता, लाल आप के कब्जे के बाहर है, हरा भी आप के कब्जे के बाहर है, केवल सफेद ही सफेद रह गया है यह प्रिवेन्टिव डिटेंशन केवल उसी पर न रहे। अगर कुछ करने की शक्ति है तो मैं फिर कहता हूँ कि बाईंस हजार महिलायें पाकिस्तान में पड़ी पड़ी लून के आसू वह रही हैं, उन के लिये कुछ अपनी शक्ति का प्रयोग कीजिये। भुक्त इस बात को कहते हुए सेव होता है जब आप कम्युनिस्ट, कम्यूनेलिस्ट

(communalist), ब्लेक मार्केटर्स और कैपिटेलिस्ट (capitalist) कहते हो तो उस का क्या अर्थ है? देख इज़ नो एक्स्क्लूडेड मिडल (There is no excluded middle) कोई बाकी बच नहीं पाता। जिस को आप पकड़ना चाहेंगे अगर वह धर्म को मानता होगा तो आप उस को कम्यूनलिस्ट कह देंगे, अगर धर्म को न मानता होगा तो आप उस को कम्युनिस्ट, या सोशलिस्ट कह देंगे। ऐसी परस्परिति में अगर आप किसी की इस तरह पोलिटिकल ब्लैकमेलिंग (Political blackmailing) के द्वारा दुर्दशा करते हैं, तो यह कहां तक उचित और मुनासिब होगा। मेरा निवेदन है कि अगर आप इस तरह की पोलिटिकल ब्लैकमेलिंग से उस व्यक्ति को बचाना चाहते हों तो यह उचित है कि आप उस को ओपिन कोर्ट (open court) में पेश करें जहां पर वह जुम्ब के लिलाफ़ अगर वह चाहे तो अपनी सफाई दे सके और अगर उस के बाद उस का जुम्ब साबित हो और दंडस्वरूप वह व्यक्ति फ़ासी के तस्ते पर भी लटका दिया जाता है तो उस के बारे में किसी को तकलीफ़ नहीं होगी। मैं आप से न्याय के नाते, धर्म के नाते और उस धर्म चक्र के नाते, जिस की आप लोग इतनी दुहाई दिया करते हैं, उस भावना के नाते, जिस के मातहत आप ने यहां पर प्रजातांत्रिक जनतंत्र और लोकतंत्र का शासन स्थापित किया है, इन सब के नाते और उस अभागे भारत को, जिस को खाने को नहीं मिल रहा है, अपील करता है कि आप किसी व्यक्ति की दंडित करने के पहले उस को अपनी सफाई पेश करने का अवसर दें, नहीं तो यह जनतंत्र पर स्पष्ट कुठाराघात करना है। मुझे इस सम्बन्ध में एक बात स्मरण आती है एक गरीब आदमी या जिस को फूड कंट्रोल (food control) के कारण रोटी

[श्री नन्द लाल शर्मा]

खाने को नहीं मिली और वह लाचार होकर भूखा क्या न करता गली में पड़े हुए गन्दे सड़े फल बगैरह उठा कर खाने लगा और जिस के फलस्वरूप उसे हैजा हो गया । उस के पास पैसा तो या नहीं जो किसी बड़े डाक्टर से मिलता और अब लगा वह ऊपर से भी बहने और नीचे से भी बहने, अब उस को लोग इलाज के लिये ले गये एक उष्ट बैद्य के पास, उस ने कहा कि भाई इस के ठीक होने का उपाय यह है कि इस रोगी को न तो कैं आये और न दस्त, और इस के लिये एक पत्थर ऊपर से ताकि दोनों तरफ से बहना बन्द हो जाय क्योंकि उस का इस तरह से प्रिवेन्टिव डिटेंशन हो जायगा और ऐसा करने के बाद न तो उस को कैं आयगी और न ही दस्त । लेकिन आप जानते हैं कि इस इलाज का नातीजा क्या हुआ ? उस बोचारे रोगी का पेट ही फट गया । मुझे डर है कि कहीं प्रिवेन्टिव डिटेंशन ऐक्ट से भी हमारा वही हश्श न हो । राम राज्य की अक्सर दुहाई दी जाती है, आप जानते हैं कि आदर्श पुरुष राम ने किस प्रकार एक धोबी के मुंह से अपनी घर्मपत्ती सीता के लिये कुछ बुरे शब्द मुन कर भी, उन्होंने धोबी को कुछ भी नहीं कहा, अगर वह चाहते तो उस को जेल के सीखचों में बन्द कर सकते थे, मगर राम ने उस धोबी को उस के लिये प्रिवेन्टिव डिटेंशन में नहीं डाला, राम क्या नहीं कर सकते थे, उस राम ने जिस ने रावण के सारे कुल का विना अयोध्या से सेना का एक सिपाही मंगाये नाश कर दिया सप्त लोकेनायस्य कुल दशकण्ठकुल द्विषः ॥ उन के लिये कौन सी चीज असम्भव थी, वह चाहते तो पता नहीं उस धोबी को साईबरिया के जंगलों में भेज सकते थे, लेकिन उन्होंने चरित्र की पवित्रता का परिक्षय दिया । सीता के चरित्र की पवित्रता

का वह आदर्श उपस्थित किया जो आज सारे विश्व के सामने है और आज उस रामायण काल की साढ़े नौ लाल वर्ष बीत जाने पर भी लोग स्मरण करते हैं और उस से प्रेरणा प्राप्त करते हैं । कहा वह रामराज्य और कहां आज का जमाना जब हमें समाचारपत्रों से यह विदित होता है कि रामचन्द्र शर्मा वीर ने गौहत्या बन्द करने के प्रयत्न में अपने प्राणों की आहृति दे दी, वह आप की हिरासत में बिहार प्रान्त में रह कर मर गया, परन्तु सरकार के कानों पर जूँ तक नहीं रेंगी ।

[MR. DEPUTY-SPEAKER in the Chair]

मैं इतना ही चाहता हूँ कि आप इस प्रिवेन्टिव डिटेंशन के द्वारा अपने विरोधियों का मुंह बन्द करने का प्रयत्न न करें, यह सर्वथा अनुचित और न्यायसंगत नहीं होगा । मैं यह नहीं कहता कि आप न्यायपूर्वक दंड का विवान न करें, लेकिन जिस को आप दंडित करना चाहें उस को अपनी सफाई उपस्थित करने का अवसर दें और उस के बाद यदि यह सिद्ध हो जाय कि वास्तव में वह अपराधी है तो आप उसे सहर्ष भयंकर से भयंकर दंड दें, उस में किसी को आपत्ति नहीं हो सकती है । लेकिन अगर आप ऐसा नहीं करते और जिस को आप गिरपत्तार करते हैं उस को सफाई पेश करने का अवसर नहीं देते तो आप का आचरण अमरीका के समान होगा जो हिरौसीमा के असहाय ईश्वी पुरुषों के ऊपर एटम बम का प्रयोग करके भी विश्व शान्ति की बातें कर रहा है, लेकिन एक अन्धा भी समझता है कि उस के इस कथनी और करनी में कितना अन्तर है । अन्त में मैं ज्यादा न कहते हुए सिर्फ यह कहूँगा कि आप के सामने जो संशोधन उपस्थित हुए हैं उन में हम न्यायसंगत संशोधनों को

स्वीकार करें और बन्दी को दंडित करने के पहले सफाई पेश करने का पूरा अवसर व सुविधा प्रदान करें। यदि आप ऐसा करना स्वीकार कर लें तो मैं समझता हूँ कि आप का यह विरोधी दल भी इस में आप का समर्थन करेगा और अपने विरोध को उठा लेगा।

Shri C. C. Shah (Gohilwad-Sorath): Before referring this Bill to the Joint Select Committee we had a full debate regarding the principle of the Bill and the opposition to the Bill disclosed two categories of persons: one who were opposed to it in principle, that is to say, who were not prepared to have a measure of this nature under any circumstances, whatever may be the conditions prevailing in the country, and another category of persons who said that they were prepared to have a measure of this nature if they were satisfied that there was necessity for it, and they asked for facts and evidence to prove the necessity. I will deal principally with the second category of persons. I do not wish to argue with those who say that they will not have a measure of this nature under any circumstances, whatever the conditions in the country. I think the large majority of the Members in this House are committed to the principle that a measure of this nature can be had and must be had if it is necessary to have it. And that is our Constitution.

When persons like Mr. Chatterjee and Dr. Mookerjee asked "What is the evidence on which you prove the necessity for a measure of this nature", it appeared a very reasonable attitude and a very legitimate question to put. But I am going to analyse whether they really asked that question with an open mind with a desire to be convinced or was it another form of opposition, a more subtle and a more clever one, but nonetheless an opposition, to this Bill root and branch.

The Home Minister in his opening speech gave certain facts and in his reply he gave more facts, particularly the figures which Dr. Mookerjee had asked for of the detentions and releases after March. But some more facts and irrefutable figures were given by my hon. friend Mr. Nathwani regarding conditions in Saurashtra. What was the reaction of these persons who asked for evidence and facts to be convinced as to the necessity of a measure of

this nature? Was it the reaction of persons who had an open mind and who were prepared to be convinced, or was it the reaction of persons who were annoyed that facts should be placed before the House, irrefutable facts for which there is no answer? And they were annoyed that they could not give an answer to them.

