HOUSE OF THE PEOPLE

(4)

THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

(Report of the Joint Committee)

PARLIAMENT SECRETARIAT
NEW DELHI

July 1952.

Report of Select/Joint Committees presented during First Session, 1952.

S.No.	Title of Bills	Date of presentation of Report.
1.	The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Bill, 1952.	18.7.52
2.	The Notaries Bill, 1952	18.7.52
3.	The Commissions of Inquiry Bill, 1952.	25.7.52
4.	The Preventive Detention (Second Amendment) Bill, 1952	30.7.52
5.	The Reserve and Auxiliary Air Force Bill, 1952	1.8.52
6.	The Delimitation Commission Bill, 1952	
7.	The Constitution (Second Amendment) Bill, 1952	
8.	The Forward Contracts (Regulation) Bill, 1952	
9.	The Administration of Evacuee Property (Amendment) Bill, 1952	

HOUSE OF THE PEOPLE

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952.

(REPORT OF THE SELECT COMMITTEE)

PARLIAMENT SECRETARIAT
NEW DELHI.
July, 1952.

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952

Members of the Select Committee

Shri C. D. Deshmukh—*Chairman.*
Shrimati B. Khongmen.
Dr. Ram Subhag Singh.
Shri Tulsidas Kilachand.
Acharya Shriman Narayan Agarwal.
Shri P. T. Chacko.
Shri B. Das.
Shri Gurmukh Singh Musafir.
Col. B. H. Zaidi.
Shri S. V. L. Narasimham.
Shri S. V. Ramaswamy.
Shri G. D. Somani.
Shrimati Sucheta Kripalani.
Shri Rajaram Giridharlal Dubey.
Shri Keshava Deva Malaviya.
Shri Arun Chandra Guha.
Shri Liladhar Joshi.
Shri Balwant Singh Mehta.
Shri Dev Kanta Borooah.
Shri Sarangadhar Das.
Shri Mahavir Tyagi.
Shri M. V. Krishnappa.
Dr. Shaukatulla Shah Ansari.
Shri N. R. M. Swamy.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to declare, in pursuance of clause (3) of Article 286 of the Constitution, certain goods to be essential for the life of the community was referred, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed thereto.

The Schedule to the Bill is the most important part of the Bill and it is only in the Schedule that the Select Committee have recommended certain amendments. Certain existing items in the Schedule have been amended or rearranged and certain new items have been added. The Select Committee note as follows upon the changes proposed in the Schedule which are not formal or consequential.

[References to the items in this Report are to the items as amended by the Select Committee and references in brackets are to the items of the Schedule as in the original Bill.]

Item 2.—In this item the Select Committee has included coconuts, edible tubers and vegetable seeds. Orchids have been excluded because the Select Committee was given to understand that there is an expanding business done in this commodity in the State of Assam. Sugar-cane has been omitted from item 7 and has been included in this item as being more appropriate. The Select Committee has also made a slight drafting alteration in order to make it clear that no medical preparation which may be made from any one or more of the articles mentioned in this item is included here.

Items 4, 5 and 6.—Items 4, 5 and 6 are new.

Item 8 (original item 5).—This item has been re-drafted so as to include all hand-loom cloth, cotton, silk or woollen. Coarse and medium cotton cloth, woven on power looms, has also been included. The expressions "coarse cloth" and "medium cloth" have been defined so that there may be no ambiguity about their meanings.

Item 9 (original item 7).—This item has been amplified to include certain additional articles.

Item 10.—This is a new item.

Item 11 (original item 6).—Manures and parts of agricultural machinery and implements have been included in this item.

Item 12.—This is a new item.

Item 13 (original item 8).—This item has been slightly amplified. Electrical energy has been omitted because it is doubtful whether the expression 'goods' in article 286(3) of the Constitution includes electricity, in view of the fact that in List II of the Seventh Schedule to the Constitution there is a separate entry (entry 54) relating to the consumption or sale of electricity, whereas the expression used in article 286(3) of the Constitution is "taxes on the sale or purchase of goods", an expression which finds its counterpart in entry 53.

Items 15 and 16.—These are new items.

2. The Bill was originally published in the *Gazette of India*, Part II, Section 2, dated the 24th May, 1952.

3. The Select Committee think that the Bill has not been so altered as to require circulation under rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

C. D. DESHMUKH,

Chairman of the Select Committee.

New Delhi;

The 18th July 1952.

MINUTE OF DISSENT

We are sorry we are not able to agree with our colleagues in regard to the propriety of retaining the words "made after the commencement of this Act" in the Act as it may finally be adopted by Parliament.

2. The main purpose of enacting this measure is to introduce uniformity of legislation throughout the country in respect of the taxation of goods considered by Parliament to be essential for the life of the community in India as a whole. Different States have followed different policies in levying sale taxes on such commodities. Till the inauguration of the new Constitution they were legally within their power in doing so. But to our mind, the language of Article 286, clause 3 of the Constitution is not only absolutely unambiguous but peremptory. It appears to reflect clearly the intentions of those who framed the Constitution.

3. The addition of the words "made after the commencement of the Act" can have no other effect than to negative the very concept of uniformity and seem to be entirely uncalled for. It may be argued that if these words are not incorporated in the clause, all State legislation enacted prior to the passing of the Act and levying sales taxes on commodities enumerated in the schedule may stand in danger of being automatically declared to be null and void, and it may create new problems and difficulties. If this is so, it will only mean that some measures may have to be devised to prevent any sudden and serious dislocation in the financal structure of the States. We concede that it may have to be done. But the addition of the words in question far exceeds the limitations of what, after all, can only be a claim for some accommodation and adjustment.

4. Two points are, in our opinion, quite clear; firstly, that the policy of uniformity of taxation in this particular sphere, brought about by and flowing out of central control, can be taken to have been laid down in the Constitution by virtue of Article 286 and, secondly, that the Constitution does not contain any saving clause exempting pre-existing State legislation from the operation of Article 286. On the contrary, the language of Article 286, clause 3, appears so unconditional and decisive that the operation of the clause seems to be intended to take retrospective effect.

5. And, after all, if there is any doubt or ambiguity in regard to the interpretation of the sub-clause as it exists in the Constitution, the proper course is to have it interpreted by the highest Judicial authority *viz.* the Supreme Court, and not allow it to be materially altered by an ordinary law of Parliament. We, therefore, definitely suggest that the words "made after the commencement of this Act" be deleted from clause 3 of the Essential Goods (Declaration and Regulation of Tax on sale or purchase) Bill, 1952.

TULSIDAS KILACHAND.

G. D. SOMANI.

NEW DELHI;

The 18th July, 1952

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee; asterisks indicate omissions).

A

BILL

to declare, in pursuance of clause (3) of article 286 of the Constitution, certain goods to be essential for the life of the community.

BE it enacted by Parliament as follows :—

1. Short title.—This Act may be can of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952.

2. Declaration of certain goods to be essential for the life of the community.—The goods specified in the Schedule are hereby declared to be essential for the life of the community.

3. Regulation of tax on sale or purchase of essential goods.—No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

THE SCHEDULE

[*See* section 2.]

Goods declared essential for the life of the community

1. Cereals and pulses in all forms, including bread and flour, including atta, maida, suji and bran (except when any such article is sold in sealed containers).

2. Fresh and dried fruits, sugar-cane, coconuts, vegetables, edible tubers, vegetable and flower seeds, bulbs and plants, * * * excluding orchids (except (i) any medicine prepared from any one or more of such articles; and (ii) when any such article is sold in sealed containers).

3. Fresh milk, whole or separate, and milk products, including butter, ghee, chana, khoa, but excluding sweetmeats.

4. Meat, fish and eggs (except when any such article is sold in sealed containers).

5. Edible oils, and oilseeds from which edible oils are extracted.

6. Gur.

7. Salt.

8. All cloth woven on hand-looms, coarse and medium cotton cloth made in mills or woven on power-looms.

Explanation 1.—"Coarse cloth" means any cloth in which the count of warp yarn employed (excluding the border) is below 17s. (whether single or folded).

Explanation 2.—"Medium cloth" means any cloth in which the count of warp yarn employed (excluding the border) is 17s. or finer but is less than 35s. (whether single or folded).

9. Raw cotton, including ginned and unginned cotton or kapas, ***** cotton thread, cotton yarn, cotton seeds, jute seeds, raw jute, * sun-hemp, and mesta.

10. Hides and skins.

11. Fertilisers and manures, agricultural machinery and implements, including parts of such machinery and implements.

12. Cattle feeds.

13. Coal including coke and other derivatives, petroleum and petroleum products, including kerosene and motor spirit * * *.

14. Iron and steel.

15 Books, exercise books and periodical journals.

16. Antibiotics and sulpha drugs.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Essential Goods (Declarati. n and Regulation of Tax on Sale or Purchase) Bill, 1952

(As amended by the Select Committee)

GIPD—LAD—342 P. S.—22-7-52—600

HOUSE OF THE PEOPLE

THE NOTARIES BILL, 1952.

(REPORT OF THE SELECT COMMITTEE)

PARLIAMENT SECRETARIAT
NEW DELHI.
July, 1952.

THE NOTARIES BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Shri Hari Vinayak Pataskar—*Chairman.*
Shri N. C. Chatterjee.
Shri Kamal Kumar Basu.
Dr. A. Krishnaswami.
Shri Rayasam Seshagiri Rao.
Shri B. S. Murthy.
Shri Munishwar Dutt Upadhyay.
Shri Balwant Nagesh Datar.
Shri Nemi Chandra Kasliwal.
Shri Narendra P. Nathwani.
Shri Chimanlal Chakubhai Shah.
Shri Nageshwar Prasad Sinha.
Shri Khushi Ram Sharma.
Shri S. V. Ramaswamy.
Shri C. C. Biswas, and
Shri Kotha Raghuramaiah.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to regulate the profession of notaries was referred, have considered the Bill and I now submit this their report, with the Bill as amended by the Committee annexed thereto.

Clause 2.—In order to make the definition of "instrument" in clause 2(b) more comprehensive, the committee think that it will be better to insert the words "modified" and "suspended" therein and have amended clause 2(b) accordingly.

In the definition of "legal practitioner" in clause 2(c), the committee think that agents of the Supreme Court should be specifically included and have also slightly redrafted the clause to make the intention clear.

The committee are of opinion that notaries public who were appointed either under the Negotiable Instruments Act, 1881, or by the Master of Faculties in England should be allowed to practise for at least two years instead of one year without being appointed as notaries under this Act. The proviso to clause 2(d) has been modified accordingly.

Clause 3.—The committee are of opinion that it is not desirable to discriminate among notaries and to appoint some notaries to perform only a limited class of functions and not all the functions mentioned in clause 8. The words "on such conditions, if any, as it thinks fit", have been omitted accordingly.

The committee further hold that the qualifications which a notary should possess should be prescribed by rules. The clause has been amended accordingly.

Clause 5.—The committee consider that it shall not be necessary for a person who has been appointed a notary under this Act to file an application to have his name entered in the register. The clause has been amended accordingly.

The committee recommend that persons who were appointed as notaries public on payment of fees should not be made liable to pay the prescribed fees under this clause and exemption should be granted to them under clause 15(2)(c).

Clause 8.—The committee consider that it should be specifically stated that notaries may demand better security and clause 8(1)(b) has been amended accordingly.

As notaries cannot be appointed under clause 3 to perform only a limited class of functions, the proviso to clause 8(1) is unnecessary and has been omitted.

Clause 9.—The proviso to clause 9(1) has been re-drafted to make the intention clear.

The amendment made to clause 9(2) is only a consequential one.

New clause 13.—The committee consider that protection should be given to notaries in respect of cognizance of offences. They think that such protection should be given only to notaries who commit an offence acting or purporting to act in the discharge of their functions under this Act. This clause has been inserted to achieve this object.

Clause 15 (original clause 14).—The committee consider that the qualifications which a person should possess for being appointed as a notary should be prescribed by rules and have amended clause 15(2)(a) accordingly.

Clause 15(2)(c) has been amended to make the intention clear that exemption from payment of fees may be either partial or full.

Clause 16 (original clause 15).—The definition of "notary" in the Negotiable Instruments Act has become superfluous as the power to appoint notaries under that Act has been taken away. The definition of "notary" in section 3 of that Act has, therefore, been omitted and this clause has been amended accordingly.

2. The Bill was published in Part II—Section 2 of the Gazette of India, dated the 24th May, 1952.

3. The committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

NEW DELHI;
18*th July*, 1952.

H. V. PATASKAR.
Chairman of the Select Committee.

THE NOTARIES BILL, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to regulate the profession of notaries.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement. (*1*) This Act may be called the Notaries Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "India" means the territories to which this Act extends;

(*b*) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded;

(*c*) "legal practitioner" means any advocate or agent of the Supreme Court or any advocate, vakil or attorney of * * * any High Court or any pleader authorised under any law for the time being in force to practise in any court of law;

(*d*) "notary" means a person appointed as such under this Act:

Provided that for a period of two years from the commencement of this Act it shall include also a person who, before such commencement, was appointed a notary public either under the Negotiable Instruments Act, 1881 (XXVI of 1881), or by the Master of Faculties in England, and is, immediately before such commencement, in practice in any part of India;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*) "Register" means a Register of Notaries maintained by the Government under section 4;

(*g*) "State Government", in relation to a Part C State, means the Lieutenant Governor, or, as the case may be, the Chief Commissioner.

3. Power to appoint notaries.—The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may * * * appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed.

4. Registers.—(*1*) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

(*2*) Every such Register shall include the following particulars about the notary whose name is entered therein, namely:—

(*a*) his full name, date of birth, residential and professional address;

(*b*) the date on which his name is entered in the Register;

(*c*) his qualifications; and

(*d*) any other particulars which may be prescribed.

5. Entry of names in the Register and issue or renewal of certificates of practice.—(*1*) Every notary who intends to practise as such shall, on * * * payment to the Government appointing him of the prescribed fee, if any, be entitled—

(*a*) to have his name entered in the Register maintained by that Government under section 4, and

(*b*) to a certificate authorising him to practise for a period of three years from the date on which the certificate is issued to him.

(*2*) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time.

6. Annual publication of lists of notaries.—The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

7. Seal of notaries.—Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

8. Functions of notaries.—(*1*) A notary may do all or any of the following acts by virtue of his office, namely:—

(*a*) verify, authenticate, certify or attest the execution of any instrument;

(*b*) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;

(*c*) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;

(*d*) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

(*e*) administer oath to, or take affidavit from, any person;

(*f*) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;

(*g*) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(*h*) translate, and verify the translation of, any document from one language into another;

(*i*) any other act which may be prescribed.

* * * * * *

(*2*) No act specified in sub-section (*1*) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

9. Bar of practice without certificate.—(*1*) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5:

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(*2*) Nothing contained in sub-section (*1*) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in the proviso to clause (*d*) of section 2.

10. Removal of names from Register.—The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he—

(*a*) makes a request to that effect; or

(*b*) has not paid any prescribed fee required to be paid by him; or

(*c*) is an undischarged insolvent; or

(*d*) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary.

11. Construction of references to notaries public in other laws.—Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act.

12. Penalty for falsely representing to be a notary, etc.—Any person who—

(*a*) falsely represents that he is a notary without being appointed as such; or

(*b*) practises as a notary or does any notarial act in contravention of section 9,

shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

13. Cognizance of offence.—(*1*) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(*2*) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.—If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by

notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

15. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.—

(*a*) the qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;

(*b*) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;

(*c*) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption, whether wholly or in part, from such fees in specified classes of cases;

(*d*) the fees payable to a notary for doing any notarial act;

(*e*) the form of Registers and the particulars to be entered therein;

(*f*) the form and design of the seal of a notary;

(*g*) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;

(*h*) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;

(*i*) any other matter which has to be, or may be, prescribed.

16. Amendment of Act XXVI of 1881.—In the Negotiable Instruments Act, 1881,—

(*i*) in section 3, the definition of "notary public" shall be omitted;

(*ii*) Chapter XVII shall be omitted.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Notaries Bill, 1952

(As amended by the Select Committee)

GIPD—LAD—543 PS—22-7-52—600

HOUSE OF THE PEOPLE

THE COMMISSIONS OF INQUIRY BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT
NEW DELHI
July, 1952

THE COMMISSIONS OF INQUIRY BILL, 1952

MEMBERS OF THE SELECT COMMITTEE.

Dr. Kailas Nath Katju—*Chairman.*
Shri N. Somana.
Shri Nandlal Joshi.
Pandit Mukut Bihari Lal Bhargava.
Shri H. C. Heda.
Shri Shankargauda Veerangauda Patil.
Shri Narendra P. Nathwani.
Shri K. G. Deshmukh.
Shri Jagannath Kolay.
Shri Kamakhya Prasad Tripathi.
Shri Tek Chand.
Shri Pannalal R. Kaushik.
Shri M. L. Dwivedi.
Shri Tribhuan Narayan Singh.
Shri Banarsi Prasad Jhunjhunwala.
Shri Shiva Datt Upadhyaya.
Shri Rayasam Seshagiri Rao.
Dr. N. M. Jaisoorya.
Shri P. T. Punnoose.
Shri Umashankar Muljibhai Trivedi.
Shri Hukam Singh.
Shri K. S. Raghavachari.
Shri Frank Anthony.
Shri G. D. Somani.
Shri Bhawani Singh.
Shri Tulsidas Kilachand.
H. H. Maharaja Rajendra Narayan Singh Deo.
Shri B. Shiva Rao.
Shri Tekur Subrahmanyam.
Dr. Panjabrao S. Deshmukh.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers was referred to, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed thereto.

Upon the changes proposed, which are not formal or consequential, it may be noted as follows:—

Clause 3.—The Committee think that a time limit within which a Commission should complete its inquiry and submit its report should be specified in the notification appointing the Commission.

Clause 3(1) has been amended accordingly.

Under the existing proviso to clause 3(1), it is not competent for any State Government, except with the approval of the Central Government, to appoint a State Commission to inquire into any matter which is being already inquired into by a Central Commission for so long as that Central Commission is functioning and for two years thereafter. The Committee consider that the restriction imposed on a State Government to appoint a Commission for two years even after the Central Commission has ceased to function is unnecessary and should be omitted. They are further of opinion that there should also be a prohibition on the Central Government to appoint a Central Commission when a State Commission is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States. The proviso to clause 3(1) has been re-drafted to achieve this object.

Clause 4.—The Committee think that the Commission should also be empowered to requisition copies of public records. Clause 4(1)(d) has been amended accordingly.

New Clause 5 [original clauses 4(2), 4(3) and 4(4)].—The Committee are of opinion that it is not necessary to vest in all the Commissions appointed under section 3 all the powers referred to in sub-clauses (2) to (4) of clause 4. If, however, the appropriate Government is satisfied, having regard to the nature of the inquiry and other circumstances of the case, that such powers should be vested in any particular Commission, the appropriate Government may, by notification, vest such powers in that particular Commission. Clause 5(1) has been inserted for the aforesaid purpose.

In clause 5(3), the Committee think that no officer below the rank of a gazetted officer should be authorised by the Commission to have the powers of search and seizure. Clause 5(3) has been amended accordingly.

The Committee consider that sub-clauses (5) and (6) of clause 4 should be inserted as separate clauses. They have been inserted as new clauses 8 and 10.

Subsequent clauses have been re-numbered.

New Clause 8.—This clause reproduces the provisions of the original clause 4(5).

New Clause 9.—The Committee consider that protection should be given to the Government and the Commission and every member or officer of the Commission in respect of action taken in good faith. This clause has been inserted to achieve this object.

New Clause 10.—This clause reproduces the provisions of the original clause 4(6).

Re-numbered Clause 11.—The Committee consider that even under this clause, the appropriate Government should specify in the notification whether all or only some of the provisions of this Act should apply to a particular inquiring authority. This clause has also been slightly re-drafted to make the intention clear.

2. The Bill was published in the *Gazette of India*, Part II, Section 2, dated the 7th June, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be now passed as amended.

KAILAS NATH KATJU,
Chairman of the Select Committee.

NEW DELHI;
The 25th July, 1952.

MINUTE OF DISSENT

I am in general agreement with the report except in the particular mentioned below.

The power similar to those contemplated in clause 5(3) of this Bill may be necessary only to prevent evasion of taxation. This Bill is not expected to cover such cases. So clause 5(3) may be omitted as it is unnecessary.

K. S. RAGHAVACHARI.

NEW DELHI;
The 25th July, 1952.

THE COMMISSIONS OF INQUIRY BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(*1*) This Act may be called the Commissions of Inquiry Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means—

(*i*) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution; and

(*ii*) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution;

(*b*) "Commission" means a Commission of Inquiry appointed under section 3;

(*c*) "prescribed" means prescribed by rules made under this Act.

3. Appointment of Commission.—(*1*) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter—

(*a*) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint

another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(*b*) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

4. Powers of Commission.—*The Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of any document;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) any other matter which may be prescribed.

5. Additional Powers of Commission.—(*1*) Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (*2*) or sub-section (*3*) or sub-section (*4*) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(*2*) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry.

(*3*) The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898 (Act V of 1898) in so far as they may be applicable.

(4) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898) and any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860).

* * * * * *

6. Statements made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(*a*) is made in reply to a question which he is required by the Commission to answer, or

(*b*) is relevant to the subject matter of the inquiry.

7. Commission to cease to exist when so notified.—The appropriate Government may, if it is of opinion that the continued existence of a Commission is unnecessary, by notification in the Official Gazette, declare that the Commission shall cease to exist from such date as may be specified in this behalf in such notification, and thereupon, the Commission shall cease to exist.

8. Procedure to be followed by the Commission.—The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members.

9. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the appropriate Government, the Commission or any member thereof, or any person acting under the direction either of the appropriate Government or of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the appropriate Government or the Commission, of any report, paper or proceedings.

10. Members, etc. to be public servants.—Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

11. Act to apply to other inquiring authorities in certain cases.—Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government for the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions

of this Act should be made applicable to that authority, that Government may, subject to the prohibition contained in the proviso to sub-section (*1*) of section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification, that authority shall be deemed to be a Commission * * appointed under section 3 for * the purposes of this Act.

12. Power to make rules.—(*1*) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the term of office and the conditions of service of the members of the Commission;

(*b*) the manner in which inquiries may be held under this Act and the procedure to be followed by the Commission in respect of the proceedings before it;

(*c*) the powers of civil court which may be vested in the Commission;

(*d*) any other matter which has to be, or may be, prescribed.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers.

(As amended by the Select Committee)

GIPD—LAD—575 PS—26-7-52—1,400

HOUSE OF THE PEOPLE

(4)

THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

(Report of the Joint Committee)

PARLIAMENT SECRETARIAT
NEW DELHI

July 1952.

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THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

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Acharya Narendra Deva.

Shri Osman Sobhani.

Shri P. Sundarayya.

Report of the Joint Committee

The Joint Committee to which the Bill further to amend the Preventive Detention Act, 1950, was referred have considered the Bill, and I now submit this their Report with the Bill as amended by the Committee annexed thereto.

2. The procedure followed by the Joint Committee in the consideration of the Bill was to consider in the first instance the provisions contained in the several clauses of the amending Bill and any further amendments directly arising out of such provisions and thereafter to consider any further amendments which may be proposed to the parent Act.

3. Upon the changes made in the Bill, the Joint Committee note as follows:—

Clause 4.—The words limiting the particulars to be furnished by the officer under sub-section (3) of section 3 to such particulars as have a bearing on the necessity for the order have been omitted so that the officer concerned would be required to furnish to the State Government all particulars which in his opinion have a bearing on the matter. The Joint Committee have also reduced the period within which the approval of a State Government should be obtained from fifteen days to twelve days.

Clause 6.—This new amendment is being inserted to ensure that the disclosure to the detenu of the grounds of the order is made not later than five days from the date of the detention.

Clause 7.—This is a new clause. The Joint Committee feel that there should be a Chairman for every Advisory Board who should be a person who is or has been a Judge of a High Court and provision has been made accordingly. It is also provided that in the case of a Part C State, the Judge of the High Court of a Part A or a Part B State may be appointed as Chairman with the approval of the State Government concerned. Incidentally, the proviso to sub-section (2) of section 8 is being omitted as spent.

Clause 8 (New).—The Joint Committee have reduced the period within which a reference to the Advisory Board has to be made from six weeks to thirty days and have omitted clause (a) of sub-section (2) of section 9 as spent. The whole of section 8 has been re-drafted accordingly.

Clause 9.—The further amendments proposed are consequential upon the amendments to sections 9 and 10(1).

Clause 10.—The Joint Committee think that the new section 12A may be more appropriately numbered as section 11A.

Clause 11.—The Joint Committee have completely recast sub-section (2) of section 13 so as to make it clear that a fresh detention order can be

passed against a person only on the basis of fresh facts arising after the date of the revocation or expiry of the last detention order.

4. The Bill was published in Part II, Section 2 of the *Gazette of India* dated the 19th July, 1952.

5. The Committee think that the Bill has not been so altered as to require circulation, and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.
Chairman of the Joint Committee.

NEW DELHI;

The 30th July, 1952.

Note

The Preventive Detention (Second Amendment) Bill 1952 has been most carefully examined in the Joint Select Committee with a double objective namely to see first of all whether the continuance of this extra-ordinary piece of legislation is necessary and if so for what period, and in the second place what safeguards can be incorporated in order to avoid both hardship and injustice.

Under British rule, during the leadership of Pandit Motilal Nehru, similar legislation was opposed by the Swarajya Party on the basis firstly that the foreign Government ruling our country had no sanction of the people behind it and secondly it was, keeping the principles of non-violence as enunciated by Mahatma Gandhi, in view, the bounden duty of all of us to do whatever lay in our power by legitimate means to subvert the alien government ruling over us.

Now it cannot be said today that the Government of the day or the various State Governments have no sanction behind them. These Governments are the creation of the peoples' will, and therefore any attempt to subvert such Governments is no longer a patriotic duty as in the days before the achievement of independence, but on the contrary an act of treason and disloyalty to the nation. Further there are political groups active in the country which no longer believe in the creed of non-violence and whose declared policy appears to be to do whatever lies in their power to subvert the Peoples' Governments established under the law of the land.

In such a case, therefore, it has become necessary however abhorrent and extraordinary the legislation may be, to prevent individuals and groups from acting in a manner prejudicial to the maintenance of law and order, or to the maintenance of Essential Supplies and Services required by the nation or to the continued existence of the Constitution adopted by the nation. It is necessary, of course, that due safeguards should be adopted to see that the maximum protection is given to an individual against whom action is taken. For this purpose it has been made possible, if the person so desires, for him to appear in person before the Advisory Board, and challenge the material put before him and argue his case. This is an important advance on the previous position. Further no longer will the Officer ordering the arrest be capable of holding back any relevant material from the Government whether favourable to the detenue or otherwise. Since all such relevant material which in his opinion bears upon the matter must be placed before the Government concerned. Finally no longer will it be possible for a fresh order to issue against the detenue unless it is based on fresh material.

In my opinion the working of this measure should be carefully watched and the measure amended in the light of experience gained during the next twelve months.

D. CHAMAN LALL.

NEW DELHI;

The 30th July, 1952.

Minutes of Dissent

I

We are unable to assent to the majority Report of the Joint Select Committee as we are convinced that the refusal by the majority to amend any section or any part of the Principal Act (Act No. IV of 1950) is a

grave mistake and is bound to create unfavourable impression in the country. All lovers of liberty and upholders of 'rule of law' will regret that detention without trial and without the essential attributes of a fair hearing is to be continued in Free India.

2. When the Prime Minister responded to the appeal of the Opposition, he announced in the House of the People that the Select Committee should go thoroughly not only into the Bill but also into the principal Act.

3. Accordingly instructions were given by the House to the Select Committee on the basis of Sardar Hukam Singh's suggestion that the Select Committee should consider all amendments even to those sections of the principal Act of 1950 which were not sought to be amended by the present Bill sponsored by the Home Minister.

4. We regret to say that we are disappointed. We expected that the Committee would approach the consideration of the entire measure with an open mind and would permit modification of the much criticised and retrogade features of the principal Act. But not one of the amendments suggested by the Members of the Opposition to the principal Act was accepted. We should record that even the sober and reasoned recommendations of the All-India Civil Liberties Council with regard to affording full information to the detenu, providing facilities for legal assistance, calling of evidence and the modification of section 3 of the principal statute as to "prejudicial" acts so as to make impossible the use of the Act as against political parties were all turned down by the Committee.

5. We pressed hard that at least in peace time the preventive detention law in India should not be more drastic than what the analogous law was in England during war time. Surely it is not too much to ask that India should today pay at least as much respect to preserve liberty in peace time as England did in war. We put forward suggestions that the power of detention should not be left to the unfettered discretion of an executive or police officer, but should be consigned to the satisfaction of a responsible member of the Cabinet, *viz.*, the Home Minister as was provided in Regulation 18B of the Defence of the Realm Regulation, 1939. But we regret to say that the majority turned down this proposal.

6. We made our position clear on the floor of the House that we did not accept the principle of the Bill and were not committed to anything. We were, however, prepared to consider the desirability of extending the Preventive Detention Act with suitable amendments, provided the Honourable the Home Minister gave us facts and figures to justify the continuance of this measure which is repugnant to the principles of democracy and the fundamental postulates of justice. We regret to say that we got no facts and figures. We were supplied by the Honourable Minister with a statement showing the number persons released on the advice of the Advisory Boards and the number of detentions upheld by the said Boards and the number of releases ordered by the Government *suo moto* during the period from 22nd February 1951 to 31st May 1952. During this period the Advisory Boards ordered the release of 1241 detenus. The Advisory Boards upheld the detention of 3206 persons. Out of this the Government ordered the release *suo moto* of 1889 persons. Thus 1319 persons were kept under detention at the end of the said period. The very fact that about 30 per cent. of the persons ordered to be detained were released by the Advisory Boards in spite of the unsatisfactory procedure and lack of opportunity of fair hearing, shows that the principal Act deserved drastic

amendment so as to eliminate the possibility of innocent persons being deprived of their liberty on the mere information of informers on whose report the executive or the police officers have to take action under section 3 of the Preventive Detention Act.