I will deal with the nature of the reaction that the evidence produced in them and the nature of the amend-

ments which they have suggested to this Bill. Both go to show that their opposition to the Bill is not so reasonable as it appears to be or as they attempt to make it to be. What was the reaction of Mr. Chatterjee to the facts which Mr. Nathwani pointed out as regards Saurashtra? Only abuse. This is what he said: "You talk of a little trouble here and there; what was your Government doing in Saurashtra; it was an inefficient and incapable Ministry; the Ministers were fighting among themselves; they were absolutely unfit; they ought to have been thrown out of office. Was there no Preventive Detention Act and why was it not applied?"

5 P.M.

I do not know, but I believe there are some persons who are really brave and whose boldness of assertion seems to be in the inverse ratio to their ignorance of the subject they talk about. Like some lawyers, they seem to believe that the weakness of their case must be made up by the vehemence of their attack. Probably that is the line which Mr. Chatterjee wanted to follow. He is a great lawyer himself. A shrewd judge however soon finds out that when abuse takes the place of argument, there is something wrong with the case; and I am sure that every reasonable man in this House was convinced that the facts which my hon. friend, Mr. Nathwani had stated were such as had no answer

That is not all. Mr. Chatterjee may have talked out of ignorance, but the people of Saurashtra know it better; they know their Ministry and they knew their Government. I can speak with some knowledge. I have been associated with that Ministry ever since it was formed in 1948 and what are the facts? If the Ministry was so inefficient or incompetent, the people of Saurashtra had only a few months ago opportunities to throw it out. But what happened? Everyone of the Ministers was returned with an overwhelming majority and out of the 60

[Shri C. C. Shah]

seats of the State Legislature the Congress captured 55 seats and all the six seats to the House of the people. Is that a record of a Ministry which was incompetent or inefficient? Only three days before the date of polling in the constituency of the Chief Minister Mr. Dheoar, eleven murders were committed within ten or 15 minutes with a view to terrorize the people and prevent them from going to the polls and voting. What was their reaction? I was there personally myself on the day of polling and on the day that this event happened. The Chief Minister called the leaders of the people from every village of his constituency and told them: I am prepared to postpone the elections if you like. The people said: Nothing of the kind. We are not going to be terrorized by such tactics of feudal forces which are out to terrorize us and prevent the land reforms of the Saurashtra Government and on the day of the poll an overwhelming number of people in every village voted for the Chief Minister and he was returned with an overwhelming majority. That is not the reaction of the people who considered their Ministry to be inefficient. I can say this, of course. Such sweeping allegations made without any regard for truth can have only one answer and it is the answer which I can give with knowledge that every one of them is totally unfounded.

Now let us see what was the reaction of Dr. Mookerjee? He made a very eloquent and a very moving speech. He made certain assertions; he put certain questions and he hurled certain accusations. I will deal with them very briefly during the time at my disposal.

Mr. Deputy-Speaker: I expect hon. Members not only on the Treasury Benches but other Members also who were so seriously and vehemently arguing here, to be present in their seats when answers are being given to what they have said on the floor of the House. It ought not to be one sided show like this. It is rather strange that hon. Members are not in their seats.

Shri C. C. Shah: This is what Dr. Mookerjee said: "Who is this Bhupat? I hear he was a police officer under the Bombay Government. I hear he and his gang were of great assistance to Congress in capturing Junagadh a few years ago. He was a loyal citizen who helped in a great cause. Now today he has gone astray." I do not know where Dr. Mookerjee gathered his facts from. (An Hon. Member: From

the Communist side.) Bhupat was neither a police officer nor even a constable in the Bombay Government or in any other Government. As a matter of fact Bhupat never helped or gave any assistance to the Congress in capturing Junagadh. My hon. friend Mr. Nathwani knows Bhupat. Mr. Nathwani was a member of the *Arzi Hakumat* which captured Junagadh. Bhupat was only a driver of a petty jagirdar and only once he drove the car of a Congress worker because of his knowledge of the countryside roads of that area. That was the "great assistance" which he was supposed to have rendered in capturing Junagadh. After the Saurashtra Government took strong action against those who were harbouring Bhupat and assisted him, these interests—they are very rich and powerful and they count no cost—have scrupulously spread a story that Bhupat was some patriot, that he was some hero and that he had turned into a dacoit because of some misdeeds of the Saurashtra Government or something else. I am sorry that Dr. Mookerjee fell a prey to such a propaganda.

What else did he say: "Was there no Government functioning in Saurashtra? Was there no Preventive Detention Act? Why were things allowed to go to such an extent?" Relevant questions. I hope he will pause to think of the answers to these questions. Who were the persons against whom action had to be taken? Rulers and great jagirdars. This had nothing to do with any political party. I can assure you. The Rulers thought and still think that they had some privileges and immunities, that they can never be arrested, that no action can be taken against them and they acted with impunity. You can understand the difficulty of collecting evidence against the Rulers when they harbour dacoits in their palaces, when they supply arms and ammunition to dacoits. It is very difficult to get evidence against them. It takes time to get that evidence and as regards the arms and ammunition supplied by the Rulers, they are immune from the Arms Act and like ordinary citizens they are not bound to maintain a list of the arms which they possess nor are they bound to make a report of the use they have made of those arms; they can do whatever they like. After all Saurashtra is a small State and action had to be taken against Rulers, a thing which was never done in India; it was something unprecedented. Great caution had to be exercised before taking such action. You cannot rush. You may have your suspicions but you must have material

at least to justify detention under the Preventive Detention Act. I do not know, of course, and I presume that before taking action against the Ruiers even the Government of India had to be consulted. It was setting up a precedent, something which was new. Even the Government of India had to be satisfied that *prima facie* there was evidence enough to justify action against the Ruiers who had certain privileges and immunities under the Constitution. It takes time. But that is not all. All these activities of the dacoits were intensified during the election period.

Allegations have been made on the floor of the House and elsewhere that the Congress has used the Preventive Detention Act to crush Opposition. What would have been the condition of the Saurashtra Government and of the Ministers who were standing for election if they had then taken action against political opponents? You can imagine the kind of allegations and the malicious propaganda which would have gone round. We knew what was going on but it had got to be endured and suffered until the elections were over. It was a great and trying task indeed and I can assure Dr. Mookerjee that I was there in Saurashtra for more than three months during that period and we were careful to see that the political opponents should have no opportunity of making any allegation against the Congress and the result was overwhelmingly in favour of the Congress. What happened? Soon, following upon the elections, after the people returned a vote of confidence in the Government and the Ministry, they took action; immediately within a week of the elections, the Chief Minister made a speech in Bombay that however highly placed may be the persons who harboured these dacoits and supplied them arms and ammunitions, he will take stern action and firm action was taken with immediate results. I submit that instead of the Saurashtra Government and the Ministry of that small State being abused by responsible Members of this House, the Saurashtra Government deserves to be congratulated by this House. It was no small thing. I am sorry to say that Dr. Mookerjee did not stop at that. He said something more. I am really sorry that he said it: He said, "The other day one hon. Member said that Bhupat was being helped by police officers". I do not know which hon. Member of this House said that. No hon. Member has said that. Something more he said: "We are told he was helped by one section of the Ministry. We are told that there was a lot of conspiracy, party-split etc., in the tiny little State". I do not know

who told Dr. Mookerjee but whoever told him, I can assure him has not served the cause of the country and Dr. Mookerjee by his repeating that allegation in this House—I say with utmost humility and respect—has not enhanced his reputation. It is an utterly unrounded allegation and it is totally false. We, Members of this House have certain privileges. But, we owe also a duty and a responsibility, while criticising the State Governments who are not here to answer our charges, to see that we do not say anything which detracts from our prestige.

As I said, we did not take action, or the Government did not take action against those people because it was election time. Who were the persons against whom action had to be taken? Two of the persons against whom action was subsequently taken were actually candidates for the local Assembly. Action could not have been taken against them. Even after action was taken, one of the Rulers, who was arrested under the Preventive Detention Act, made a petition for a writ of *habeas corpus* to the Supreme Court I shall read to you the grounds of detention which were given to him. It will give you some idea of the difficulties under which the Saurashtra Government had to work:

"(1) You have supplied arms and cartridges to outlaw Bhupat and his gang from time to time during the last 12 months;

"(2) You have met personally outlaw Bhupat in Rajkot in the month of August 1950 and thereafter from time to time; you have been sending instructions to outlaw Bhupat for arranging his activities for committing dacoities and murders; you have remained in contact with him and in that manner you have maintained your contact with Bhupat up to January, 1952."

The elections in Saurashtra ended in January 1952. These are the grounds of detention. What was the attack on these grounds against preventive detention? That this action was taken by the Saurashtra Government *mala fide* out of political antagonism, and that the grounds were so vague that the detainee or the person detained could not make a proper representation to the Government against the grounds. The Supreme Court held—I have the judgment of the Supreme Court before me; I do not want to take the time of the House by reading it in detail—on a review of all the facts, that it was impossible to infer that the order made under the Preventive Detention Act was the out-

[Shri C. C. Shah]

come of feelings of animosity arising out of strained relations due to political antagonism, and that in their opinion there was no substance in the charge of *mala fides*. The Supreme Court also held that the grounds were not vague and that they gave the detenu sufficient indication of the case against which he had to make representation to the Government.

I am only mentioning this fact to show that the Preventive Detention Act was the only measure which could have helped the Saurashtra Government to meet a situation of this character. All kinds of forces, feudal, communal, capitalistic and communistic all combined to fight the forces of progress which are represented by the Congress. The result of the action taken under this law was immediately seen.

Dr. Mookerjee put a question, how was it that Bhupat ran away? Well, the story will be told some day with fuller details. This is not the time to do so. But, he could have as well asked, why was it that Bhupat had to run away? He ran away because his royal harbourers and those who helped him were behind the prison bars. Immediately the effect was seen of the action under the Preventive Detention Act. Therefore, I respectfully submit that this Act, odious though it may be to many of us according to our notions of liberty and democracy, is absolutely necessary under the present conditions of our country.