7. The principal points on which we should draw the attention of the Parliament and should recommend that suitable modifications of amendments of the Act and the Bill should be effected are as follows:—

(*1*) *Legal Aid.*—The three essentials for a proper functioning of an investigating body or tribunal are (a) that full information concerning the facts and circumstances in which the detenu has been ordered to be detained should be made available to him; (b) that the detenu should be allowed to appear in person or by legal parctitioner of his choice to put forward his defence; and (c) that he be allowed to call evidence and cross-examine witnesses.

None of these pre-requisites of a fair and free enquiry are provided by the Preventive Detention Act as sought to be amended by the present Bill. All these conditions were satisfied to an appreciable extent under the procedure adopted by the Advisory Committee in England.

We recognise that the prohibition of personal attendance has been relaxed but the ban on legal assistance is still maintained. It is wholly unsustainable and should be removed.

We cannot possibly subscribe to the amazing doctrine propounded that the detenus can put up their defence properly before the Advisory Board which will be in effect a quasi-judicial tribunal. From our experience we note that for the majority of detenus it is not possible to put their cases properly before the court, and the Supreme Court and the High Courts had often to provide counsel to argue the cases *amicus curice*. In England competent persons have pointed out that the majority of the detenus are quite incapable of presenting their own cases. In India having regard to the standard of literacy and the lack of training it is impossible for the detenus to present thier own cases before the Advisory Boards. Mr. C. K. Allen in his well-known work on 'Law and Orders' states as follows:—

> "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."

The English practice will be seen from the statements of responsible ministers in the British House of Commons. "The Advisory Committee have before them all the evidence which is 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".—Home Secretary (October, 31, 1939) "Witnesses can be called, and are called in many of these cases"—Home Secretary (July 23, 1941).

(*2*) *Composition of the Advisory Boards.*—We pressed for the amendment of the Act so that the Advisory Board shall consist of a sitting Judge of the High Court who shall be the Chairman of the said

Board. But even this recommendation was not accepted and a person who is a Judge or had been a Judge of a High Court is going to be appointed as Chairman of the Board.

(3) *Family Allowance.*—We pressed very strongly for the grant of family allowance to the detenue. It is the barest minimum justice which the State depriving a person of liberty merely on suspicion can render to him. Detenus have been detained without trial and kept behind the prison bars for months and years and it is only fair that such allowance should be paid to the members of their families who are dependent on him for their subsistence. Even under Regulation III of 1818 family allowance was provided. There was good deal of criticism when leading members of the Congress were detained under Preventive Detntion statutes or regulations and adequate family allowances were not granted. Our national Government should not imitate the practice of the imperialist rulers.

(4) *Operation and extent of the Act.*—We put forward amendments suggesting that the Act should be extended only to such areas as would require the application of the Act. Such a drastic statute need not apply to the whole of India and if any particular area or State wants such drastic powers for dealing with an emergency then it should be applied to that State and that area. Even this suggestion was turned down.

(5) *Restriction of the scope of prejudicial acts.*—We wanted that the very vague expression "public order" which is a term of widest amplitude should be deleted. This will eliminate the possibility of abuse of the statute. We also desired the deletion of "the relations with foreign powers because this may be used as a handle for checking justifiable criticism of India's policy towards certain foreign States. But our suggestions were negatived.

(6) *Placing of material before the Advisory Board.*—We earnestly pressed an amendment so that all materials available to the Government should be placed before the Adviosry Board and the same should also be made available also to the detenue so that the person who has been deprived of his liberty should have a fair chance of proving his innocence. The withholding of information considered by the detaining authority against the public interest to disclose the same is unknown in any country. The Chief Justice of the Bombay High Court in one case depricated the way grounds were furnished to the detnus:—

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

8. We consider the following amendments to the principal Act as incorporating the essential safeguards against the possible abuse of the statute:—

Section 1.—Short Title, extent and duration.—Sub-section (2): The Act should not be made applicable to the whole of India all at once. It should be applied to such States or parts or areas which in the opinion of

the Central Government require having regard to the special conditions prevailing therein the application of such an extraordinary measure.

Sub-section (3). The duration of the Act should in no case extend beyond one year from the 1st October 1952 and the Parliament must have an opportunity of reviewing the whole position in the country next year, to decide whether really any emergency exists to justify the prolongation of this measure.

Section 3.—Power to make orders detaining certain persons.—We suggest that this section should be substantially altered to restrict the scope of possible abuse and to curtail the ambit of power of the executive or the police officers concerned to order detention.

We suggest the deletion of the words "the relations of India with foreign powers" in item (i) of sub-clause (a) of sub-section (i) of section 3.

We also suggest the deletion of the words "or the maintenance of public order" in item (ii) of sub-clause (a) of sub-section (1) of section 3.

We propose the substitution of the following sub-section in place of present sub-section (2):—

"(2) The power conferred by sub-section (1) of section 3 shall be exercised by the Minister for Home Affairs of the Central Government or by the Home Minister of a State Government or, in a State where there is no ministry, by an officer of the State Government specially authorised in that behalf;

Provided that the Minister passing an order of detention has reasonable cause to believe that the person against whom the said order is going to be passed has been recently concerned in acts prejudicial to matters mentioned in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1) aforesaid or in the preparation or instigation of such acts and by reason thereof it is necessary to exercise control over him."

Section 4.—Power to regulate place and condition of detention.—In clause (a) we propose the insertion of "family allowance" after the word "maintenance".

Section 7.—Grounds of detention to be disclosed to persons affected by the order.

We suggest the deletion of sub-section (2).

It is not fair to keep back any relevant facts from the detenu. Otherwise, the right to make representation to the Advisory Board will be rendered ineffective or nugatory.

Section 8.—Constitution of Advisory Boards.—We propose that the section should be altered as follows:—

For sub-section (2) of section 8, the following shall be substituted namely:—

A. "(2) Every such Board shall consist of

(*a*) A Judge of a High Court who shall be the Chairman of the said Board; and

(*b*) Two other persons who have been or are qualified to be appointed as Judges of the High Court."

B. After sub-section (2) of Section 8 *add*:—

"(3) The Judge of the High Court who shall act as Chairman of the Board as aforesaid shall be appointed by the Chief Justice of the High Court concerned and the other persons shall be appointed by the Central Government or the State Government as the case may be."

Section 9.—Reference to Advisory Boards.—In section 9— after the words "the grounds on which the order has been made" *add* "and all the materials in the possession of the said Government on which the order of detention has been made."

Nothing should be kept back from the Advisory Board.

Section 10.—Procedure of Advisory Boards.

We strongly recommend that the detenu should not only be given a chance of appearance before the Advisory Board but he should in all cases be given the right to have his case represented by a lawyer.

9. We also recommend that the detenu and his lawyer shall be permitted to call evidence and to cross-examine witnesses.

N. C. CHATTERJEE
SARANGADHAR DAS
S. S. MORE
JASWANT RAJ MEHTA
A. KRISHNASWAMI
HUKAM SINGH

NEW DELHI;
The 30th July, 1952.

II

We are generally in agreement with the minute of dissent signed by Shri N. C. Chatterji, Shri S. S. More and other colleagues. We wish, however, to make the following supplementary observations on this important matter:—

(1) We are opposed to the underlying principle of the amending Bill as it is repugnant to the right of freedom and inviolability of the individual guaranteed to all citizens of the state. Freedom of person is a valuable right cherished by all freedom-loving persons, and every democratic and progressive constitution ensures the personal liberty of the subject. In Britain and the U.S.A. liberty of person is restricted or withheld only when an emergency has been declared. Preventive Detention in these two countries has been authorised only when war is imminent or hostilities have actually broken

out *i.e.*, only when there is a clear threat to national security. In these countries it is always a war time measure. Unfortunately our constitution has more or less followed the retrograde Government of India Act, 1935, and therefore in those Articles of the Constitution which deals with fundamental rights, has tried to restrict and limit them at the same time.

(2) The Preventive Detention Act is a peace time measure and the life of the Act is sought to be extended for another two years although there has been admittedly a marked improvement in the situation.

(3) One of the objectives of the Act is also the suppression of the goondas and black-marketeers. But the ordinary law of the land should be enough to meet the menace of these classes. The existing law could be made more strigent and drastic. Nobody has ever heard of a preventive detention act being enacted to meet such a menace. With the exception of one or two states, the position of law and order is quite normal and there is no interference on any appreciable scale with the supplies of commodities which are essential for the life of the community. In Britain an Emergency Powers Act was passed in 1920 to secure commodities which are essential for the life of the community. In order that the Act should be put into operation it was necessary that His Majesty should issue a proclamation of emergency. The proclamation remained in force for a month only. Regulations that were framed in pursuance of the Act provided for trials by courts of summary jursidiction and the maximum sentence awarded was three months only. It is therefore evident that at least in this matter the Government are not guided by wholesome British practice and precedent and are enacting an obnoxious measure which, without sufficient cause and justification constitutes an undue interference with personal liberty of the subject.

(4) It is also significant that some of the safeguards which were considered essential in Britain and the U.S.A. in the interest of personal liberty of the subject even in war time are not being provided in the present Bill for the protection of the detenu even when it is a peace time measure. It is not enough that the Government should advise the detenue of the specific grounds for his detention, but should also give him notice of such further facts presented to the Advisory Board. The detenue should also be given sufficient opportunity to prepare his defence, and if he feels it is necessary that he should be allowed to consult a counsel of his choice in the preparation and defence of his case, he should be permitted to do so. The detenue should also have the right to produce witnesses and submit such documentary evidence as may be considered relevant to his defence. The American Emergency Detention Act however goes much further. It is the Attorney General who issues the warrant; the person arrested is brought before a preliminary hearing officer, who is to issue a detention order if he finds that probable cause

for detention exists. The accused is given opportunity to consult counsel, allowed to present evidence in his own behalf and permitted to cross-examine his accusers. 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 information. If it is not in public interest that a certian fact be disclosed, we do not insist that such a fact be furnished to the detenue, but all other material facts which are supplied to the Advisory Board should be given to the detenu without disclosing the source of information. In the U.S.A. there has to be also a Detention Review Board which reviews the detention order passed by the preliminary hearing officer and in such a case the Attorney General must supply to the detenu all particulars including the identity of informants, subject of course to the national security proviso. The detenu has also got the right to seek a judicial review of an order of the Board confirming detention.

(5) The present Bill, however, does not take sufficient care to protect the rights of the citizen as against the State. It is eminently desirable that increased protection should be provided to the individual specially when the situation is not abnormal and is continuously improving instead of deteriorating. In the absence of such safeguards the danger is that innocent persons may be deprived of their personal liberty against the officers who are responsible for their arrest and detention.

(6) Again it is stated in the Bill that the maximum period of detention shall be twelve months from the date on which the order of detention has been confirmed. The maximum period within which the Advisory Board may submit its report to the appropriate Government is ten weeks and some more time will elapse before the confirmation takes place. It is, therefore, recommended that the maximum period shall be counted from the date of arrest and not from the date of confirmation of the detention order and shall not exceed 6 months.

(7) The Government has been given the right to issue a fresh order of arrest and detention against the same person after release, on the basis of fresh facts and in view of this additional power it is quite unnecessary to keep a person in detention for a very long period.

(8) In our opinion the life of the Act shall not be extended beyond one year.

NARENDRA DEVA

SARANGADHAR DAS

K. A. DAMODARA MENON

NEW DELHI;

The 30th July, 1952.

III

We the undersigned are forced to submit this note of dissent from the majority report, to the Parliament. on the Preventive Detention Bill referred to the Joint Select Committee.

We do hold that the very principle of detention without trial is abhorrent to the canons of civilised democratic administration. Yet, Detention Acts have been a regular feature throughout the Congress Administration, for the last five years. Thousands of citizens are put under detention, some for more than 3 or 4 years. during the last five years. The Government is not satisfied with the ample powers provided to it under Criminal Procedure Code, Indian Penal Code, Criminal Law Act and such other measures. It has become the habit of the Government to bypass the Courts and resort to Preventive Detention. As such when for the first time, this black Act comes before the elected Parliament, for a further lease of life, it is only proper that the representatives of the people must be very reluctant to agree to such a measure unless there are sufficient grounds for enacting such an Act.

We do hold that the situation in India does not warrant any extention of the Preventive Detention Act. There is no internal disturbance worth mentioning nor the situation is such that it can be remotely said that there is a threat to the security of India or any part of it or even to the maintenance of public order and maintenance of essential supplies and services. Ordinary demands of the people for radical agrarian reforms for living wage and security of jobs, for food and shelter, instead of being tackled by measures that would be beneficial to the vast masses of the Indian people, are being met by the repressive measures and by resorting to Preventive Detention. The only conclusion that can be drawn, is that the Government is arming itself with this power of detention to preserve and safeguard the landlord and big monopoly interests in the country and to suppress the peoples' genuine interests.

In the Joint Select Committee, we have moved amendments to restrict the scope and duration of this Black Preventive Detention Act and also amendments that would have afforded some protection to the detenue from the tender mercies of the Governmental machinery, but none of these have been accepted.

Preventive Detention only in Emergency

1. We do hold that the Preventive Detention Act should come into force only when the President of Indian Republic proclaims an emergency under Article 352 of the Constitution in whole of India or any part of it, as he may by notification declare from time to time.

Even a modest amendment that the Preventive Detention Act must be applied only when the Government declares any area a disturbed area was not acceptable to the majority which only goes to show that the Government instead of relying on ordinary process of law, wants to continue its policy of relying on Preventive Detention.

Not satisfaction of the Officer but sufficient proof must exist for detention.

2. To prevent the abuse of Preventive Detention Act, we suggested that there should be sufficient proofs in the hands of the Government that the person concerned is going to commit overt acts, before it can pass a detention order.

The majority refused to accept this. They held mere satisfaction of the Officer concerned as sufficient. They even rejected another amendment that the detention order must be passed only if the officer concerned is satisfied on the basis of reasonable evidence in his possession. Their whole anxiety is, not to allow, this arbitrary detention from being questioned by the Courts of the Land. When the Government is given powers to detain a person on certain grounds, it is but proper that the Courts be empowered to look into the matter whether the grounds adduced by the Government are sufficient to detain a person. This is not debarring the Government from detaining persons without trial but once these powers are granted the right of Courts to look into the grounds of detention, is only a safeguard to see that the Government does not misuse those powers.

Grounds of detention:

3. The grounds for which detention can be ordered should be sufficiently grave and as such that they cannot be dealt with under the ordinary laws of the land. Yet our amendments to omit as grounds of detention the maintenance of public order, or the maintenance of essential supplies and services were rejected. It is a well known fact that Preventive Detention was extensively used to throttle public agitation for redressal of genuine grievances under the plea of maintenance of public order. Similarly many a Trade Unionist were arrested and detained only because they were organising workers and get their grievances removed (redressed) or leading working class strike struggles. The Government's plea has always been that they are interfering with the maintenance of essential supplies and services. Under the head of essential services, every conceivable branch of working class has been brought.

That is why we do hold that the Preventive Detention Act should not be applicable for the so-called maintenance of Public Order or for the so-called maintenance of essential supplies and services. These can be governed by ordinary process of law.

Anything prejudicial to the relations of India with foreign powers is a ground for Preventive Detention in the present Act. It is too sweeping a power in the hands of the Government. Any sustained criticism or continued agitation exposing the policies in its relations with the Governments of foreign powers or exposure of foreign powers. doings in our country could be brought under the mischief of this Act. The majority refused to omit this from the grounds of detention.

Who is authorised to detain?

4. The Act provides that even District Magistrates and Commissioners of Police are authorised to order detention. Detention itself is an evil act. And when the power is given to any District Magistrate, it becomes much more dangerous. There is nothing in the Act which enables a detenue to sue the officials who maliciously detain persons. Our amendment to the effect has been rejected. We are opposed to clothing the District Magistrates with this power of detention, and make detention an easy thing. Let the order of detention be passed under the signature of the Minister in charge of the port-folio and not any District Magistrate or any Office Secretary of the respective Government.

The Magistrate is merely asked to supply the detenues with grounds of detention, as soon as possible, not later than five days after arrest to enable him to make representation to the Government. If there is material

already enough on the basis of which the Magistrate concerned is satisfied that the detention in that particular case is necessary, what makes it impossible for him to supply these grounds and particulars to the detenues forthwith or within 24 hours, so as to enable the detenue sufficient time to make his representations before the Government before it passes the confirmation order?

The Magistrate is asked to send "all other particulars, as *in his opinion* have a bearing on the matter". Why should the Magistrate be left the right to choose what the particulars are that have bearing on the matter? We do hold that all particulars having a bearing on the matter be submitted to the appropriate Government. The time before which the appropriate government should pass the Order of confirmation can well be reduced to ten days instead of twelve days.

Preventive Detention should not be made punitive detention:

5. A person is not tried. He is detained at the more satisfaction of an officer. He has been denied the protection of the Courts. Every man should be presumed innocent till he is convicted through the due process of law, is given the go-by. Yet a detenue is treated as a criminal. In many a province he is given the rations given for convicted persons, forced to work like an ordinary convict, humiliated and handcuffed and roped, the persons whom he can interview are to be agreed to by the police and in many a case his nearest relatives are denied interviews. Newspapers and books are restricted or even totally denied. They are given as a privilege and not as a right of detenue. Paying of family allowance is not obligatory on the Government and thousands of detenue families are left to starve. The detenue is far removed from his usual place of residence to another corner of the State. They can even be removed from one province to another. This makes it impossible for his family people to come and see him.

We hold that the Parliament must enact rules fixing the conditions of detention, place and amenities to the detenues. It must lay down that a detenue's family must be paid an allowance for the period of detention. In fact a detenue must be allowed all the rights which a citizen outside the jail gates enjoy except for the confinement to prevent him from doing things which the government claim to be prejudicial.

6. We do hold that non-compliance to obey a detention order should not be considered as an offence, when you are not prepared to bring persons to trial in the courts of law, the case of the Government is to be deemed as hopeless and the person concerned is to be presumed as innocent of crime. As such, he is not bound to obey an illegal order. And not complying with an illegal order can never be a crime. But the Government wants it to be treated as an offence and propose to confiscate the property of the person concerned, thus starving the family for no crime of them. This savours of nothing but that of theory of hostages or that story of lamb and the wolf.

We do hold that neither his property be confiscated nor he be tried for the so-called crime of not complying with the notification to surrender himself to detention. Even our amendment that the sentence should not exceed three months or a fine not exceeding Rs. 250 is also rejected by the majority in the Committee.

The Composition and Authority of Advisory Boards:

7. When proper Courts are not allowed to prove into the Government's orders of detention, the Advisory Boards at least must be enabled to go through the cases properly.

(a) Our suggestion that Advisory Boards must consist only of High Court Judges is rejected. Our contention is that retired High Court Judges or those who are qualified to be appointed as High Court Judges are open to abuse and to other influences because they may expect promotions or other jobs from the Government.

(b) Our suggestion that Advisory Boards be furnished with all the particulars concerning the case referred to it, is rejected, on the ground that the Advisory Board can ask for further material and the Government is bound to give it. Why should the Government wait till the Advisory Board demands and waste the time of the Board and keep the detenue remain in jail longer?

(c) Our suggestion that whatever material was placed before the Advisory Board be made available to the detenue was also rejected. We consider it highly objectionable that certain material to be placed before the Advisory Board on the basis of which it is influenced, while the detenu cannot disabuse the minds of members of the Advisory Board of these allegations levelled against him by challenging the varacity of these allegations. ...

(d) Our suggestion that the detenu be allowed to have the right to be represented by the lawyer before the Advisory Board was also rejected. There were thousands of cases where the detenus could not by themselves represent their cases. And it will be only proper that he be given the help he requires.

Similarly, our suggestion that the detenu be given the opportunity to produce evidence to rebut the allegations levelled against him is rejected.

The argument of the majority is that then it becomes a trial held *in camera* instead of Open trial. Secret trials are bad enough. But even to deny it is much worse. Further, how could it become a trial *in camera*, when the evidence act and the ordinary laws are not applied, but only the detenu is allowed to produce informally that evidence to rebut allegations levelled against him.

When the Government wants to detain a person for a period of 15 months, it is but just that he be enabled to represent his case and rebut the allegations with evidence before the Advisory Board, at least informally and in *camera*.

(e) Our suggestion that the Advisory Board should submit its report within 2 months of the date of detention or within a month of the matter being referred to it is rejected.

(f) Our suggestion that the Advisory Board should review the case after a period of three months after its last report is also rejected.

We could understand the Government's reluctance to allow any evidence being adduced or its refusal for periodical review, if the period of detention is limited to 6 months, *i.e.*, 3 months more than it is entitled to detain a person, under the Constitution, without referring to an Advisory Board. But when it wants to keep the detenu for a period of 15 months, it is but

proper that it allows his case for detention be reviewed every three months by the Advisory Board and allow the detenu to produce evidence against the allegation levelled.

The Maximum Period of Detention:

8. (a) We do hold that no person should be detained for more than three months under any conditions, if the object of the Government is only to prevent him from doing any overt act prejudicial to the Government etc... By that time the Government can bring him to trial before the Courts of the land. If it cannot, then it must release him.

An amendment that the maximum period of detention should not exceed six months was also rejected by the majority in the committee.

(b) Another amendment that the period be calculated from the date of detention and not from the confirmation date after the Advisory Board Report, even that was rejected. By rejecting this amendment, the maximum period of detention is made 15 months. Why does the Government quibble with the words? Why does it not openly say that the maximum period of detention is 15 months from the date of detention and not 12 months?

(c) For those who are already in detention even though they might have been already in detention for more than 2 or 3 years, they still have to rot in detention till 1st April, 1953. All our efforts to persuade the Minister concerned and the majority in the Committee to accept our suggestion to release the detenus who have been in detention for more than a year was of no avail. Our amendment to reduce that term to 1st January, 1953 at least, is equally rejected.

9. We hold that the period of two years imprisonment prescribed in the Act for a detenue on parole for failure of surrendering is too high. When the period of detention itself is fifteen months, to prescribe two years for a detenue who has to serve most probably another six months looks fantastic. It need not in any case be more than what is prescribed for a person who fails to surrender when called to do so after the detention order is served.

The right of the Parliament to review the working of the Act:

10. An amendment was moved that every six months the Government must place before the Parliament specifying the number of detenues, classifying the grounds on which they are detained, *i.e.*, under which subsection of Section III, 1(a). What was the decision of the Advisory Board on such detentions.

This was rejected on the grounds that it was waste of time of the Parliament to go into these matters too often. The same argument was advanced to reject an amendment restricting the life of the Act till December, 1953. This is strange and dangerous argument. We do feel that the Parliament must demand the six monthly report on the working of the Preventive Detention Act.

11. (a) We do hold that the Preventive Detention Act must not be applicable to members of the Parliament and members of State Legislatures. This violates the immunity of Peoples' Representatives. The Government should not be allowed to detain without prior sanction of the Parliament or State Legislature. This is the practice in France, and in a number of other countries. This is necessary in our country too.

(b) Another suggestion that was put forth that members of Parliament or of State Legislatures even if they are detained, must be allowed facilities to attend the sessions of the Parliament or State Legislatures was also rejected.

(c) Similarly, another amendment, that the Legislature or Parliament shall inquire into the propriety of the detention order served on a Parliament member was also rejected.

This will only undermine the faith of the people in the Parliament, if they see that their representatives can be arrested without trial and detained.

12. We hold that in no case this Black Act should be on the Statute Book beyond the 31st December, 1953.

CONCLUSION: We hold that this Black Act of Preventive Detention is not only not necessary, but dangerous to the Democratic life of our people. We recommend that the Bill be dropped or in case the Government persists, it must be modified on the lines suggested above.

If the Government persists, and is not prepared even to modify it on the lines suggested above the only conclusion that will be drawn by the wider sections of our people, is that Government unable to solve the agrarian problem, unable to feed and shelter our people, unable to find employment and guarantee a living wage to our workers, unable to rehabilitate millions of refugees, wants to resort to rule by Prevention Detention.

There cannot be a democratic life or administration with a Democle's Sword of Preventive Detention hanging over the head of the people and of the democratic parties.

P. SUNDARAYYA.

A. K. GOPALAN.

NEW DELHI,

The 30th July, 1952.

IV

The Preventive Detention Act which came into force in February, 1950, has been on the Statute Book for about 2¼ years. In view of the seriousness of depriving a person of his freedom without trial both the Act and the amending Bill brought forward last year by the Government to improve it in certain respects were subjected to a great deal of criticism in the Provisional Parliament. It was, therefore, necessary that the Government in order to assure Parliament that the powers conferred by the Act on the executive were not being misused should have asked the Chairmen of the Advisory Boards of some of those states where it has been largely used to appear before the Select Committee to give information about the manner in which the Act was being used and the Boards were functioning. It is very regrettable that Government gave no thought to this important question before the Select Committee met. It was suggested in the Select Committee that some of the Chairmen of the Boards referred to above should be invited to meet the Committee but the suggestion was unfortunately turned down by the Committee. The Commitee, therefore, discussed the Bill without any accurate information of the working of the Act.

The most important amendments considered by the Committee related to the extension of the life of the Act and its scope and the facilities given to the detenue to meet the charges against him. But with one exception all the amendments were rejected by the Committee.

The Preventive Detention Act when passed in 1950 was to be in force for a year only. It was continued for a year more by the amending act passed in 1951. As this law is of an exceptional character it is necessary that the position should be reviewed every year so that the Act may not remain in force for a day longer than is necessary. For this reason I do not agree with the proposal in the Bill that the Act should continue till the 31st December, 1954.

Section 3 of the Act allows the authorities to detain a person if they are satisfied that it is necessary to do so "with a view to preventing him from acting in any manner prejudicial to the Defence of India, the relations of India with foreign powers or the security of India". It seems to me highly undesirable to use this power to detain a person because of his criticism of Indian foreign policy. Even though it may be quite unfair it is far better to place the correct facts before the public than to deal with the unjustifiable criticism in this way.

The Bill gives the detenu the right which he did not previously enjoy to appear in person before the Advisory Board. This amendment is satisfactory so far as it goes but it may not be sufficient to enable him to represent his case properly to the Board. The procedure followed in England during the last war under the Emergency Powers (Defence) Act was much fairer to the detenu than the procedure laid down in our Preventive Detention Act. The well-known Regulation 18B which authorised the detention of certain categories of persons without trial laid down that the Chairman of an Advisory Committee should inform the detenu of the grounds of detention and "furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case". Apart from this the detenu could be allowed to have the assistance of a lawyer in preparing his reply. The Home Secretary stated in the House of Commons on the 28th January, 1943 that the general practice would be to allow British subjects detained under this Regulation to have consultations with their legal advisers out of the hearing of an officer. The detenu could also be allowed to call witnesses. I am strongly of the opinion that the facilities that were allowed to the detenu in England during the war should be allowed to him in India in peace time.

H. N. KUNZRU.

NEW DELHI,

The 30th July, 1952.

THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

(AS AMENDED BY THE JOINT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Joint Committee; asterisks indicate the omissions).

A

BILL

further to amend the Preventive Detention Act, 1950.

BE it enacted by Parliament as follows :—

1. Short title and commencement.—(*1*) This Act may be called the Preventive Detention (Second Amendment) Act, 1952.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1, Act IV of 1950.—In sub-section (*3*) of section 1 of the Preventive Detention Act, 1950 (hereinafter referred to as the principal Act), for the words and figures "1st day of October, 1952" the words and figures "31st day of December, 1954" shall be substituted.

3. Amendment of section 2, Act IV of 1950.—In section 2 of the principal Act, in clause (*a*), for the words "Chief Commissioner" the words "Lieutenant-Governor or, as the case may be, the Chief Commissioner" shall be substituted.

4. Amendment of section 3, Act IV of 1950.—In section 3 of the principal Act,—

(*i*) in sub-section (*3*), for the words "have a bearing on the necessity for the order", the following words shall be substituted, namely:—

"have a bearing on the matter, and no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.";

(*ii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order."

5. Amendment of section 6, Act IV of 1950.—Section 6 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after that sub-section as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence under clause (*b*) of sub-section (*1*) shall be cognizable."

6. Amendment of section 7, Act IV of 1950.—In sub-section (*1*) of section 7 of the principal Act, for the words "as soon as may be", the words "as soon as may be, but not later than five days from the date of detention" shall be substituted.

7. Amendment of section 8, Act IV of 1950.—In section 8 of the principal Act,—

(*a*) in sub-section (*2*), the proviso shall be omitted;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) 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:

Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952, to dispose of any reference under section 9 pending before it at such commencement."

8. Substitution of new section for section 9, Act IV of 1950.—For section 9 of the principal Act, the following section shall be substituted, namely:—

"*9. Reference to Advisory Boards.*—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."

9. Amendment of section 10, Act IV of 1950.—In * * * section 10 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) for the words "if in any particular case it considers it essential", the words "if in any particular case it considers it essential so to do or if the person concerned desires to be heard" shall be substituted;

(*ii*) for the words "from the date specified in sub-section (*2*) of section 9" the words "from the date of detention" shall be substituted;

(*b*) in sub-section (*3*), the words "to attend in person or" shall be omitted, and for the words "legal representative" the words, "legal practitioner" shall be substituted.

10. Insertion of new section 11A in Act IV of 1950.—After section 11 of the principal Act, the following section shall be inserted, namely:—

"*11A. Maximum period of detention.*—(*1*) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 11 shall be twelve months from the date on which the said order has been so confirmed.

(*2*) Notwithstanding anything contained in sub-section (*1*), every detention order which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date on which it was confirmed under section 11, whichever period of detention expires later.