I do not want to deal with the amendments which are suggested; but I shall say a few words about them because I have carefully studied them. What are the principles by which we shall judge the amendments? I submit that the principle should be this. Any amendment which is intended to prevent an abuse of the powers conferred under the Preventive Detention Act should be acceptable; but any amendment which is intended to weaken the Act, to dilute the Act, to take away powers from the executive and make them useless or ineffective, is not one which we can accept. I respectfully submit that a majority of the amendments tabled by the Opposition are of the second category and therefore they are not acceptable. Let us once for all recognise that preventive detention is an extraordinary measure and it cannot be measured by the ordinary canons of jurisprudence which Mr. Chatterjee is so fond of quoting. I have also read those judgments. But, in the extraordinary circumstances that we have to

deal with in this country, let us see to it that while we should be very cautious in clothing the executive with authority or power, which is likely to be abused, we should not distrust the authority of the executive to the extent of nominally conferring that power and at the same time making them ineffective. I would rather like that this Preventive Detention Act were repealed and take risk, than incur the odium of putting on the statute book an Act which appears to allow preventive detention, but which has no use and which cannot be effective. Therefore, I submit that every one of these changes that have been accepted by the Government—I do not want to go into each one of these changes—has been accepted with this intention, namely that no injustice should be done to the detenu; there should be no abuse of power; the matter should be reported as quickly as possible; it should be looked into by the Advisory Board as quickly as possible; the personnel of the Advisory Board should be such as would command the confidence of everybody. But let us not, for heaven's sake, introduce into this Bill amendments which will take away and destroy its value and effect. For example, there are amendments to say that lawyers must be allowed to represent and cross examine. It sounds very reasonable apparently. Even in America of which we talk so much—I am reading from the minutes of dissent of Acharya Narendra Deva and others—

"There is only one exception and it is that the Attorney General is not required to furnish information the revelation of which would disclose the identity of the informant".

What to talk of cross examination? Take the case in Saurashtra itself. Who will give evidence against the Rulers of what they have done in their palaces? Only their servants. Can you possibly disclose to them the names of these people? Can you possibly produce them before the Advisory Board for cross-examination? Their life would not be safe. You can never do that. I therefore submit that the amendments which the Government have accepted are all amendments which minimise—I do not say they completely eliminate all chances of abuse; it is impossible to eliminate completely all abuse; some are bound to be there—the chances of abuse of power. Any other amendment would certainly weaken and destroy its effect.

भी नामधारी (फ्रांजिल्का-सिरसा) : मैंने जब इस ऐक्ट का डिमाक्रेटिक कंट्रीज (democratic countries) के और वाकी मुल्कों के ऐक्टों से मुकाबला किया तो मैं बड़ा हैरान हुआ कि यह कौन से पवित्र हृदय में से आया। इस का बनाने वाला कोई महात्मा है या साधू है जिस ने ऐसा पवित्र ऐक्ट बनाया। अभी थोड़े ही दिन हुए कि हमारे यहां के एक बड़े भारी आदमी सरदार गुरुबरुश सिंह, जो बड़े भारी लीडर पंजाब के कम्युनिस्टों के हैं वह चीन हो कर आये हैं। तो उन्होंने अपना जो कुछ चीन का एक्सपरियेंस (experience) या वह नवी दिल्ली टाउन हाल में अभी करीब दस दिन हुए बताया। तो मैं वह सुनने के लिये चला गया। जब मैं ने उन की सारी बातें सुनीं तो मैं बड़ा प्रसन्न हुआ कि चीन ने इतनी बड़ी तरकी की। इतने थोड़े से अरसे में उम्म ने इतना आला से आला काम किया और अपने मुल्क को इतना आगे बढ़ा दिया। यह उस का बड़ा ही काबिले तारीफ काम था। उन्होंने उस के साथ ही एक बड़ी भारी बात और कही और यह बताया कि पांच महीने के अन्दर चीन ने जितना वहां करपान (corruption) था, स्टेट (State) के वरखिलाफ जितने मूवमेंट (movement) थे और चोर बाजारी वर्गरह जितनी चीजें थीं वह सब खत्म कर दीं। तो मैं ने कहा कि आई वह कौन सा पैनसिलीन या ऐसा इन-जैक्शन उस के पास था कि जिस ने ऐसा क्षम कर दिया। फिर उन्होंने साथ ही यह भी कहा कि कोई शास्त्र अगर हमारे से सवाल करना चाहे तो वह कर सकता है। फिर उन्होंने बतलाया कि चीन में कम्युनिस्ट पार्टी के जो बीस साल के पुराने शो मैम्बर थे तो इस करपान को दूर करने के बास्ते वहां जो प्रिवेटिव डिटेशन ऐक्ट था वह ऐसा नहीं था कि टैम्पोरेरीली (temporarily) उस

को डिटेन (detain) करते थे बल्कि उस को गोली से उड़ा कर परमानेटली (permanently) प्रिवेटिव डिटेशन में भेज देते थे। तो उस प्रिवेटिव डिटेशन ऐक्ट के मुताबिक जब दो आदमियों को जो उन की पार्टी के बहुत पुराने सेवक थे, गोली से मारने का हक्म हुआ तो उन में से एक जो चीन के डिक्टेटर (Dictator) मासे तंग के बहुत बड़े प्रेमी थे, आप मुझे माफ करेंगे अगर जो मैं तलपफुज करता हूँ वह ठीक न हो, उन्होंने उन के जो लीडर हैं उन से इंटरव्यू (interview) मांगा। तो उन्होंने जब लीडर से इंटरव्यू किया तो उन से कहा कि आप मुझ पर कृपा करें। मैंने तो बीस साल पार्टी की सेवा की है और मुझ को अभी आप गोली मारते हैं। तो गलती की मुझ को माफी हो जानी चाहिये।

[श्री नामधारी]

(man of the peace) है, दुनिया में अमन चाहता है। लेकिन हम लोग जब किसी ब्लाक के मेम्बर नहीं हैं, सब के साथ प्रेम करते हैं, हम ने चीन की सीट को प्राप्त करने के बास्ते यु० एन० ओ० (U. N. O.) में लड़ाई की और अपने नेशन (nation) की जो सिस्टर श्रीमती विजयलक्ष्मी पंडित हैं, उन को गुडविल मिशन (good-will mission) पर चीन में भेजा, तो भेरी समझ में नहीं आता कि करण्शन को दूर करने के लिये चीन में तो कम्युनिस्ट पार्टी गोली के सामने जा कर अपने ऊपर झेलती है और हम हिन्दुस्तान में (anti-social) लोगों को पोजीशन के माफिक ए, दी और सी क्लासेज में बिठा कर रसगुल्ले खिलाना चाहते हैं तो वह भी नहीं खाना चाहते। भेरी समझ में नहीं आता कि वही कम्युनिस्ट पार्टी चीन में एक काम करती है और हिन्दुस्तान में दूसरा। वह सरदार साहब कहने लगे यह पोलिटिकल बात है तुम बैठ जाओ बैठ जाओ। मैं ने कहा, यह बात आप ने क्या कही। रावलपिंडी में रायट (riot) हुआ सन् १९२६ में तो वहां पर सर जान माइनार्ड मिनिस्टर आये। उन्होंने फौरन ही सारा रायट की एन्कवायरी की। भगत लक्ष्मी नारायण, ऐडवोकेट ने उन से पूछा कि जहां फौज और पुलिस मीजूद थी वहां आग भी लगी और कल्प भी हुए और जहां फौज व पुलिस मीजूद नहीं थी वहां कुछ नुकसान नहीं हुआ उन्होंने कहा बैठ जाइये, बैठ जाइये, यह बकीलों की बात है। कहने का मतलब यह है कि यह जो प्रिवैन्टिव डिटैन्शन एकट है उस से आप क्यों घबराते हैं। हम तो महात्मा के फालोअर (follower)

हैं, हमारे रहनुमा उन के फालोअर हैं, वह तो दया, धर्म और प्रेम से ही दुनिया को जीतना चाहते हैं। यह प्रोप्रेगेंडा करना कि यह देश की जनता के बास्ते है, यह बिल्कुल गलत है। यह जनता के बास्ते नहीं है, जनता के बास्ते हमारे पास महात्मा गांधी का प्रेम है, भगवान कृष्ण का प्रेम है, हमारे पास रुहानी ताकत है, हम तो उन के सेवादार हैं, यह जो प्रिवैन्टिव डिटैन्शन एकट है यह तो उन जुमों के बास्ते डी० डी० डी० है जो जनता को खाते हैं, और जनता को बर्बाद करते हैं। सिर्ज उन्हीं लोगों के लिये है न कि जनता के बास्ते। मैं ने जिस वक्त अपने अपोनेन्ट (opponent) को बीस हजार से ज्यादा बोटों से हराया तो वह मेरे पास आये और कहने लगे कि सरदार साहब आप तो हमारी पार्लियामेंट के आनरेवल मेम्बर हो गये, मैं ने कहा, क्या फौज बातें करते हो, अंगरेजों के जामाने में तो हम आनरेवल मेम्बर हो जाते थे, और बड़े आदमी हो जाते थे, लेकिन अब हम क्या बड़े हो गये हैं? हां बड़े हो गये हैं, बड़े सर्वेन्ट्स और बड़े नौकर हो गये हैं जनता के। तो हमारी जो स्पिरिट है वह तो हमारे महात्मा की बनाई हुई है, हम उन के फालोअर हैं, जिस आदमी के दिमाग में अधर्म का खतरा नहीं है, जो आदमी पाप नहीं करता, उस को धर्मराज के दंड का क्या खतरा हो सकता है, जो आदमी अपने मन में डरा करता है इस का मतलब यह है कि वह कोई अनलाफुल डिज़ाइन (unlawful design) रखता है वह कोई क्राइम (crime) करने का इरादा रखता है, इसीलिये घबराता है, बरना, अगर हम धर्म के रास्ते पर ह तो हमें क्या खतरा है?