(*3*) The provisions of sub-section (*2*) shall have effect notwithstanding anything to the contrary contained in section 3 of the Preventive Detention (Amendment) Act, 1952 (XXXIV of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."

11. Amendment of section 13, Act IV of 1950.—For sub-section (*2*) of section 13 of the principal Act, the following sub-section shall be substituted, namely:—

"(*2*) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made."

JOINT COMMITTEE OF PARLIAMENT

Report of the Joint Committee on the Bill further to amend the Preventive Detention Act, 1950.

(As amended by the Joint Committee)

GIPD—LAD—595PS.—4-8-52—1,500

HOUSE OF THE PEOPLE

THE RESERVE AND AUXILIARY AIR FORCES BILL, 1952

(Report of the Joint Committee)

Parliament Secretariat
New Delhi
August, 1952

THE RESERVE AND AUXILIARY AIR FORCES BILL, 1952

MEMBERS OF THE JOINT COMMITTEE

HOUSE OF THE PEOPLE

Shri Jagannathrao Krishnarao Bhonsle.
Shri Shahnawaz Khan.
Sardar Surjit Singh Majithia.
Shri P. T. Chacko.
Shri T. S. Avinashilingam Chettiar.
Shri Tekur Subrahmanayam.
Choudhary Raghubir Singh.
Prof. Nibaran Chandra Laskar.
Shri Uma Charan Patnaik.
Shri M. S. Gurupadaswamy.
Shri Hirendra Nath Mukerjee.
Shri Girraj Saran Singh.
Shri Rayasam Seshagiri Rao.
Shri Rameshwar Sahu.
Shri Awadheshwar Prasad Sinha.
Pandit Balkrishna Sharma.
Pandit Krishna Chandra Sharma.
Shri T. R. Neswi.
Shri Jaipal Singh.
Shri Ajit Singh.
Shri S. V. Ramaswamy.

COUNCILS OF STATES

Shri N. Gopalaswami Ayyangar—Chairman.
Shri Jaspat Roy Kapoor.
Shri Jagannath Das.
Shri Kailash Bihari Lal.
Shri M. Govind Reddy.
Shri Pir Mohammad Khan.
Shrimati Mona Hensman.
Shri H. D. Rajah.
Shri K. C. George.
Shri C. G. K. Reddy.

REPORT OF THE JOINT COMMITTEE

The Joint Committee to which 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 was referred have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed thereto.

Upon the changes proposed which are not formal or consequential, the Committee make the following observations:—

Clause 2.—Sub-clause (*b*) has been amended so that the competent authority may, in appropriate cases, consist of a committee of two or more air officers.

Clause 3.—A slight drafting alteration has been made so as to make it clear that there may be different competent authorities for different areas.

Clause 5.—A new sub-clause has been added to enable members of the Air Defence Reserve and the Auxiliary Air Force to be appointed to the Regular Air Force Reserve.

Clause 7.—A maximum limit of 5 years has been fixed in relation to the extension of the normal period of service in the Regular Air Force Reserve.

Clause 10.—This is a new clause which has been added to provide for classification of officers and airmen in the Air Defence Reserve on the same lines on which such classification is made in the case of the Regular Air Force Reserve under clause 6.

Clause 11 (*original clause 10*).—A new category of persons has been added in sub-clause (*1*), in order to bring within the scope of the sub-clause persons who are employed in connection with aerodromes or in connection with the control and movement of aircraft. Other amendments are consequential.

Clause 13 (*original clause 12*).—In sub-clause (*1*), the provision relating to the time-limit has been omitted and it is left to the competent authority to fix such time as it may deem fit. Sub-clause (*2*) has been omitted as being unnecessary.

Clause 16 (*original clause 15*).—The provision relating to the time-limit has been omitted to bring this clause in conformity with clause 13 [original sub-clause (*1*) of clause 12] as amended.

Clause 17 (*original clause 16*).—In this clause a new sub-clause has been added to provide for the termination of membership of the Air Defence Reserve on completion of the age specified in sub-clause (*1*).

Clause 19 (*original clause 18*).—The classification has been brought in line with the classification in the Regular Air Force Reserve under clause 6.

Clause 24 (*original clause 23*).—The Joint Committee is of opinion that there should be an Advisory Committee in every State irrespective of the fact whether any squadrons or units of the Auxiliary Air Force are stationed in that State. Such an Advisory Committee will be helpful in the formation of such squadrons and units and for carrying on general propaganda for recruitment to the Auxiliary Air Force. This clause has been amended accordingly.

Clause 25 (*original clause 24*).—The Joint Committee think that the period of training should be prescribed under the rules. Sub-clause (*a*) has been amended accordingly. In sub-clause (*c*), the words 'in an emergency' have been omitted as being unnecessary.

Clause 29 (*original clause 28*).—The Joint Committee feel that persons who are already in employment and who join any of the Reserves or the Auxiliary Air Force should not suffer any pecuniary loss in the shape of a reduced remuneration. It has, therefore, been provided that in the public interest the employer should make good the difference, if any, in the remuneration. Such liability of the employer has been restricted to the period of training only which is not likely to exceed a month in any year. The clause has been amended accordingly.

Clause 34 (*original clause 33*).—A specific clause has been added for rules being made in respect of the period and manner of training of members of any Air Force Reserve and the Auxiliary Air Force. It has also been provided that the rules shall be laid before Parliament.

2. The Bill was published in the Gazette of India, Part II, Section 2, dated the 31st May, 1952.

3. The Joint Committee think that the Bill has not been so altered as to require circulation and they recommend that it be passed as now amended.

N. GOPALASWAMI,

Chairman of the Joint Committee.

NEW DELHI;

The 1st August, 1952.

I

I am constrained to submit this note of dissent to the majority report of the Joint Select Committee on the Reserve and Auxiliary Air Force Bill, 1952.

2. The purpose of constituting auxiliary forces, according to me, is to give the necessary training in the technique of defence to the people, to enable them to successfully defend their country in any emergency. Provisions in the Bill regarding the liability to be called up for service in caluse 25 seems to defeat this purpose.

3. Auxiliary forces should not often be called up for service; otherwise they would practically become one branch of the regular forces, with one advantage to the state that they need not be remunerated when actually not in active service. The liability for service should be as little as possible to give greater encouragement for the people to get themselves enrolled in the Auxiliary Forces.

4. Therefore, I hold that the Auxiliary Air Forces should not be called up for services:—

(i) except in an emergency proclaimed by the President under article 352 of the Constitution;

(ii) abroad; and

(iii) in aid of Civil power.

5. I am strongly of the opinion that clause 24 of the Bill should be amended accordingly.

P. T. CHACKO.

NEW DELHI;
The 1st August, 1952.

II

While welcoming wholeheartedly steps to create Air Force Reserves, I must, in the first instance, say that the Bill appears to have been drafted in a hurry, without first finalising the plans for the creation of the reserves. It would have been well if plans for the reserves had been worked out in detail, before bringing the bill forward.

2. I disagree with the principles underlying the classification of the three reserves. I hold strong views against the creation of reserves to our Armed Forces, in which the personnel would feel uncomfortable, or are made to feel that they are inferior to those in the regular forces, in any way. It is essential that the privileges and the status in all the sections of our forces are uniform. There should be free mobility, so that the finest of our forces, to whatever section they belong, will be able to reach the top. It is my opinion that there should be no im-

pediment, legal or otherwise, in the way of a member of our reserves being absorbed into the regular forces, subject to his proving his capacity.

3. I therefore suggested that just as in our Navy and the Air Forces or other countries, there should be only two reserves: (a) the reserve of qualified men, and (b) the reserve of civilian volunteers. In the former reserve there should be no distinction between the civil aviation pilots who have the necessary flying experience and those who have served in the regular Air Force. I also suggested that as in the Navy, the personnel of the Volunteer Reserve should be eligible for the regular reserve, and ultimately for the regular Air Force, subject to their being found suitable.

4. The Committee accepted the principle of mobility, but I think caricatured it, because they did not see their way to accept the basic principle which would make this mobility real. The Bill, as is being presented, seeks to create a "caste" between the Regular Reserve and the Air Defence Reserve. This, in my opinion would vitiate against the morale of the personnel in the "lower rung" of the reserves.

5. Although the Committee has not accepted my suggestion, perhaps due to the inconvenience of materially changing the Bill, necessitating circulation, I would urge that an amendment may soon be brought to ensure happy and equal relations that ought to exist between one reserve and another and the reserves and the regular forces.

6. Subject to this dissent I welcome the creation of the reserves to our Air Force, and congratulate the Defence Minister on his step.

C. G. K. REDDY.

NEW DELHI;

The 1st August, 1952.

III

We regret to have to add this Minute of Dissent from the majority of our colleagues on the Joint Committee.

2. We take a very serious objection to the conscriptive nature of the Bill, as is clear in clause 15 which says that "the person upon whom the notice is served shall be deemed to be enrolled in the Reserve as from the day so specified." No option is given to such a person. But on the other hand, if the competent authority considers a person fit for enrollment in the Air Defence Reserve, he has no escape. It is wrong in principle to introduce conscription as a general feature and when the situation does not warrant it. We, therefore, suggest that a third Proviso to clause 10 be added exempting those who do not want to serve. We raised this question in Committee, but it was not accepted.

3. We take a very serious view of Clause 24(b) which lays down that every member of an Air Force Reserve or the Auxiliary Air Force shall be liable to be called up for service in aid of the civil power. We welcome, of course, the idea of assistance to the civil power by our Air Force in the sphere of beneficent public work like, for example, quick transport of food to deficit and scarcity areas. But during discussion

in Committee, it was plain that Government contemplates, even when there is no emergency, the requisitioning of the Reserve and Auxiliary Air Forces for quelling civil disturbances. We fear it is wrong in principle. It is wrong to expect members of the Reserve and Auxiliary Air Force who live with their fellow-citizens peacefully to suppress them as members of the Armed Forces. We feel that an exception should have been made in the case of personnel of the Reserve in respect of their liability to aid civil power in the maintenance of what is called 'Law and Order'. We are convinced that many promising entrants to the Auxiliary Air Force will be deterred by this provision in the law, which, in our view, militates against the normal decencies of democratic life. We pressed in Committee for the deletion of Clause 24(b), but in vain.

4. In regard to Clause 24(c), we wanted to retain the words "in an emergency". We feel it is only right that volunteers recruited, as the statement of Objects and Reasons points out, "in order to enable quick expansion (of our Air Forces) in an emergency" shall not be required when there is no emergency to serve abroad. The kind of training which is envisaged for them does not, quite obviously, require their having to collect experience away from India. We wish as many of our citizens as possible to have access to opportunities of learning to defend our country. We see no reason to cloud the issue by insisting on the liability of such citizens for service abroad. We know, of course, that in any emergency the whole picture changes, but that is another story and that does not come within the ambit of this Bill.

HIRENDRA NATH MUKERJEE

M. S. GURUPADASWAMY

K. C. GEORGE.

NEW DELHI;

The 1st August, 1952.

IV

The importance and urgency of the proposed measure can hardly be over-estimated, although the same have been obscured by other matters. The reserve and auxiliary air forces are calculated to augment our limited air strength, to reinforce our meagre air forces with well-trained, part-time, non-regular personnel. The Bill seeks to enlist civilian co-operation in organizing and manning the civilian air defence of the country and providing cheap and efficient second lines of reserves.

2. The Joint Select Committee has considerably improved the provisions of the Bill by providing, *inter alia*, for the laying of the rules on the table of the Houses of the Parliament, for the establishment of Advisory Committee in every State, for due compensation to the skilled personnel in private employ and for opportunities to the auxiliary and air defence reserve officers and men to be absorbed in the regular reserve. While associating myself in general with the report of the Joint Select Committee, I have to make the following observations in the interests of the forces that the Bill seeks to build up:—

(1) It is regretted that this is intended only to be a "permissive piece of legislation". The implementation of the provisions of the bill is an

urgent necessity in view of the requirements of national defence; and funds have to be found for the purpose. It is not known how far the Committee of experts said to be examining the reduction in army expenditure have progressed with their work; they can succeed only if they confer with other departments and obtain facilities for ex-army personnel in other fields of activity. But all such savings from the army budget (to be effected after careful planning so as not to throw out army personnel only to swell the ranks of the unemployed) have to be utilised for the proposed air force reserves and auxiliaries, as also for their navy and army counter parts.

(2) The rules, at least, must make suitable provisions for attracting and training the civilians in national defence. All western nations, including the "Democracies", have adopted Conscription in some form or other for national defence as well as for developing their national resources. Their "National-Security" or "National-Service" Acts and the all-out mobilization and all-round reorganization thereunder, indicate the new approach of the nations which were hitherto having voluntary-recruitment as their policy. We have therefore to adopt, not their present set-up, but the methods they formerly pursued to make the conditions of voluntary recruitment to the civilian forces (Volunteers, Territorials and Auxiliaries), attractive. Suitable "Schemes" have to be formulated for the purpose.

(3) From the view-point outlined in paragraph (2) supra, we could have omitted sub-clause (b) of clause 25 of the Bill as amended by the Joint Select Committee. It is true that compulsory military service has become the order of the day in other countries, thus every conscript during service or when otherwise embodied, being liable for duties as now laid down. Further, clause 26 of this Bill provides for the application of the Air Force Act, 1950, during training or when embodied; the Criminal Procedure Code (Second Amendment) Bill, recently passed in both the Houses, also makes similar provisions. In any case, it is not likely that any popular government with its full array of police and regular armed forces will call forth the civilian volunteers or auxiliaries in aid of civil power. Hence, omission of this sub-clause, or qualifying it by adding "during floods, famines, epidemics or other national emergencies" would have made Auxiliary Air service more attractive.

(4) Very careful planning will be necessary for making the envisaged organization a success. The rules have to provide for close association of representative civilians in building up the national defences. The organization of civil defence units, the reorganization of the N. C. C. with due emphasis upon its air and naval wings, the organization of army territorials for coast guard, anti-air craft and allied duties, the protection of essential and defence industries, the organization of semi military civilian institutions like Flying-clubs, Rifle-clubs, glider-clubs, scouts associations (especially air and sea scouting) have all to be co-ordinated through Unit, State and Central Advisory Committees as envisaged in the Act.

(5) The Air Force Volunteers under the Indian Air Force Volunteer Reserve (Discipline) Act of 1939 (corresponding to the envisaged air force auxiliaries) form the bulk of the Indian Air Force today. But recuritment to the A.I.F.V. Reserve was stopped during the war. The I.A.T.C. (Indian Air Training Corps) attached to Colleges and Universities was also disbanded after the war; the air wing of the N.C.C. is just making a

beginning. The civil defence organizations started during war were also abolished. The Air Defence Reserve Bill was introduced in 1950 and allowed to lapse. It is hoped that the present Bill will be effectively implemented so that it marks a new era in the history of our defence organization.

UMA CHARAN PATNAIK

NEW DELHI;
The 1st August, 1952.

THE RESERVE AND AUXILIARY AIR FORCES BILL, 1952

(AS AMENDED BY THE JOINT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions).

A

BILL

to provide for the constitution and regulation of certain Air Force Reserves and also an Auxiliary Air Force and for matters connected therewith.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(*1*) This Act may be called the Reserve and Auxiliary Air Forces Act, 1952.

(*2*) It extends to the whole of India.

(*3*) This Chapter shall come into force at once, and the remaining provisions shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(*a*) "Air Force Reserve" means any of the Air Force Reserves raised and maintained under this Act;

(*b*) "competent authority" means an air officer or a committee consisting of two or more air officers appointed under section 3;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) all other words and expressions used herein and defined in the Air Force Act, 1950 (XLV of 1950), and not hereinbefore defined shall have the meanings respectively assigned to them by that Act.

3. **Appointment of competent authority.**—The Central Government may, by notification in the Official Gazette, appoint an air officer or a committee consisting of two or more air officers to perform all or any of the functions of the competent authority under this Act for such area as may be specified in the notification.

CHAPTER II

REGULAR AIR FORCE RESERVE

4. **Constitution of Regular Air Force Reserve.**—The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force Reserve to be designated the Regular Air Force Reserve which shall consist solely of persons transferred or appointed, to it under section 5.

5. Recruitment to the Regular Air Force Reserve.—(*1*) The competent authority may, by general or special order, transfer to the Regular Air Force Reserve—

(*a*) any officer or airman of the Air Force who under the terms and conditions of his service is liable to serve in any Air Force Reserve if and when constituted;

(*b*) any officer or airman of the Air Force whose commission or engagement in the Air Force has been terminated before the commencement of this Act and who under the terms of his commission or engagement was liable to serve in any Air Force Reserve if and when constituted;

(*c*) any officer or airman who has served in the Air Force and has retired therefrom ;

and any officer or airman so transferred shall be deemed to be a member of the said Reserve.

(*2*) The competent authority may, in such circumstances and subject to such conditions as may be prescribed, by special order, appoint to the Regular Air Force Reserve any member of the Air Defence Reserve or the Auxiliary Air Force raised and maintained under this Act, and where any such member is so appointed, he shall cease to be a member of the Air Defence Reserve or the Auxiliary Air Force, as the case may be, and shall as from the date of such appointment be deemed to be a member of the Regular Air Force Reserve.

(*3*) The competent authority may, for reasons which in *** its opinion are sufficient, cancel any order made under sub-section (*1*) or sub-section (*2*) and on the cancellation of such order the person in respect of whom the order had been made shall cease to be a member of the Regular Air Force Reserve.

6. Classes of persons in the Regular Air Force Reserve.—Members of the Regular Air Force Reserve shall be divided into the following classes, namely:—

(*a*) general duties officers,

(*b*) ground duties officers, and

(*c*) airmen,

and every officer shall be entitled on transfer or appointment to the Reserve to hold the same rank as that which he last held in the Air Force, or the Air Defence Reserve or the Auxiliary Air Force, as the case may be, before such transfer or appointment.

7. Period of service.—(*1*) Every member of the Regular Air Force Reserve shall be liable to serve in the Reserve—

(*a*) if he is transferred to the Reserve under sub-section (*1*) of section 5, for the period of his Reserve liability; and

(*b*) if he is appointed to the Reserve under sub-section (*2*) of section 5, for the remainder of the period for which he was liable to serve in the Air Defence Reserve or the Auxiliary Air Force, as the case may be:

Provided that the competent authority may require any such member to serve in the Reserve for such further period or periods not exceeding in the aggregate five years as it may think fit.

Explanation I.—For the purposes of this sub-section, "period of Reserve liability" in relation to any member of the Regular Air Force Reserve means the period for which under the terms and conditions of his service in the Air Force he was liable to serve in any Air Force Reserve if and when constituted.

Explanation II.—In computing the period of Reserve liability in relation to any member of the Regular Air Force Reserve whose commission or engagement in the Air Force was terminated before the commencement of this Act, the period which has elapsed between such termination and the date of such commencement shall be included.

(*2*) Notwithstanding anything contained in sub-section (*1*), no person shall be liable to serve in the Reserve after attaining the prescribed age.

8. Termination of service in the Reserve.—Every member of the Regular Air Force Reserve shall, on completion of the period of his service therein, cease to be a member of the Reserve.

CHAPTER III

Air Defence Reserve

9. Constitution of Air Defence Reserve.—The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force Reserve to be designated the Air Defence Reserve which shall consist of persons deemed under the provisions of section 16 to be enrolled therein.

10. Classes of persons in the Air Defence Reserve.—Members of the Air Defence Reserve shall be divided into the following classes, namely:—

(*a*) general duties officers;

(*b*) ground duties officers; and

(*c*) airmen.

11. Obligation to register.—(*1*) Every citizen of India who—

(*a*) holds or has held a public transport pilot's licence ("B" Licence) issued under the Indian Aircraft Rules, 1937, or

(*b*) has had not less than two hundred hours' experience of solo flying, including not less than thirty landings, or

(*c*) holds or has held a first class navigator's licence issued under the Indian Aircraft Rules, 1937, or

(*d*) has had at least four years' aviation experience during which at least six hundred hours shall have been spent in the air, not less than one hundred hours of such experience being experience of navigation in the air, or

(*e*) holds or has held a first class radio telegraph operator's licence issued under the Indian Aircraft Rules, 1937, or

(*f*) holds or has held a radio telephone operator's licence issued under the Indian Aircraft Rules, 1937, or

(*g*) holds or has held a licence as ground engineer in any of the categories A, B, C, D or X issued under the Indian Aircraft Rules, 1937, or

(*h*) is or was at any time employed in connection with any aerodrome or in connection with the control and movement of aircraft, in such capacity as may be prescribed,

shall within the prescribed period correctly fill up, or cause to be filled up, to the best of his knowledge and belief the prescribed form, and sign and lodge it with the competent authority nearest to his usual place of residence or business:

Provided that nothing contained in this sub-section shall apply—

(*i*) to any person belonging to any of the classes specified in clauses (*a*) to (*f*), if he has attained the age of thirty-seven years; or

(*ii*) to any person belonging to any of the classes specified in clauses (*g*) and (*h*), if he has attained the age of fifty years.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), the competent authority may, if it is satisfied that the provisions of that sub-section apply to any person, by order in writing, require that person to furnish within such time such particulars as may be specified in the order and such person shall within the specified time furnish correctly to the best of his knowledge and belief the said particulars to the said authority in such form and manner as may be prescribed.

12. Liability to be called up for inquiry.—Every person to whom the provisions of section 11 are applicable shall be liable to be called up for inquiry under section 13—

(*a*) if he belongs to any of the classes specified in clauses (*a*) to (*f*) of sub-section (*1*) of section 11 until he has completed his thirty-seventh year, and

(*b*) if he belongs to any of the classes specified in clauses (*g*) and (*h*) of the said sub-section, until he has completed his fiftieth year.

13. Calling-up for inquiry.—*** The competent authority may cause to be served on any person for the time being liable to be called up for inquiry under section 12 a written notice stating that he is called up for inquiry regarding his fitness for service in the Air Defence Reserve and requiring him to present himself to such person and at such place and at such time **** as may be specified in the notice and to submit himself to inquiry by the **** said person.

* * * *

14. Medical examination.—Every person called up for inquiry under section 13 shall, if and when required by the competent authority, present himself for examination before such medical officer as may be directed by that authority and, for the purposes of such examination, shall comply with the directions of the medical officer.

15. Registration of persons considered fit for enrolment.—If, after such inquiry and medical examination as aforesaid, the competent authority considers a person fit for enrolment in the Air Defence Reserve, it shall inform him accordingly and enter his name and other prescribed particulars in a register maintained in such form and manner as may be prescribed.

16. Calling up for service.—The competent authority may cause to be served on any person whose name is entered in the register maintained in pursuance of section 15 a written notice stating that he is called up for service in the Air Defence Reserve and requiring him to present himself at such place and time **** and to such authority as may be specified in the notice; and the person upon whom the notice is served shall be deemed to be enrolled in the Reserve as from the day so specified.

17. Period of service.—(*1*) Every person deemed to be enrolled in the Air Defence Reserve shall be liable for service—

(*a*) if he belongs to any of the classes specified in clauses (*a*) to (*f*) of sub-section (*1*) of section 11, until he has completed his forty-second year;

(*b*) if he belongs to any of the classes specified in clauses (*g*) and (*h*) of the said sub-section, until he has completed his fifty-fifth year.

(*2*) Every such person, on attaining the age specified in sub-section (*1*), shall cease to be a member of the Air Defence Reserve.

CHAPTER IV

Auxiliary Air Force

18. Constitution of Auxiliary Air Force.—(*1*) The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force to be designated the Auxiliary Air Force.

(*2*) The Central Government may constitute such number of squadrons and units of the Auxiliary Air Force as it thinks fit and may disband or reconstitute any squadron or unit.

19. Classes of persons in the Auxiliary Air Force.—Members of the Auxiliary Air Force shall be divided into the following classes, namely:—

(*a*) general duties officers;

(*b*) ground duties officers; and

(*c*) airmen.

20. Officers of the Auxiliary Air Force.—The President may grant to such person as he thinks fit a commission as an officer in the Auxiliary Air Force with designation of rank corresponding to that of any commissioned officer in the Air Force.

21. Persons eligible for enrolment.—Any citizen of India may offer himself for enrolment in the Auxiliary Air Force and may, if he satisfies the prescribed conditions, be so enrolled on such terms as may be prescribed.

22. Period of service.—Every officer and every enrolled person shall, subject to any rules that may be made in this behalf under this Act, be required to serve in the Auxiliary Air Force for a period of five years from the date of his appointment or enrolment but may, after the completion of his period of service, volunteer to serve therein for further periods each of not more than five years' duration.

23. Termination of service.—The service of any officer or enrolled person in the Auxiliary Air Force may, at any time before the completion of his period of service, be terminated by such authority and under such conditions as may be prescribed.

24. Advisory Committees.—(*1*) The Central Government shall, as soon as may be after the commencement of this Act, constitute—

(*a*) for the whole of India, a Central Advisory Committee;

(*b*) for each State, **** a State Advisory Committee; and

(*c*) for every unit of the Auxiliary Air Force, a Unit Advisory Committee.

(*2*) It shall be the duty of the Central Advisory Committee to advise the Central Government on matters connected with the Auxiliary Air Force generally, of the State Advisory Committee to advise the Central Government on matters connected with the formation of squadrons or units * in the State and squadrons or units already stationed in the State.

(*3*) The duties, powers and procedure of Advisory Committees and in particular the matters in respect of which the Advisory Committees may be called upon to give advice shall be such as may be prescribed.

CHAPTER V

Liability and Discipline of Members of Reserve and Auxiliary Air Forces

25. Liability to be called up for service.—Every member of an Air Force Reserve or the Auxiliary Air Force shall, during the period of his service, be liable to be called up—

(*a*) for * training for such period as may be prescribed and for medical examination,

(*b*) for service in aid of the civil power,

(*c*) for Air Force service in India or abroad. * * * *

26. Application of Air Force Act, 1950.—Every member of an Air Force Reserve or the Auxiliary Air Force shall, when called up for training, medical examination or for service under this Act, be subject to the Air Force Act, 1950 (XLV of 1950), and the rules made thereunder in the same manner as a person belonging to the Air Force and holding the same rank is subject to the said Act and rules and shall continue to be so subject until duly released from such training, medical examination or service, as the case may be.

CHAPTER VI

MISCELLANEOUS

27. Reinstatement in civil employ of persons required to perform service under this Act.—(*1*) It shall be the duty of every employer by whom a person called up under section 25 is employed to grant him such leave as may be necessary and to reinstate him in his employment on the termination of the period during which he has been so called up in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so called up:

Provided that if the employer refuses to reinstate such person or denies his liability to reinstate such person, or if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the prescribed authority and that authority shall, after considering all matters which may be put before him and after making such further inquiry into the matter as may be prescribed, pass an order—

(*a*) exempting the employer from the provisions of this section, or

(*b*) requiring him to re-employ such person on such terms as that authority thinks suitable, or

(*c*) requiring him to pay to such person by way of compensation for failure or inability to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(*2*) If any employer fails to obey the order of any such authority as is referred to in the proviso to sub-section (*1*), he shall be punishable with fine which may extend to one thousand rupees, and the court by which an employer is convicted under this section shall order him (if he has not already been so required by the said authority) to pay to the person whom he has failed to re-employ a sum equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid either by the said authority or by the court shall be recoverable as if it were a fine imposed by such court.

(*3*) In any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed did not apply to the employer for reinstatement within a period of two months from the termination of the period during which he was called up under section 25.

(*4*) The duty imposed by sub-section (*1*) upon an employer to grant leave to a person such as is described in that sub-section or to reinstate him in his employment shall attach to an employer who, before such person is actually called up under section 25, terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section and such intention shall be presumed until the contrary is proved if the termination takes place after the issue of an order relating to that person under section 25.

28. Preservation of certain rights of persons called up for service.—When any person called up under section 25 has any rights under any provident fund or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, during the period for which he has been so called up and if he is reinstated, until such reinstatement under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed.

29. Pay and allowances.—(*1*) Every member of an Air Force Reserve or the Auxiliary Air Force shall, during the period of training or active service, receive such pay and allowances as are admissible to an officer or airman, as the case may be, in the corresponding rank, branch or trade of the Air Force.

(*2*) Where any such member was in any employment immediately before he is called up for training under section 25, the employer shall, during the period of the training, be liable to pay to him the difference, if any, between the pay and allowances which he would have received from the employer if he had not been called up for such training and the pay and allowances which he receives as such member while under training.

(*3*) If any employer refuses or fails to pay to any such member the difference in pay and allowances as provided in sub-section (*2*), such difference in pay and allowances may, on application by the member to the prescribed authority, be recovered from the employer in such manner as may be prescribed.

30. Penalties.—(*1*) If any person refuses or without lawful excuse (the the burden of proving which shall lie upon such person) neglects to comply fully with the requirements of sub-section (*1*) of section 11 or of any order made under sub-section (*2*) of that section or with the requirements of section 14, he shall be punishable with fine which may extend to five hundred rupees.

(*2*) If any person wilfully fails to comply with any notice issued under section 13 or section 16, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

31. Service of notice.—Any notice or order to be served on any person for the purposes of this Act may be sent by post to that person at his last known address or may be served upon him in such other manner as may be prescribed.

32. Competent authority to be public servant.—For the proposes of this Act every competent authority and where the competent authority consists of a committee of two or more air officers, every member of the committee shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

33. Power of Central Government to grant exemptions.—The Central Government may, for special reasons and subject to such conditions as may be prescribed, by order exempt any person from any obligation or liability under this Act or any particular provision thereof.

34. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the composition and strength of any Air Force Reserve;

(*b*) the circumstances in which and the conditions subject to which any officer or airman may be transferred or appointed to the Regular Air Force Reserve under section 5;

(*c*) the age beyond which persons shall not be liable to serve in the Regular Air Force Reserve;

(*d*) the form and manner in which the particulars required by sub-section (*2*) of section 11 shall be furnished;

(*e*) the form and manner in which registers shall be maintained in pursuance of section 15, the particulars to be entered therein, and the correction or revision of such particulars from time to time;

(*f*) the pay or allowances payable to persons called up for inquiry **** or medical examination **** under this Act;

(*g*) the terms and conditions subject to which a person may be enrolled as a member of the Auxiliary Air Force;

(*h*) the authority by which and the conditions subject to which the service of any officer or enrolled person in the Auxiliary Air Force may be terminated;

(*i*) the constitution and the duties, powers and procedure of Advisory Committees to be constituted under section 24;

(*j*) the period and manner of training of members of any Air Force Reserve and the Auxiliary Air Force;

(*k*) the manner in which and the conditions subject to which the rank of any member of an Air Force Reserve may be determined;

(*l*) the constitution of the authority for the purpose of section 27 and the manner in which such authority may conduct any inquiry under this Act;

(*m*) the authority to which an application under sub-section (*3*) of section 29 may be made and the manner in which the difference in the pay and allowances may be recovered under that sub-section;

(*n*) the manner in which any notice or order issued or made under this Act may be served;

(*o*) the conditions subject to which any person may be exempted from any obligation or liability under this Act or any particular provision thereof;

(*p*) any other matter which under this Act is to be, or may be, prescribed.

(*3*) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(*4*) All rules made under this section shall be laid for not less than seven days before Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

35. Amendment of sections 2, 4 and 31, Act XLV of 1950.—In the Air Force Act, 1950—

(*i*) in section 2, for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force, in the circumstances specified in section 26 of the Reserve and Auxiliary Air Forces Act, 1952";

(*ii*) in section 4, for the words "the Indian Air Force Volunteer Reserve", wherever they occur, the words "any Air Force Reserve or the Auxiliary Air Force" shall be substituted;

(*iii*) in section 31, for the words "the Air Force Reserve" the words "any Air Force Reserve or the Auxiliary Air Force" shall be substituted.

36. Repeal of Act XXXVI of 1939.—The Indian Air Force Volunteer Reserve (Discipline) Act, 1939, is hereby repealed.

HOUSE OF THE PEOPLE

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.

(As amended by the Joint Committee)

GIPD—LAD—602 P.S.- 5-8-52—1400

HOUSE OF THE PEOPLE

THE DELIMITATION COMMISSION BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT
NEW DELHI
December, 1952

HOUSE OF THE PEOPLE

CORRIGENDA

to

The Report of the Select Committee on the Delimitation Commission Bill, 1952 together with the Bill as amended.

(i) In page (i) in line 24, for "Shri Krishnamacharya Joshi" read "Shri Krishnacharya Joshi".

(ii) In page (iv) in line 17, for "N.C. CHETTERJEE" read "N.C. CHATTERJEE".

(iii) In page 4 in line 8, for "pacticable" read "practicable".

New Delhi,
10th December, 1952.

M.N. KAUL,
S E C R E T A R Y.

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THE DELIMITATION COMMISSION BILL, 1952

MEMBERS OF SELECT COMMITTEE

Shri M. Ananthasayanam Ayyangar (*Chairman*).
Shri Shankar Shantaram More.
Shri B. S. Murthy.
Shri N. C. Chatterjee.
Dr. Syama Prasad Mookerjee.
Shri Bhawanji A. Khimji.
Shri Syamnandan Sahaya.
Shri Gajendra Prasad Sinha.
Shri K. L. More.
Pandit Lingaraj Misra.
Shri Rohini Kumar Chaudhuri.
Pandit Lakshmi Kanta Maitra.
Shri Mohanlal Saksena.
Shri N. M. Lingam.
Shri Udai Shankar Dube.
Chaudhary Raghubir Singh.
Shri Nemi Chandra Kasliwal.
Shri Ranbir Singh Chaudhuri.
Shri Govind Hari Deshpande.
Sardar Amar Singh Saigal.
Shri Kotha Raghuramaiah.
Shri Krishnamacharya Joshi.
Shri Liladhar Joshi.
Shri A. M. Thomas.
Shri C. R. Basapa.
Shri C. Madhao Reddi.
Shri Choithram Partabrai Gidwani.
Shrimati Renu Chakravartty.
Shri P. T. Punnoose.
Shri Giriraj Saran Singh.
Dr. Manik Chand Jatav-vir.
H. H. Maharaja Rajendra Narayan Singh Deo.
Shri N. R. M. Swamy.
Shri Radha Charan Sharma.
Shri Ranjit Singh.
Shri P. N. Rajabhoj.
Shri Awadheshwar Prasad Sinha.
Shri C. C. Biswas.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and for matters connected therewith was referred, have considered the Bill and I now submit this their report, with the Bill as amended by the Committee annexed hereto.

1. Upon the changes proposed in the Bill which are not formal or consequential, the Select Committee note as follows :—

Clause 4.—Although the power to "readjust representation" probably includes the power to delimit, in the sense of fixing the boundaries of, constituencies, and this is also expressly provided for in clause 8 of the Bill, the Committee consider it desirable to remove any doubts in the matter by stating in clause 4 itself that it shall be the duty of the Commission to delimit the various territorial constituencies.

Clause 5.—The Committee feel that as different States have varying representation in the House of the People as well as in the Legislative Assemblies and as some Part C States have no Legislative Assembly at all, the number of associate members from the States should be different according as the States are Part A States, Part B States, Part C States having Legislative Assemblies or Part C States having no such Assembly. The Committee also feel that those of the associate members who are members of the House of the People should be nominated by the Speaker of the House and those who are members of the Legislative Assembly should be nominated by the Speaker of that Assembly and that in making such nomination the Speaker should have due regard to the political composition of the House or the Assembly. In order to secure this, and at the same time avoid delay in the beginning of the commission's work, the committee consider that the Speakers of the several Legislative Assemblies should make their nominations within one month of the coming into force of the Act, and the Speaker of the House of the People should make his nominations thereafter but within two months of the commencement of the Act. To give effect to these decisions the Committee have substituted a new clause for this clause.

Clause 6 (new).—The Committee have inserted a new clause providing for the filling up of casual vacancies among the members of the Commission and among associate members.

Clause 7 (old clause 6).—The Committee have inserted two new sub-clauses in this clause providing that in case of difference of opinion among the members of the Commission the opinion of the majority shall prevail and that the Acts and proceedings of the Commission shall not be called in question on the ground merely of the temporary absence of a member or associate member or of the existence of a vacancy in the Commission or in any group of associate members.

Clause 8 (old clause 7).—The Committee feel that the work of the Commission should be divided into two stages. The first stage should relate to the determination on the basis of the latest census figures, of the number of seats to be allotted to each of the States in the House of the

People, the number of seats to be assigned to the Legislative Assembly of each Part A State and each Part B State and the number of seats to be reserved for the Scheduled Castes and the Scheduled Tribes. The second stage should relate to the distribution of these seats to the various territorial constituencies and the delimitation of those constituencies. Before finalising its proposals in respect of each stage, the Commission should publish them in draft, invite objections and suggestions by a specified date, and for the purpose of considering the objections and suggestions so received hold one or more public sittings at such place or places as it thinks fit.

As regards the formation and delimitation of constituencies the Committee are of the view that as far as possible constituencies should be single-member constituencies except in cases where reservation has to be made for Scheduled Castes or Scheduled Tribes and for that purpose two-member constituencies may be formed. In every two-member constituency one seat should be reserved for the Scheduled Castes or for the Scheduled Tribes, and the other seat should not be reserved. Constituencies in which a seat is reserved either for the Scheduled Castes or for the Scheduled Tribes should be located in areas in which the population of those castes or those tribes is most concentrated, but in regard to Scheduled Castes care should be taken to distribute the reserved seats in different areas of the State. As far as practicable, constituencies should be formed of geographically compact areas, and in delimiting them, regard should be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience.

To give effect to these decisions the Committee have proposed a revised clause.

Clause 9 (*old clause 8*).—The Committee have inserted a new sub-clause providing that the final orders of the Commission should be laid before the House of the People. They have also made it clear that these orders cannot be called in question in any court.

Clause 10 (*old clause 9*).—With regard to the correction of clerical or arithmetical mistakes in the final orders of the Commission or of errors arising therein from any accidental slip or omission, the Committee have decided that the Chief Election Commissioner may at any time within six months of the publication of the order may make the necessary corrections with the approval of the other members of the Commission or such of them as might be then available. The clause has been redrafted accordingly.

2. The Bill was published in Part II, section 2 of the Gazette of India, dated the 21st June, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR,

Chairman of the Select Committee.

NEW DELHI;

The 5th December, 1952.

MINUTE OF DISSENT

The Bill proposes that the Delimitation Commission will be bound by the number of seats as allotted to the Legislative Assemblies for the Part C States in the Schedule to the Part C States Act of 1951. The Commission is however being given powers to delimit the constituencies and redistribute the seats in Part C States and the Part C States Act of 1951 is being abrogated in this respect. It will be remembered large weightage was given to the Part C States Assemblies. This was obviously intended as a temporary arrangement. We see no reason why the Delimitation Commission should be debarred from even examining the size of the Part C States Assemblies. It is time the whole question of Part C States is reviewed and the Delimitation Commission is obviously the body which should undertake this task, so that changes, if any, can be brought into effect before the next general elections fall due.

SYAMA PRASAD MOOKERJEE.
S. S. MORE.
N. C. CHETTERJEE.
CHOITHRAM P. GIDWANI.
RAJENDRA NARAYAN SINGH DEO.
RENU CHAKRAVARTTY.
P. T. PUNNOOSE.
B. S. MURTHY.
N. R. M. SWAMY.
P. N. RAJABHOJ.

NEW DELHI;
The 5th December, 1952.

THE DELIMITATION COMMISSION BILL, 1952

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined or side-lined indicate the amendments suggested by the Committee.)

A

BILL

to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and the delimitation of those constituencies and for matters connected therewith.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Delimitation Commission Act, 1952.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(*a*) "article" means an article of the Constitution;

(*b*) "Commission" means the Delimitation Commission constituted under section 3;

(*c*) "latest census figures" mean the census figures as ascertained at the census held in 1951;

(*d*) "member" means a member of the Commission and includes the Chairman.

3. **Constitution of Delimitation Commission.**—(*1*) As soon as may be after the commencement of this Act, the Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:—

(*a*) two members, each of whom shall be a person who is or has been a Judge of the Supreme Court or of a High Court, to be appointed by the Central Government, and

(*b*) the Chief Election Commissioner, *ex-officio*.

(*2*) The Central Government shall nominate one of the members appointed under clause (*a*) of sub-section (*1*) to be the Chairman of the Commission.

4. **Duties of the Commission.**—It shall be the duty of the Commission to readjust the representation of the several territorial constituencies in the House of the People and of the several territorial constituencies in the Legislative Assembly of each State other than Jammu and Kashmir, on the basis of the latest census figures and to delimit the said constituencies.

5. Associate members.—(*1*) For the purpose of assisting the Commission in the readjustment of the representation and in the delimitation of the territorial constituencies, both for the House of the People and the Legislative Assembly, if any, in each State other than the State of Jammu and Kashmir and the State of Bilaspur, the Commission shall associate with itself from that State—

(*a*) if it is a Part A State, seven persons, three of whom shall be members of the House of the People representing that State and four shall be members of the Legislative Assembly of that State;

(*b*) if it is a Part B State, five persons, two of whom shall be members of the House of the People representing that State and three shall be members of the Legislative Assembly of that State;

(*c*) if it is a Part C State having a Legislative Assembly, three persons one of whom shall be a member of the House of the People representing that State and two shall be members of the Legislative Assembly of that State; and

(*d*) if it is a Part C State having no Legislative Assembly, two persons who shall be the members of the House of the People representing that State.

(*2*) The persons to be so associated from each State (hereinafter referred to as "associate members") shall be nominated, in the case of members of the House of the People, by the Speaker of that House, and in the case of members of a Legislative Assembly, by the Speaker of that Assembly, having due regard to the composition of the House, or as the case may be, of the Assembly.

(*3*) The first nominations to be made under sub-section (*2*)—

(*a*) shall be made by the Speakers of the several Legislative Assemblies within one month, and by the Speaker of the House of the People within two months, of the commencement of this Act, and

(*b*) shall be communicated to the Chief Election Commissioner, and where the nominations are made by the Speaker of a Legislative Assembly, also to the Speaker of the House of the People.

(*4*) None of the associate members shall have a right to vote or to sign any decision of the Commission.

6. Casual vacancies.—If owing to death or resignation the office of the Chairman or of a member or of an associate member falls vacant, it shall be filled as soon as may be practicable by the Central Government or the Speaker concerned under and in accordance with the provisions of section 8 or, as the case may be, of section 5.

7. Procedure and Powers of the Commission.—(*1*) The Commission shall determine its procedure and shall in the performance of its functions have all the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of witnesses;
(*b*) requiring the production of any document; and
(*c*) requisitioning any public record from any court or office.

(*2*) The Commission shall have power to require any person to furnish any information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, any matter under the consideration of the Commission.

(*3*) The Commission may authorise any of its members to exercise any of the powers conferred on it by clauses (*a*) to (*c*) of sub-section (*1*) and sub-section (*2*), and any order made or act done in exercise of any of those powers by the member authorised by the Commission in that behalf shall be deemed to be the order or act, as the case may be, of the Commission.

(*4*) If there is a difference of opinion among the members, the opinion of the majority shall prevail, and acts and orders of the Commission shall be expressed in terms of the views of the majority.

(*5*) The Commission as well as any group of associate members shall have power to act notwithstanding the temporary absence of a member or associate member or the existence of a vacancy in the Commission or in that or any other group of associate members; and no act or proceeding of the Commission or of any group of associate members shall be invalid or called in question on the ground merely of such temporary absence or of the existence of such vacancy.

(*6*) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.—For the purposes of enforcing the attendance of witnesses the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

8. Manner of making readjustment and delimitation.—(*1*) The Commission shall, in the manner herein provided, first determine on the basis of the latest census figures—

(*a*) the number of seats to be allotted to each of the States in the House of the People and the number of seats, if any, to be reserved for the scheduled castes and for the scheduled tribes of the State, and in doing so, shall have regard to the provisions of article 81 and article 330; and

(*b*) the number of seats to be assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir, and the number of seats, if any, to be reserved therein for the scheduled castes and the scheduled tribes of the State, and in doing so, shall have regard to the provisions of article 170 and article 332, and shall also ensure that the total number of seats assigned to the Legislative Assembly of a State forms an integral multiple of the total number of seats allotted to that State in the House of the People:

Provided that no reduction shall be made in the number of seats in the House of the People at present allotted to any Part C State which has no Legislative Assembly.