जब यह प्रिवेन्टिव डिटेन्शन बिल सामने आया तो उस पर जो बहस हुई उसे सुन कर मुझे बड़ा दुख हुआ। मैं कम्युनिस्टों को भी दिल से प्रेम करता हूँ। पहला धर्मियार गांधी जी का यही रहा है, लेकिन अगर कोई सर्जन आपरेशन (operation) करता है तो वह मरीज को मारने के लिये नहीं करता है, मैं अविवारी आदमी हूँगा जो किसी को तकलीफ में देखना चाहूँगा। मैं तो चाहता हूँ कि उन के दिमाग में जो क्रिमिनलिटी (criminality) है वह दूर हो बजाय इस के कि वह तकलीफ में पड़े। उस दिन श्री गोपालन ने कहा “आई वाज ए मेस्वर आफ दि कांग्रेस, आई वाज दि प्रेजिडेन्ट आफ दि केरला कांग्रेस कामेटी” और फिर मुझ को कांग्रेस के राज्य में प्रिवेन्टिव डिटेन्शन एक्ट में गिरफतार किया गया, तो मुझे बड़ा दुख हुआ इसे सुन कर। जिन की इतनी सर्विसेज थीं, जो कांग्रेस के प्रेजिडेन्ट थे उन को इस तरह से दुख क्यों दिया गया? मैं भी कांग्रेस में शामिल हूँ, कांग्रेस कहीं मुझ को भी न गिरफतार कर ले प्रिवेन्टिव डिटेन्शन एक्ट में मैं सोचने लगा कि क्या कांग्रेस एक दम अनरिलायबिल पार्टी (unreliable party) है? मेरे पास एक और आदमी बैठा था उस ने कहा तुम क्यों परेशान हो रहे हो? अगर तुम शुद्ध हो, पवित्र हो तो तुम्हें क्यों परेशान करेंगे, उस ने कहा कि इस बात का प्रश्न आप श्री गोपालन से ही पूछिये, और उन से कहें कि वह शुद्ध जज बन कर इस बात का फैसला करें, कि अगर उन की दो स्त्रियां हों, एक पतिन्नता और दूसरी रन-अवै बाईफ (run-away wife) जो अपने पति के सामने कुकर्म करना शुरू कर दे चो वह उस से शुद्ध क्या सुलूक करेंगे। इस से

मैं सन्तुष्ट हो गया और अज्ञ करने का मतलब यह है कि यह जो ऐप्ट है यह कोई कम्युनिस्टों के बास्ते नहीं है। जब नुर्मय चहता है तो सारी सृष्टि के लिये चहता है, उसी तरह से कानून है तो सब के बास्ते है। चैंटिवी विगिन्स ऐट होम। सरदार शाहूल सिंह धर्मशाला जेल में कैद थे। देवी माता का मेला था वहां से १६ साधू गिरफतार कर के जेल में डाल दिये गये। सरदार शाहूल सिंह ने सुपरिन्टेंडेन्ट से कहा इन साधुओं को क्यों जेल में लाये हो सुपरिन्टेंडेन्ट ने कहा यह साधु नहीं हैं, यह जेबकतरे हैं। उन्होंने कहा अंगरेज बनने के लिये तो पांच सौ रुपया चाहिये, कोट चाहियें, पैट चाहिये ड्रैस सूट, नाइट सूट सभी चाहिये। लेकिन अगर कांग्रेसी बदनाम है तो उस को दो पैसे की टोपी चाहिये। यह चन्द सफेद टोपी वाले ब्लैक शीप (black sheep) जो कांग्रेस को बदनाम करने के लिये उन झूठे साधुओं की तरह कांग्रेस में दाविल हो गये हैं यह तो कांग्रेस को बदनाम करते हैं, जो खराब आदमी हैं, जो कांग्रेस को बदनाम करते हैं उन के ऊपर यह प्रिवेन्टिव डिटेन्शन एक्ट लगेगा और उन को भी हमें पर्ज करना है। मेरे एक दोस्त श्री नन्दिनी उधर बैठते हैं, वह फरमाने लगे कि प्रिवेन्टिव डिटेन्शन एक्ट तो मेरे ऊपर भी लग जाना था लेकिन मेरे ऊपर नहीं लग सका। क्यों जी? अंडरग्राउन्ड (underground!) से सामने आते तो पता लगता। वह बड़े होशियार हैं। रावलपिंडी में एक कम्युनिस्ट थे जिन का नाम अहमद लां था वह बकील के मुशी थे, सारी की सारी उम्र पाप में गुजारी। जब बड़ड होने लगे तो सोचा कि मुझे मर तो जाना ही है, कोई ऐसा तरीका होना चाहिये कि मैं नर्क में न जाऊं। क्या किया कि एक वसीयत कर दी अपने बेटे को लिखा कि जब मैं मर जाऊं तो

[श्री नामधारी]

कफ़न ऐसा देना जिसे कीड़ों ने खा लिया हो, उस में सूराख हों उस लड़के ने ऐसा ही किया। जब लड़के उन को दफ़न करके चले गये तो फरिश्ते आये, एक लात मारी और दामन उठा दिया, इस पर वह बुड़ा हैरान हो कर फरिश्तों की तरफ देखने लगा और कहने लगा कि आप मेरी कब्र में गल्ती से आ गये हो मैं तो बहुत पुराना मरा हुआ हूँ, मेरे तो कफ़न तक को कीड़े खा गये हैं। जिस अहमद खां की आप तलाश करते हैं वह ताजा मरा हुआ किसी और कब्र में होगा जो इस तरह की होशियारी करना चाहते हैं उन के लिये यह एक्ट है। जो सही रास्ते पर आना नहीं चाहते उन के बास्ते हैं।

अब मैं एक खास बात कहने जा रहा हूँ। आज आप दुनिया में देखिये कि सब से ज्यादा इज़ज़त हिन्दुस्तान की है, वह हमारी सेक्युलर (Secular Policy) का असर है। आप के सामने पाकिस्तान का लड़ाई झगड़ा चल रहा था लेकिन उस के बाद भी नतीजा क्या हुआ? आज इडोलीसिया आप के साथ है, तुर्किस्तान आप के साथ है, अफगानिस्तान आप के साथ है, ईरान आप के साथ है, मिस्र आप के साथ है, मैं कहता हूँ कि अगर आज किसी ने दुनिया को रूहानियत की शिक्षा दी है तो कामेस ने। जिस समय डाक्टर ग्राहम आये थे, जो मेमोरैंडम (Memorandum) बारह हिन्दुस्तानी मुसलमानों ने दिया उस का जो असर हुआ वह अगर हम ३३ करोड़ आदमी भी देते तो न होता। और मिडल ईस्ट (Middle East) में मौलाना साहब के भेजने का नतीजा क्या हुआ? पंजाब दूसरा कोरिया बनते बनते रह गया। यह हमारे मौलाना साहब और पंडित जी के बताव का असर है कि तमाम इस्लामी मुलक हमारे दोस्त हो गये हैं। मैं रावलपिंडी का

रहने वाला हूँ, वहां से दो सौ मील चल कर रिफ़्लूजी काश्मीर पहुँचे, वहां गढ़बढ़ मच गई, जम्मू में गढ़बढ़ मच गई, राजा साहब तो वहां से चले गये तीन दिन पहले। तीन दिन बाद हिन्दुस्तान की फौज पहुँची। इस असें में शेख अब्दुल्ला और उन के बालंटियरों ने जो हिन्दू और सिख वहां पर गये उन सब की जान बचाई। कितनी नेक नियती से उन्होंने महात्मा जी के प्रिंसिपल को फालो किया। और जो हिन्दू और सिख श्रीनगर में घबराये हुए थे और जम्मू जाना चाहते थे उन के बास्ते तकरीबन दो सौ मुसलमान टांगे वाले बालंटियर शेख अब्दुल्ला ने तैयार किये जो हिन्दुओं और सिखों को जम्मू छोड़ने गये। उन में से १७० मुसलमान टांगे वाले मारे गये। लेकिन फिर भी शेख अब्दुल्ला और उस की पार्टी ने सेक्युरिज्म को नहीं छोड़ा। और महात्मा जी के नक्शे कदम पर चलते रहे। इन पांच सालों में जितना काम किया है हमारे लीडरोंने उन की मिसाल नहीं है। हम चाहते हैं कि किसी को हम में किसी किस्म का शब्दा नहीं होना चाहिये। मैं हिन्दुस्तान की कम्युनिस्ट पार्टी और जो दर्जनों पार्टियां उठी हुई हैं उन से कहता हूँ कि हट से बाहर जो जायगा वह बच नहीं सकता। बड़ी बड़ी हस्तियां दुनिया में हुईं लेकिन वह कायम नहीं रहीं। जयपुर में पल्किक प्लेटफार्म पर तकरीर करते हुए यह सवाल हुआ कि सीता माता जो एक हाथ से धनुष उठा कर ज्ञाइ दे लेती थीं और रावण से स्वयम्भर में वह धनुष उठाया नहीं गया वह जबर्दस्ती उन को कैसे ले गया? तो मैं ने गुरु महाराज की कृपा से जवाब दिया था कि एक एलेक्ट्रिक मीटर जो हजारों टनों की मशीनरी को चलाती है, प्लूज उड़ाने के बाद अपने आप को भी नहीं चला सकती।

[SHRI PATASKAR in the Chair]

सीता माता के जगत माता और सत्वन्ती होने में किसी को शक नहीं है लेकिन जैसे ही लक्षण जी ने राम की जो लकीर सीधी थी उसे पार किया, यानी पति की आज्ञा उल्लंघन किया, तो उन का बल जाता रहा। इसलिये मेरा कहना कंग्रेस पार्टी से यह है कि We appreciate your hurry and even hurry takes some time. We appreciate your kindness but there should be a limit to the kindness. इसी में कम्यूनिस्टों का भला, दूसरे लोगों का भला और सब का भला है कि कानून को माना जाय। मैं कम्यूनिस्ट पार्टी से अपील करूँगा कि वह भी हमारे साथ आयें इस मामले में। हमारा हिन्दुस्तान कृषि भूमि है जो सब दुनिया की सहायता करने वाली है, अगर तैतीस करोड़ आदमी एक ब्लाक में हो गये तो बड़ा फ़र्क़ पड़ जायगा। हम को दोनों ब्लाकों में से किसी तरफ़ नहीं रहना चाहिये। हमें दुनिया में नेक नियती और इन्सानियत का साथ देते हुए अमन कायम रखने में सहयोग देना चाहिये और आजकल की इंटरनेशनल पोजीशन को इस किस्म की प्रेम और मुल्ह पैदा करने वाली एजेन्सी की सहत जरूरत है। मैं चाहता हूँ कि चूंकि आप हिन्दुस्तानी हैं इसलिये हम और आप बाजू में बाजू डाल कर चले।

मैं किसी इज्म (Ism) के खिलाफ नहीं हूँ, मैं तो गरीब जनता के लौट (lot) को बेहतर बनाने के लिये जो भी इज्म आगे आये, उस के साथ हूँ, लेकिन मेरे सामने बैठने वाले दोस्त तो गरीबों की आड़ लेकर अपना मतलब सिद्ध करना चाहते ह, उन की टैकटिक्स (tactics) को मैं खूब समझता हूँ और हम उन के घोड़े में आने वाले नहीं हैं।

बंग्रेजों के बहत में लोग दूसरों के बच्चों का गला कटा कटा कर सर का स्थिताव ले कर सरदार बनते थे, लेकिन ऐसे भी लोग उस समय थे जो अपना सिर तलबार पर रख कर सरदार बनते थे। आप लोग मुबारक हैं जो लोगों को जायदादें तकीम करते हैं, लेकिन मैं आप को बतलाऊं हम वह लोग हैं जिन्होंने देश की बेहतरी और आजादी के खातिर हजारों लालों और करोड़ों रुपयों की अपनी जायदादें तकसीम की और लोगों की खातिर कमाया और जीवन व्यतीत किया। आप जो यह लूट कर के और खुनखराबा कर के जो जायदादें लेने का आप का आदर्श रहा है, हम उस को बुरा समझते हैं और मैं परमात्मा स प्रायंन। करता हूँ कि वह आप को भी प्रेम, शान्ति और सच्चाई का मार्ग दिखाये ताकि आप अपने गलत नीति और रास्ते को छोड़ें और सही रास्ता अखिल्यार करें। जो आदमी सोया हुआ हो, उस को तो जगाया जा सकता है, लेकिन अगर आप जागते हुए भी सोये रहना पसन्द करते हैं और सही रास्ते पर नहीं चलना चाहते तो फिर आप को जगाना मुश्किल है। बस मैं इतना ही कह कर अपनी स्पीच खत्म करता हूँ और अगर मुझ से कोई गलती या सहत अल्फाज़ निकल गये हों, तो उस के लिये क्षमा चाहता हूँ।

Shri H. N. Mukerjee: In spite of the picturesque banalities which have just been indulged in by the hon. Member who has sat down, I sense in the House a kind of exhaustion, and this exhaustion is not merely physical because we are sitting twice a day, but it is due, I suppose, to an idea in the minds of many Members of this House that this Bill is as good as passed into law, and that there is a certain amount of discussion going on, desultory or otherwise, and there is nothing for us to take any notice of. Except on that supposition, I could not understand the speech which was made this morning by my hon. friend the Home Minister.

[Shri H. N. Mukerjee]

I do not think—I may be wrong, but I do not think he had even taken the trouble to read the minutes of dissent to the report which he presented to us a few days ago. If he had read these minutes of dissent, I am sure, he would have tried to make out a case for the report of the majority of the Joint Select Committee. He did nothing of that sort; but what he did was in the confidence, against which I warn the Members of this House, that today for the time being for certain fortuitous circumstances he enjoys a majority, a majority which he is going to use as a steam-roller against whatever Opposition there might be in the House and in the country. And that is why we find him coming forward to ask the House for an extension of the life of the Preventive Detention Act for as long as 27 months. The hon. the Home Minister with whom I had associated all ideas of humanity had the gumption to say, "I am going to extend it up to the end of December 1954, not even up to 30th September 1954, because I do not want Members of Parliament to be called to Delhi in the humid heat of July and August. I want them to come in more propitious circumstances and in very comfortable conditions—the airconditioned comfort to which we are getting accustomed—when we shall pass legislation in order to extend such pernicious things as the Preventive Detention Act." And we are now getting a 27 month extension of a most mischievous piece of legislation, and the reasons put forward are really nil.

Only sometime ago, an hon. Member on that side spoke about Saurashtra—Yes, what has happened in Saurashtra? In spite of myself I tried to listen to what he was saying, and he tried to give an impression that in Saurashtra there is an attempt by the Government of this country to bring about the abolition of the feudal system, and there is an attack on the feudal forces, an attack which is being conducted with all the paraphernalia of Government and Congress party support, and that the feudal forces are resisting it, and therefore to put down these feudal forces, you want this preventive detention. What in the name of the devil, are these feudal forces against which the Congress Government is fighting? I tried to ransack my brain, and I remembered a few names. There is the Jamsaheb of Nawangar who goes to all sorts of conferences representing this country, and I expect he is one of the highlights of Saurashtra life, then there is the Maharaja of Bhavanagar who was the Governor of Madras

State. There are other people also. There is Major-General Himmatsinghji who has been made Lieutenant-Governor of Himachal Pradesh—he is a very estimable man, and I have nothing against him—only the other day; then there is Prince Duleep-singhji the great cricketer who is representing our country somewhere in a diplomatic or a quasi-diplomatic capacity. These wonderful representatives of the aristocracy are a part of...

Dr. Katju: Is it in order, Sir, to criticise those gentlemen by name, who are not here to defend themselves?

Dr. S. P. Mookerjee: He is only extolling them.

Mr. Chairman: It would be better if the hon. Member were not to bring in the names of persons who are not here; I think this practice should be adhered to and I would appeal to the hon. Member, without giving any ruling, to consider whether it is proper to refer to them, and I think he will agree with me that it is better to avoid the names of those who are not here.

Shri H. N. Mukerjee: The point which was being made by me was not at all contradicted. I was merely saying that these feudal gentlemen whom I have named are representatives of a feudal aristocracy of that region of India which is being placarded today as the only serious justification for preventive detention and who are hand in glove with the ruling party in this country. I have nothing to say against them personally. If the Congress Government is really serious about the abolition of the feudal system in Saurashtra, why is it afraid of the people's movement in Saurashtra? Why does it not join the common people's movement in Saurashtra and elsewhere to bring about the abolition of the feudal system? Why does it not try to do something about the basic and fundamental land problem? Why does it tinker with the land and with things like *Bhoomidan Yagna* which is merely charity-mongering acrobatics which do not work in the conditions of the modern world today? Saurashtra has been mentioned as an illustration which shows that we should have preventive detention. I have heard nothing about any other area of India. As the last resort, some Members who have submitted minutes of dissent to the report of the Joint Select Committee have said that if there were really and truly in India certain regions which are in chronic disorder, for heaven's sake, have them

declared dangerous areas, where in a limited sphere, you are going to apply the minutes of dissent, there is a preventive detention. I say that in reference to this sort of thing, but Members of the other side of the House do not even have the courtesy to go through the minutes of dissent which have been presented.

I would say that if the minutes of dissent were read by the hon. the Home Minister and by Members on 'the other side', they would have done something. I thought at least they would modify the provisions of this extremely pernicious measure which no civilised Government would touch with a pair of tongs. I find, for example, a very highly respected Member of the Council of States, Pandit Hirday Nath Kunzru, submitting a note of dissent in which he says very unequivocally—he is not a Communist for whom the hon. the Home Minister has so much affection!—absolutely without equivocation: "The Committee discussed the Bill without any accurate information of the working of the Act" because the Members of the Committee had suggested that we should have at least some representatives of the Advisory Boards which were working in those States where you found the Preventive Detention Act very necessary, so that the Committee could understand how exactly the Advisory Boards were working. Nothing was done, because this legislation had to be rushed through Parliament. Nothing was done because the Government is sure of the majority which it has got in this House and that is why we find this sort of statement made. These minutes of dissent go to the country, the people will find out all about it; they have already got some idea. Read the newspapers of India to find out what the public reactions are. I read some Congress newspapers, particularly from Calcutta, and I find that they have all reacted in a manner which does not redound any credit to the policies which are being pursued by the Government in this country. The Government attach no importance whatever to what has been said in these minutes of dissent. Then they come forward and say: "Well, we have made this Bill extremely acceptable. It is a model piece of legislation". That is what the hon. the Home Minister is trying to do.

But, the point remains, the fact remains, as Mr. Chatterjee pointed out this morning, that if in England in wartime certain provisions can be afforded, certain measures which assist the detenu at least to present his case to the authority concerned, then why

should we in peace time have the kind of legislation which is here suggested? The detenu gets no adequate information in regard to the case against him; he has no facilities for legal assistance; he cannot call in evidence and under the very expansive definition of 'prejudicial acts' a situation is created by which this legislation is bound to be used against the political parties. I know it has been said over and over again by the Home Minister that it is meant only against anti-social elements, but then he goes on, almost in the next breath, to say that the Communists are these anti-social elements. And they go on talking about violence etc., etc. Now, I personally am absolutely fed up with this sort of thing. They raise this bogey over and over again. Last time in the debate over this very important measure I had brought in the hallowed name of Gandhiji and a very worthy disciple of Gandhiji on the other side got up and protested that the hallowed name of Gandhiji had been brought in by a very unhallowed person like me. We have talked about it over and over again, and I repeat it again. We have charged the Government and the ruling party in regard to the violence which has been practised, particularly in those regions which have been publicised as the main regions of Communist violence. I am sorry to say I was not here to listen to my hon. and holy friend from Hyderabad who spoke earlier. But our challenge stands; this is the fifth time that this challenge is made. If it is shown before an impartial tribunal that over the question of violence it was not the Congress Party but the movement of *Kisans* in Hyderabad which was responsible, then we are prepared to accept the decision of that tribunal. No answer is given to this challenge. I personally repeated it even in the presence of the Prime Minister who often so magnificently responds to that kind of thing. But nothing happened. Nothing happened, because the ruling party today has not got the guts to face an impartial tribunal. The boot is on the other leg. I charge you over and over again. You talk of violence. You ask: "Do you believe in violence?" Violence as it is practised, is a fact of social life; it is not a question of my belief or disbelief in it. You are practising violence and if you go on practising violence against the people, then the people in the righteous anger will take certain steps—in spite of the fact that they are completely disarmed in this country—they will take certain steps which you cannot run away from. Our people are very patient. Our people have certain traditions of gentleness. They will not easily rush off into things.

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which the friends on the other side fear very much. But they will if you go on at this rate: they will, I am sure, if Government treats with impunity such very responsible expressions of opinion as are found in the minutes of dissent before us.

I have said, and reference has been made particularly to the absolute necessity of the detenus getting legal assistance, an opportunity of arguing their case and calling evidence, cross-examining and all that sort of thing. Reference was made by Mr. Chatterjee to Mr. C. K. Allen who wrote a book, a very well-known book *Law and Orders*. I have had the pleasure of knowing Mr. Allen when he came to Calcutta as Tagore Law Professor. I knew him at Oxford where he was the Professor of Jurisprudence, not a mere lecturer or tutor but the holder of a Chair, and he was an undiluted Conservative, a Conservative of the bluest dye. And he says it is very necessary for these people who are in detention, who have not got the professional equipment, it is very necessary for them to have the kind of assistance which has been asked for in the minutes of dissent. But nothing was done about it.

There are so many other points which I could refer to, but I am afraid I have not got the time. But I do wish to say that the speech of the Home Minister was extremely provocative. I thought he was trying to make a reasoned presentation of his case. I thought he was trying to argue that "after all conditions are improving, but in spite of the conditions improving, I have these facts and figures to show that still there are very serious elements of danger". He said nothing of the kind. On the contrary, as Mr. Chatterjee pointed out and as the Home Minister himself admitted, even in those conditions when the Advisory Boards were working in such a fashion that the interests of the detenus were not respected, as much as 30 per cent. of the cases showed that the Advisory Boards recommended that the detenus should be released. And almost every time—perhaps that will be going a little too far—in the overwhelming majority of cases when matters have come up before the High Courts for adjudication, they have said that the grounds of detention have been usually absolutely unacceptable. But such moonshine and nonsense is passed off as justification for clapping people in jail, for keeping them in detention in conditions which might appear to my hon. friend, the Home

Minister, to be extremely delectable, but which, as my friend, Mr. Nambiar, pointed out, are such that detenus would certainly like to change places if the Minister chooses to accept the proposition.

When the Minister was talking towards the end of his speech about the conditions of the detenus, he referred, for example, to the question of family allowances and he said: "I have no doubt that in needy cases, deserving cases, something will be done". Then he said that he could not possibly lay down any hard and fast rule. Well, I thought it was a humane man speaking, and possibly he would give a direction to the State Governments that they should do something about providing adequate family allowances to detenus. After all even those who were detained under Regulation 3 of 1818 used to get fairly lavish allowances for themselves and for their families. When I heard the Home Minister say that he could not lay down any hard and fast rule, but that he expected that discretion would be used in favour of the detenus, I thought he was a humane man speaking. But then he rushed on to say: "While for convicts and under-trials' families we have no sympathy, it is only in regard to those who are held up under the preventive detention law that you say that the Government is tyrannous and therefore that tyranny should be softened by giving something to the dependants of the detenus themselves". Then he went on to say: "We have got these laws for the prevention of crime and let there be no sympathy for criminals". What is the idea behind it? Has the Government said goodbye to its senses? If you say: "Look here, we are going to look after the families of these detenus because they have not been tried in a court of law. After all, they are here on suspicion only and there may be some mistake here or there, and therefore, at any rate, if they are to be punished for their past records—may be because, like Mr. Copalan, he was the President of a Provincial Congress Committee or something—if they are to be punished for their past record, we do not punish their families". I could understand that sort of thing. But he went on to say that we could not have any sympathy for these criminals it was only for the prevention of crime and we were wasting our sympathies and saying that the Government was tyrannous and the tyranny had to be softened by giving something to the dependants of the detenus concerned. Then later he went on to say that in the last three

months there has been the most intensive review of the cases of these detenus and very few of the old detenus are left in custody and that so far as these cases go such persons are to be released by 1st April, 1953. Now, what does it indicate if very few of the old detenus are in custody and very few fresh detentions have been ordered in the last three months or so? What is the deduction to be made by an intelligent person? He had begun by saying that, of course, they did not expect any vital change in the situation, there will be no great, material change in the world position and in India's position in the next two years. He hoped the situation would improve but he said there were very black clouds on the horizon, very big danger signals. We should like to know the evidence. Where are the danger signals? You do not show those danger signals—you only point out that you need these powers. Why do you want them? As I said the last time, why do you want the apparatus of a police State? And do you hope to abolish feudalism, as you claim you do in Saurashtra, by this kind of method? If you are doing so, God bless you, all power to your elbow, we are with you if you are fighting feudalism. Certainly, if you are fighting the battle for the democratic rights of the common people we are all with you. Why are you afraid of popular opinion in that case?

The hon. Minister went so far as to make ironic references to conditions in which the detenus live in jail. He said, "I had been to Murshidabad jail and there I saw they were living in great comfort". Comfort! If that is comfort any day the detenus will exchange that comfort with the comforts which any of us have who are free. Have the Members of the Government forgotten altogether the history of the past? I remember on one occasion many years ago the Government of India in the British regime sent a few representatives to go to the Andamans and report, and they came back with a report that the conditions were like paradise! I remember also a Congressman—I think it was Lala Hansraj who went there—who wrote a minute of dissent to that report. That was all they could do in those days. It is exactly in line with those reports that today Dr. Katju comes forward in this House and says that these detenus live in wonderful comfort—when the people of West Bengal are living in penury! What should we do? Do we want to keep these detenus in jail and do we want at the same time to intensify the penury, the suffering, the woes of the common people outside?

That is exactly what you are doing. If you are fighting in order to eliminate and abolish the poverty and the suffering which stalks our land today like an ugly colossus, then you will find you will mobilise people's enthusiasm, then you will find you will not need this kind of legislation. But today you want this kind of legislation. You want to extend it for twenty-seven long months, you want even to deprive the detenu of all facilities for legal assistance and cross-examination and tackling of the evidence. You want altogether to deprive the detenu of even the means of making his dependents' lot somewhat less unbearable than otherwise it could be, and that is the kind of legislation that you have before you.

I would submit, therefore, that in view of the minutes of dissent which are here for all to read, I would make a last minute appeal to the hon. Minister really to go through the minutes of dissent to find out what exactly are the points that have been raised in the minutes of dissent, and then after that come to the House and say that in spite of it all he wants an extension of the Preventive Detention Act for twenty-seven long months.

Dr. S. N. Sinha (Saran East): I am glad there is one subject on which I can speak with some real authority and justification, perhaps with a little more justification than our Home Minister or the Leader of the House, with all due respect to them. This subject is the subversive or the underground world, the main target of the Preventive Detention Act batteries about which the hon. Members of the Opposition are so much scared of. Our leader himself said a few weeks back that he never indulged in any subversive or underground activities. We have no reason to doubt it. But my case is quite different. I know that world thoroughly and I am afraid unless you know a little about that world you will not be able to judge today what dangers are confronting our country, where we are standing today; what cases of emergency exist today—you will not be able to imagine. Therefore, Sir, will you allow me to take you along with this House for a couple of minutes for a stroll to the underground world? It is a very fascinating world. I have lived in that world. So long as the British ruled our country I had never a chance to walk overground without being accompanied by a couple of detectives. And those experiences were very rich. And at that time I knew a great many secrets—State secrets. My activities were not confined to

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India only. I went to Central Europe and to many other countries of the world. I went there as an emissary of the underground world of the political party here to come in contact with foreign organisations and to some extent also with foreign Governments. (Interruption) You will be surprised. Sir, to know that there is a special technique about which we have not talked as yet in this House. It is, as I have seen in many other countries, that certain Governments are interested in subsidising underground movements, or doing such acts as may weaken the countries in which they are interested. It is very easy to meet the Heads of State of those countries if you work underground. If we come here to meet the Head of our State it is very difficult, but there I have found that it was very easy. At that time we had a moral justification for such actions, because we needed help, and we took that help from any Government which assisted us to drive the British out of India. But after we gained our independence things have thoroughly changed. You will find a great many changes in the underground too. The underground today is no longer the same underground—we could never go so low as it has gone today. There is no greater crime for a man than to fight against his own country, but today, we find that being done. I have enough material to prove this fact because during the last few years I have been doing nothing but spending all my money and all my energies to find out the real dangers which confront and threaten our country. I have wandered a lot during these years from the Arctic to the Adriatic, to Europe and many other countries—also to Tibet. And for what? Not aimlessly, but just to find out how things stand today in that world which fascinated me so much. Today I find that the underground in our country is in closer contact with certain foreign Governments than it was under the British rule. And there is one change, a very significant change, that is, those foreign Governments themselves are interested in fostering chaos and anarchy in India. What I am saying is from personal experience. There are many things which you cannot prove with documents. But if you come along, I will drive you in my car straight to that building on the sixth floor, to room No. 632, where those people chalk out plans for subversive activities in many countries of the world. I will return to this in a moment. Before doing so I must take you a little deeper, because you will not understand this language of the

underground unless I take you deeper and show you a brief picture of our underground.....

Shri A. K. Gopalan: On a point of order, Sir. In the morning when some of the Members were speaking about preventive detention the Speaker said that we have to talk about the amendments. I want to know on what amendment he is speaking now—whether he is speaking on the minutes of dissent or on the amendments given notice of.

Mr. Chairman: There is no point of order. The hon. Member, Mr. Gopalan will remember that there were so many other Members who did not strictly confine themselves to this rule 98. Now the same latitude may be extended to another Member on this side.

Shri A. K. Gopalan: I wanted to know whether he was speaking on an amendment.

6 P.M.

Dr. S. N. Sinha: The hon. Member protests too much.

Mr. Chairman: The hon. Member should proceed in his own way without minding the interruption.

Dr. S. N. Sinha: I was going to show you a picture of the underground which exists today in India. Very unfortunately, our Home Minister has not evolved such an apparatus, more sensitive than the radar, which could find out, detect and record the whispers which go on in the underground world. Many other countries have found such an apparatus. But unfortunately in our country we have not evolved one. Unless we study those whispers, we will be nowhere, because they affect our security.

Now, I shall give you concrete examples as to how foreign espionage nets are spread out in India and how they are operated. Taking the foreign spies, I shall give you proof in black and white to show that such activities are going on quite openly. The most recent fact that has emerged from the underground—unfortunately I cannot produce any documents—is this. I can tell you this with authority and I had a good name in these matters even during the British days. Due to all this knowledge which I have about these activities, once I landed during the British days in Elysium Row. Today it is called Lord Sinha Road—not yet Dr. Sinha Road. It may be so some day, because I have greater justi-

fication for it. I was tortured there because they wanted to know a great secret from me. That secret was the liaison between the Indian political underground and a foreign country. They could not know it, but that secret is at your disposal today, and I am going to explain it to you, so that you will realise fully the dangers that are threatening our country today.

The most recent whisper which has come from the underground—and it is again from that office in the sixth floor—is that there have been some changes in the underground world, and a great underground warrior has come into power again, a warrior who used to create much violence in the country. They say that he has been put into power again and he is trying his best and waiting for an opportunity. What opportunity I shall tell you. Before that, let us have a look at his lieutenants in this underground world. As soon as you enter the underground world, you see a whole panorama of people. In the first category come those fashionable Oxford and Cambridge educated people, with their melodramatic speeches, talking of revolution and other things. They are quite harmless from the point of view of the underground. They speak too much. In the second category come those people who indulge in our trade union movements, in our factory strikes etc. But they are also more or less harmless. You can ignore them. In the third category come those people who are a type of Moscovite partisans, and their activities are alarming. You will have proof of it, then you will realise how alarming they are. But let us go a little deeper into the underground to see their activities.

You will find a few small arms and a few transmitters, and if you have a good memory and you are a connoisseur of arms, you will recognise that those armaments are of the same which are missing from our State armouries. You will find a lot of them, and such armaments in their hands create a great danger to our country, to our security, to our defences and to our foreign relations. These armaments may be used some day. You should not be afraid when you are travelling with me, because I am a good shot myself! Their armament is a bit rusty. They have to polish it. They do not know how it should be used. But they might come to know. The most recent whisper is—my ears are very sensitive to the underground whispers—that a few of their technicians are on their march towards

Uttarapath,—towards Kailash, for deliberations, meditations and collection of new arms. In the Mahabharatha days people used to go to Himalayas. Today we see some more interesting things. These people are proceeding further north. The news which I have received only this morning is from a Chinese newspaper. It says that whereas so far there were schools for subversive activities only in Central Europe, now there is also one in Canton. The Red net is being spread over South East Asia. Some Indians who have been in Canton and have received training in espionage are on their way to India.

Shri Raghavaiah (Ongole): Is this all relevant?

Shri K. K. Basu (Diamond Harbour): The hon. Speaker has ruled that whenever any reference is made to a publication, the date and the author should be mentioned. My hon. friend is only saying, "I am going to give you proof." He has produced none. He is making generalisations. Is this in order?

Mr. Chairman: There is no point of order in this. At the same time, I should tell the hon. Member that he has sufficiently elaborated the background and given the justification for the Bill. He will now come to the points in the Bill.

Shri H. N. Mukerjee: On a point of order, Sir. The hon. Member about whose habits we are aware has just said that in Canton which is situated in the People's Republic of China with which our country has the friendliest relations, there is some sort of a school for giving training in subversive activities all over the world. Apart from all questions of decency which my hon. friend abjures, is it in order to refer to this sort of thing on the floor of the House?

Mr. Chairman: I do not think there is any point of order in this. He is only referring to an alleged fact. What is the point of order in it? I would appeal to hon. Members that by interrupting any Member, whether he belongs to this side or the other side, the cause which this side or the other side is interested in is spoiled. Therefore, it will be much better to let the hon. Member advance his points. I have already told him that he has already made out the background and the necessity for these provisions. He will perhaps take a little more time. Therefore, patience will be far more useful from every point of view rather than interruptions and points of order at every stage.

An Hon. Member: He is not giving the background, but the underground.

Mr. Chairman: Order, order. I would again appeal to hon. Members not to get excited at all.

Shri H. N. Mukerjee: I am absolutely cool headed. I want to point out to you that one of the professed objectives of this legislation as propounded by the Home Minister is that we do not want to have any disturbance in our foreign relations and this sort of thing which the hon. Member is mentioning is definitely going to disturb our foreign relations.

Mr. Chairman: I do not think the hon. Member has said anything which will imperil our foreign relations with any other country. Let hon. Members have patience.

Dr. S. P. Mookerjee: He has given us the background picture. Let us see something of the underground.

Dr. S. N. Sinha: Yes, it is like this. Supposing you are today in Helsinki. You have seen the Olympics. You want to visit an Eastern European country, and you apply for a visa. What do these people do? They send a copy of your papers to subversive groups here to check up. This thing happened in my case, and it proves that there are groups in our country who supply dossiers to foreign countries, which is the gravest crime a man can commit.

Coming to the masses about which our hon. Member from Calcutta has spoken, I will say a word only. These subversive activities are so discredited and people are so enraged about them, that if Government in the near future, do not take any action, the masses will take the law into their own hands and tear off these fellows from the face of the earth, because they are so furious. Nobody tolerates a foreign agent in the country; nobody tolerates espionage which endangers the security of the country.

I have to say many things, but since time is short I will conclude. Returning to our own country, there are heavy clouds hanging on the Himalayas—very low. They are no more black; they are turning red. What we have to see today is that the subversive elements may not invoke those clouds to shower blood on us. If not for anything else, then at least to save the country from bloodshed, it is necessary that we pass this Preventive Detention Bill, and say in challenging words to the whole world: let this red storm burst and rage; we will do our duty and conquer them.

Dr. Krishnaswami (Kancheepuram): I am very reluctant to refer to the speeches that have been delivered on the other side, partly because they have not taken account of the viewpoints of the Members of the Opposition, partly because our suggestions have been turned down and partly because there is an utter lack of appreciation of the seriousness of this measure. But there is one remark made by my hon. friend Mr. Shiva Rao which I cannot pass unnoticed.

Speaking this morning the hon. Member in the course of a long speech said that so far as the Congress Party was concerned, it had received a mandate from the people and had received the backing of the people to pass this measure. My understanding of the Congress Party's programme is different. During the long campaigns we had to witness in many of our constituencies, the speakers of the Congress Party who spoke to a brief were very definite on this matter and in fact one of the fundamental talking points that they brought before the electorate was that they had widened the area of civil liberties and that if elected, they would end all repressive measures. There was no mention of the Electorate giving them authority to enact a preventive detention law—far from it, they obtained sanction to widen the ambit of civil liberties. I mention this incidentally in order to refute some of the observations that have been made by hon. Members opposite that because they have a majority, they can carry through this measure. It is true that in this House majority counts. But there is a country outside which is watching our proceedings and each of us is on his trial. We have to search our hearts and find out whether this measure is necessary, whether the circumstances are such that this measure should ever be passed by this Parliament and whether the period for which we are passing this measure is justified.

When the Prime Minister and Leader of the House, in one of those rare speeches which raised the level of our debate, pointed out that the parent Act could be examined completely and that we were at liberty in the Select Committee to suggest amendments to it, the House—and we on this side of the House in particular—went into the Select Committee with high hopes, stilling our lurking fears. But what was the fate of the amendments moved by us? Not one of our amendments was accepted by the majority in the Select Committee and today we have a fees-

ing that however constructive we are, we cannot make an impression on those whose minds are encased in traditions of repression and power intoxication.

We went to the Select Committee with high hopes; but our hopes turned out to be dupes. On almost every material issue, we have differed from our colleagues opposite.

We suggested at the outset that the term of the Preventive Detention Act, granting that an emergency situation exists, should be only for one year; but that suggestion was turned down on the superficial plea that it would be a waste of parliamentary time to discuss the limitation of civil liberties once a year. As though Parliament had more important duties to attend to than to consider how the rights of individuals were affected!

In the United Kingdom when a similar measure, Regulation 18B, was being discussed during the war, when the nation was locked up in conflict with an unscrupulous enemy, when the question of survival hung in the balance, what happened? Parliament reserved each year four or five days to discuss the existence and the continuation of the measure and I recollect that in the year 1943 they had a discussion of well over three or four days on whether and how best to continue the emergency powers entrusted to the executive. Parliament could not abandon its responsibilities and Parliament had therefore to review each year whether there was necessity for the continuance of this measure. And in fact, the Home Minister, Mr. Herbert Morrison pointed out on the floor of the House that if the House deserted its responsibility, the executive would be cranky and there was all the more reason to see to it that the executive was controlled by the Parliament and he therefore welcomed the House keeping the executive in a state of "controlled jitters".

That was what happened in that country and I do not see any reason why we should not emulate that example here. After all fifteen days spent to consider how best to widen civil liberties, cannot be considered a waste of time and I should have thought that on this matter at least hon. Members opposite would have accepted our amendment. But they did not accept our amendment, and our modest proposal was voted down by a ruthless majority.

Then there was another proposal put forward. The proposal was that

the Preventive Detention Act should be confined only to a few areas and such areas should be declared by notification by the Central Government. The purpose of this amendment was that so far as these areas were concerned, the Central Government would be in a position to make an objective study of the emergency situation and to place those facts before Parliament and get the sanction of Parliament to declare that the Preventive Detention Act should be extended only to those areas. We had long arguments as to whether the object of the Government would be advanced by extending it only to a few areas. Some there were who pointed out that this particular legislation, if confined to a few areas, would lead to the States passing other legislation and therefore our purpose would be defeated. But those of us who had given some thought to the constitutional aspect of this matter realised that once the Union administration occupies a field, it would be extremely difficult for the State to pass legislation covering that area. In a way we would have had at least the consolation in this House that we had opposed this emergency legislation for the whole of India. If the Preventive Detention Act is extended to the whole of our country, our fellow-citizens—all of them—will have to walk through the valley of fear and anybody can be preventively detained if he is suspected to have committed a prejudicial act. Is this fair?

How is "prejudicial act" defined? The Home Minister in the course of his speech pointed out that the definition of a "prejudicial act" was very simple and that it covered a few categories. Our objection is that it covers far too many categories. Whenever you define a certain act as prejudicial, it is extremely difficult to demarcate the boundaries of that act and that is why in legislation similar to the one that we are having, people have put in one or two categories in the definition of a "prejudicial act". That was why we suggested that some of these items like friendly relations with foreign powers and the maintenance of order might be safely omitted from the definition of 'prejudicial act'. Our purpose was simple. We felt that so far as these two items were concerned, neither the security of the State nor the security of society would be imperilled if we omitted both these categories. Because, what is that we are doing by having these large categories in the list of 'prejudicial acts'? Friendly relations with foreign powers are not likely to be imperilled by "any prejudicial act" committed by a private citizen. It is after all one of

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those things which has to be analysed to be understood, and you will realize that so far as these prejudicial acts are concerned a few acts of the individual citizen have never imperilled friendly relations with foreign powers.

So far as maintenance of order is concerned, what is the argument put forward? The argument that is put forward is that unless and until these powers are there, there would be a very serious threat to our security. I have not been able to understand this argument at all. In any democracy the deliberative forces should always dominate over the coercive forces, but if we are going to draw the line at a place where we exalt security at the expense of liberty we would reach a position when we could safely be said to be on the high road to dictatorship. What comes under 'maintenance of order'? Suppose tomorrow for instance Swami Sitaram, with whose ideas I do not have any sympathy, starts a *satyagraha* movement and as a result of his starting a *satyagraha* movement for the Andhra State there is difficulty experienced in certain areas, under this Act we could put him in prison, because he is the man behind the agitation, he is responsible for starting the *satyagraha* movement. Or, to take another less vivid example; rebelling against prohibition being introduced in our State. Suppose there comes on the scene a party wedded to the doctrine that this ought to be abolished and there is a great agitation carried on and certain disturbances occur in large areas would not those responsible for the agitation perfectly constitutional and perfectly democratic be liable to be locked up. And yet this is what would, paradoxically, happen by your having this maintenance of order provision included in the definition of a 'prejudicial act'. I would be told no doubt that the Constitution authorises your putting all these acts under the definition of 'prejudicial act'. I am aware of that line of argument. But the Constitution, while it certainly gave you enabling powers, did not make it mandatory on your part to include it in the list of 'prejudicial acts' which you can utilise to detain citizens in our country and detain them without facing courts of law.

What are the powers that you are claiming? When you consider the judgments delivered by various courts, the definitions which they had given of 'prejudicial acts', you will find that we are in a very very serious

position in which the executive has got practically unlimited powers and in which any act of the citizen can be brought within the meaning of 'prejudicial act'. Even speeches are not completely exempt from the list of prejudicial acts. The Supreme Court and the other High Courts have held that even a speech delivered comes within the definition of 'prejudicial act', and any man can be locked up in preventive detention for having infringed what they call maintenance of order and discipline. I strongly hold the view that if an individual has committed an offence against the law by his speeches or writings, the ordinary criminal law is quite sufficient to bring him to book and we should not have resort to preventive detention in order to control freedom of speech and freedom of address and freedom of thought. It was a great pity that this amendment could not be accepted by the majority of our colleagues of the Select Committee and that it was not viewed with favour by the Home Minister.

Let me briefly deal with those aspects of the amending Bill with which I am not in agreement. Section 7 deals with the rights of a detenu to have the grounds submitted to him by the detaining authority. Hitherto the objection that was raised was that it was not sufficient to supply the detenu merely with the grounds; what is necessary is that we should supply him not only with the grounds but also 'particulars' so that he might be in a position to make an intelligible and valid representation. Section 7(2), as you will realise, contains a provision to the effect that wherever the detaining authority considers it to be in the public interest it need not divulge the grounds of the detention. It was pointed out when we suggested that this should be omitted that the Constitution of India had made it clear that so far as this particular matter was concerned the government had the right not to disclose any facts to the detenu if they were so minded. Now, there is some force in that argument. But I think there is greater force in the argument that has been put forward by many of us that there was no need for this provision being put in here, because such a provision being put in the Preventive Detention Act leads to many officers withholding information on the spurious ground of 'public interest' and taking shelter under the plea that public interest would be infringed. This has led in the past many High Courts and Judges of the Supreme Court to point

out that on very many occasions the grounds and the particulars were withheld from the detenu and that they could easily have been disclosed without violating the canons of public interest. I have grave doubts as to whether there was any necessity for this provision being inserted in the Constitution, but that is a different matter. After all, every State has the privilege, the definite privilege to withhold any facts which it considers to be in the public interest from any one, and if the Secretary of the State or a responsible Minister swears on an affidavit that the grounds cannot be divulged in public interest no court of law can go behind it and compel the Minister to disclose those facts. That is the inherent power of any State. Therefore there is no need to emphasise it in statutes, particularly in statutes where you have preventive detention, because it is generally considered that it would not be in the interest of the detenu or even of the State to withhold the grounds from him who after all must have an opportunity of removing the suspicion attaching to his name. This idea of preventive detention is something which is infectious. It is not realised by those in authority that often those who are detained, those who are sent to detention camps, lose caste with the vast majority of their fellowmen.

Mr. Chairman: How long will the hon. Member take? He has already taken fifteen minutes. If he will finish in about five minutes we can go on.

Dr. Krishnaswami: I will require another ten or fifteen minutes, Sir.

Mr. Chairman: Generally we have

been allowing fifteen to twenty minutes so that other people may get a chance. That is the point. If he can conclude in another five minutes, we can sit for five minutes more.

Hon. Members: No, no.

Mr. Chairman: Very well. He may continue tomorrow.

MESSAGE FROM THE COUNCIL OF STATES

Secretary: Sir. I have to report the following message received from the Secretary of the Council of States:

"In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States. I am directed to inform the House of the People that the Council of States at its sitting held on the 1st August, 1952, agreed without any amendment to the following Bills, which were passed by the House of the People at its sittings held on the 17th, 22nd, 28th and 29th July, 1952, namely:

1. The Indian Ports (Amendment) Bill, 1952.
2. The Central Tea Board (Amendment) Bill, 1952.
3. The Central Silk Board (Amendment) Bill, 1952.
4. The Notaries Bill, 1952."

The House then adjourned till a Quarter Past Eight of the Clock on Saturday, the 2nd August, 1952.