(*2*) The Commission shall, in the manner herein provided, then distribute the seats allotted to each of the States other than Jammu and Kashmir in the House of the People, the seats assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir, and the seats allotted to the Legislative Assemblies of certain

Part C States under section 3 of the Government of Part C States Act, 1951 (XLIX of 1951), to territorial constituencies and delimit them in accordance with the provisions of the Constitution and of the said section 3 on the basis of the latest census figures, and in doing so, the Commission shall have regard to the following provisions, namely:—

(*a*) all constituencies shall be either single-member constituencies or two-member constituencies;

(*b*) wherever practicable, seats may be reserved for the scheduled castes or for the scheduled tribes in single-member constituencies;

(*c*) in every two-member constituency, one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the other seat shall not be so reserved;

(*d*) constituencies in which a seat is reserved either for the scheduled castes or for the scheduled tribes shall, as far as practicable, be located in areas in which the population of the scheduled castes or, as the case may be, of the scheduled tribes is most concentrated; and

(*e*) all constituencies shall, as far as practicable, consist of geographically compact areas, and in delimiting them, regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience.

(*3*) First in respect of the determination of numbers under sub-section (*1*), and then again in respect of the distribution of seats and delimitation of constituencies under sub-section (*2*), the Commission shall—

(*a*) publish its proposals, together with the dissenting proposals, if any, of an associate member who desires publication thereof, in the Gazette of India and Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(*b*) specify a date on or after which the proposals will be further considered by it;

(*c*) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places as it thinks fit ; and

(*d*) thereafter, determine the matters referred to in sub-section (*1*) or, as the case may be, in sub-section (*2*) by one or more final orders.

9. Readjustment of representation and the date of operation of such readjustment.—(*1*) The Commission shall cause each of its final orders to be published in the Gazette of India ; and upon such publication, the order shall have the full force of law and shall not be called in question in any court.

(*2*) As soon as may be after such publication, every such order shall be laid before the House of the People.

(*3*) Subject to the provisions of sub-section (*4*), the readjustment of the representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House of the People or to the Legislative Assembly of such State, as the case may be, held after the publication in the Gazette of India of that order, and shall so apply in supersession of the provisions relating to such representation contained in the Representation of the

People Act, 1950 (XLIII of 1950), the Government of Part C States Act, 1951 (XLIX of 1951) and the orders made under either of the said Acts.

(4) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or the Assembly, as the case may be, existing on the date of publication in the Gazette of India of the order made by the Commission under sub-section (*1*) relating to the readjustment of such representation.

10. Amendment of orders of the Commission.—At any time within six months of the date of publication in the Gazette of India of any order of the Commission under sub-section (*1*) of section 9, any clerical or arithmetical mistake in the order and any error arising therein from an accidental slip or omission may be corrected by the Chief Election Commissioner by order made with the previous approval of the other members of the Commission or of such of them as may be then available and published in the Gazette of India.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and the delimitation of those constituencies and for matters connected therewith.

(As amended by the Select Committee)

GIPD—LAD—948 P.S.—8-12-52—1,400

HOUSE OF THE PEOPLE

THE CONSTITUTION (SECOND AMENDMENT) BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT
NEW DELHI

November, 1952

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MEMBERS OF SELECT COMMITTEE

Shri M. Ananthasayanam Ayyangar (*Chairman*).
Shri Bhawanji A. Khimji.
Shri Syamnandan Sahaya.
Shri Gajendra Prasad Sinha.
Shri K. L. More.
Pandit Lingaraj Misra.
Shri Rohini Kumar Chaudhuri.
Pandit Lakshmi Kanta Maitra.
Shri Mohanlal Saksena.
Shri N. M. Lingam.
Shri Udai Shankar Dube.
Choudhary Raghubir Singh.
Shri Nemi Chandra Kasliwal.
Shri Ranbir Singh Chaudhuri.
Shri Govind Hari Deshpande.
Sardar Amar Singh Saigal.
Shri Kotha Raghuramaiah.
Shri Krishnacharya Joshi.
Shri Liladhar Joshi.
Shri A. M. Thomas.
Shri C. R. Basapa.
Shri C. Madhao Reddi.
Shri Choithram Partabrai Gidwani.
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Shri P. T. Punnoose.
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Shri Radha Charan Sharma.
Shri Ranjit Singh.
Shri P. N. Rajabhoj.
Shri Awadheshwar Prasad Sinha.
Shri Shankar Shantaram More.
Shri B. S. Murthy.
Shri N. C. Chatterjee.
Dr. Syama Prasad Mookerjee.
Shri C. C. Biswas.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Constitution of India was referred have considered the Bill, and I now submit this their Report with the Bill as amended by the Committee annexed hereto.

2. The Committee have explored the possibility of readjusting the representation of the territorial constituencies within the present limits laid down in sub-clause (b) of clause (1) of article 81 of the Constitution so that any amendment of the Constitution could be avoided. Although theoretically it may be possible to readjust the representation of the constituencies within these limits, the Committee consider that practical administrative difficulties will stand in the way of such readjustment. The Committee further feel that although the amendment proposed in the Bill will be sufficient to solve the immediate difficulty, it is desirable to avoid the necessity of amending this article periodically after every census. The Committee have accordingly decided that the upper limit of representation laid down in sub-clause (b) should be removed altogether thereby bringing article 81(1) (b) into line with article 170(2) relating to representation in the State Assemblies. At the same time the Committee wish to record that the upper limit of one member for every 750,000 of population should not, as far as practicable, be exceeded.

The Committee have accordingly substituted a new clause for clause 2 of the Bill.

3. The Bill was published in Part II, section 2 of the Gazette of India, dated the 21st June, 1952.

4. The Committee think that the Bill has not been so altered as to require re-circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR,

Chairman of the Select Committee.

NEW DELHI;

The 18th November, 1952.

MINUTE OF DISSENT

The discussion in the Select Committee revealed that the constituencies may still be delimited for the next election keeping to the maximum limit set by the Constitution. Since Ji am firmly of the opinion that there must be no further extension of the number of voters to a constituency which already is unwieldy, I give my minutes of dissent to the amendment proposed. The amendment of not specifying the upper limit of the number of voters to a constituency gives the blank-cheque to government to increase the constituencies and as such I am opposed to it. Parliamentary democracy can only be a "democracy" when the members of Parliament can keep living links with the people they represent—going amongst them constantly, ascertaining their demands and desires, and reporting back to them what has been done in Parliament. The Present 7½ lakh limit itself is difficult enough to cover. Any further extension will further make this intimate connection between the people and its representatives impossible.

Further, I am of the opinion, since there is no pressing need for this amendment we should have left this to the future Parliaments to do, as and when need arose. As I do not subscribe to the opinion that any extension of the 500 limit to the House of the People will impair its efficiency, I assert we have no right to legislate ahead for those who will come 10 years hence or to presuppose their needs and conditions. I therefore strongly disagree with this amendment.

RENU CHAKRAVARTY.

NEW DELHI;
The 18th November, 1952.

THE CONSTITUTION (SECOND AMENDMENT) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee)

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Constitution (Second Amendment) Act, 1952.

2. Amendment of article 81.—In sub-clause (b) of clause (1) of article 81 of the Constitution, the words and figures "not less than one member for every 750,000 of the population and" shall be omitted.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill further to amend the Constitution of India.

(As amended by the Select Committee)

GIPD—LAD— 883 P S—19-11-52—1,400 .

HOUSE OF THE PEOPLE

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT

NEW DELHI

November, 1952

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

Members of the Select Committee.

Shri T. T. Krishnamachari (*Chairman*).
Shri Chimanlal Chakubhai Shah
Shri V. B. Gandhi
Shri Ghamandi Lal Bansal
Shri Mukand Lal Agarwal
Shri Raghubir Sahai
Shri Sinhasan Singh
Shri C. R. Bassapa
Shri Balwant Sinha Mehta
Shri Asim Krishna Dutt
Shri Lalit Narayan Mishra
Shri Mathura Prasad Mishra
Shri R. P. Navatia
Shri Ahmad Mohiuddin
Dr. Ram Subhag Singh
Shri P. T. Thanu Pillai
Shri G. R. Damodaran
Shri K. T. Achuthan
Shri Satis Chandra Samanta.
Shri Jagannath Kolay
Shri C. R. Chowdary
Shri Umashankar Muljibhai Trivedi
Shri Tulsidas Kilachand
Shri Amjad Ali
Shri Rayasam Seshagiri Rao
Shri G. D. Somani
Shri Dev Kanta Borooah
Shri Bhawanoji A. Khimji
Shri Bhagwat Jha Azad
Shri Satish Chandra
Shri Radhelal Vyas
Shri Feroze Gandhi
Shri D. P. Karmarkar
Shri Chintaman Dwarkanath Deshmukh

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

Clause 3.—The Select Committee think that this provision should be made more flexible and that the reference therein to a full-time member-Secretary should be deleted. This clause has been redrafted accordingly.

Clause 4.—Sub-clause (*e*) has been slightly amended so that the Commission will be enabled to undertake the inspection of accounts of a recognised association whenever it thinks fit, without having to wait for a direction from the Central Government in this behalf.

Clause 5.—The Select Committee have amended sub-clause (*2*) to provide expressly for the prescription of additional particulars which every application for recognition should contain.

Clause 6.—It is now expressly provided in the redrafted sub-clause (*1*) that the recognition granted to an association may be subjected to conditions and shall specify the goods or classes of goods with respect to which the association has been recognised.

Sub-clause (*4*) has been amended to provide for the publication of the recognition in the local Official Gazette also, and further to provide that the recognition shall have effect as from the date of its publication in the Gazette of India.

Clause 8.—Sub-clause (*2*) (*c*) has been amended so as to authorise the inspection of the accounts of members of a recognised association also, while the amendment to sub-clause (*3*) is intended to ensure that all persons who have had dealings with any of the other persons specified in that sub-clause are under an obligation to produce the accounts in their possession if so required.

Clause 10.—The Select Committee feel that there is no need to specify any particular provision of the Act with reference to which a recognised association may be directed to make rules: nor is it necessary to restrict the discretion of the Central Government to fix a period for compliance with its directions. They also think that the modification of any rules under sub-clause (*2*) should be left to the discretion of the Central Government and not be made dependent upon an agreement between the association and the Central Government. This clause has been amended accordingly.

Clause 14.—The Select Committee feel that where the period of suspension is likely to exceed one month, the governing body should be given an opportunity of being heard in the matter and a proviso has been added accordingly.

Clause 18.—The Select Committee have carefully considered the provisions of this clause and the various views expressed thereon. But in their opinion the law should not be made applicable to non-transferable specific delivery contracts at all except to the extent to which such contracts are likely to be used for speculative purposes. To prevent such use,

a provision preventing the formation of associations which will provide facilities for that purpose is all that in their opinion is needed. Sub-clause (*1*) is intended to give effect to this purpose.

Sub-clause (*2*) gives the Central Government power to exempt transferable specific delivery contracts from the operation of all or any of the provisions of Chapters III and IV in any area and this, in the opinion of the Select Committee, would be a better method of dealing with this matter than to rely on the power of exemption given under clause 27.

Clause 20.—The amendment is designed to provide penalties for the contravention of the provisions contained in clauses 8(*3*) and 18 (*1*).

Clause 21.—A new sub-clause (*g*) has been added providing for the punishment of dissemination of false statements or information affecting or tending to affect the course of business in forward contracts.

2. The Bill was published in the Gazette of India, Part II, Section 2, dated 9th August, 1952.

3. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

T. T. KRISHNAMACHARI.

Chairman of the Select Committee.

NEW DELHI;

The 5th November, 1952.

MINUTES OF DISSENT

I

This Bill, intended to regulate and control Forward Trading and to check unhealthy speculation, will have very limited effect. On a Notification being issued by Government under Section 15, no Forward Contract can be effected in the commodity and in the area mentioned in the Notification except through a Recognised Association. Unrestricted forward trading and consequent speculation may go on in all other commodities and in all other areas. The Government can take some action in such cases under Section 17 but that would be rare and generally belated. Under section 15, the Government is likely to control Forward Trading only in important agricultural commodities like cotton, jute and oil seeds and only in important centres like Bombay, Calcutta etc.,

In fact, a hedge market is necessary only for agricultural commodities. Forward Contracts for specific delivery, transferable or non-transferable take place in almost all commodities but no hedge market or a future contract is necessary for that purpose. But war time legislation has shown that specific delivery contracts can be and are abused for heavy speculation unless controlled and hence they have also to be brought under this Bill.

It is well-known that heavy speculation is going on in all kinds of commodities like Chamak (Artificial Silk Yarn), cloves, pepper, cardamom, mercury, turmeric, copra, oil and in many other commodities. Mushroom Associations spring up even in small towns to provide facilities for such speculation. These Associations under their bye-laws take wide powers for themselves, particularly with regard to compulsory squaring up of transactions and dispensing with actual delivery of goods. Traders and merchants, small and big speculate through these Associations, but it is generally the big speculator who succeeds to the ruin of the small one. Because of such unhealthy speculation in all these commodities and cornering of markets by speculators, the producer, the manufacturer and the consumer is at the mercy of the speculator. It is a large and growing mence, which if not checked, is likely to affect seriously the economy of the country. The crisis in Forward Markets in March-April of this year ruined thousands of people as also producers, manufacturers and consumers because of excessive over-trading by the speculators.

There are two ways of checking such unhealthy speculation. One is to prohibit forward trading except in commodities permitted by the Government. This is not difficult to achieve, particularly when non-transferable specific delivery contracts are being exempted from the operation of this Act. If, however, such a general ban is considered difficult of enforcement at present on account of administrative difficulties, another way to achieve the same object is to prohibit the organisation of unrecognised associations which provide facilities for such speculation. It is these Associations with wide powers to themselves which facilitate speculation. The Governing Bodies of such Associations are formed of interested parties and vested interests. Experience shows that it is only when an Association of this kind provides facilities for large scale forward trading that speculation becomes easy. Unless such Associations are abolished and prohibited, this bill will not touch even the fringe of the

problem. It should not be difficult to do so, particularly when non-transferable specific delivery contracts are taken out of the operation of this Act. 95 per cent., if not more, of Forward Contracts are of non-transferable nature, made between party and party which are and can be performed by the parties themselves. When non-transferable contracts are found to have been abused for speculation, it is only because of the existence of an Association which provides facilities to do so.

I would, therefore, add a clause in the Bill on the following lines after clause 14:—

"(1) No person shall organise or assist in organising any association, for the regulation and control of Forward Contracts except for the purpose of obtaining recognition under Section 5.

(2) No person shall be a member of any association having for its object regulation and control of Forward Contracts, unless it be a recognised association."

I would strongly urge upon the Government to consider this proposal.

There are some other provisions of the Bill as amended by the Select Committee on which I would like to say something but they are of a minor nature and I need not discuss them in this note.

NEW DELHI;

C. C. SHAH.

The 5th November, 1952.

II

We are in disagreement with our colleagues on what we consider to be a major issue and have therefore thought ie necessary to write this minute of dissent for the purpose of explanation our point of view.

2. *Main object of the Bill.*—The main object of this Bill is to regulate and control Forward Contracts in order to prevent unhealthy trading outside a recognised association and its injurious effects. In fact the only criterion for judging the adequacy and effectiveness of the present legislation is to find out whether its provision can definitely result in the realisation of that objective. We are convinced that the change agreed to by a majority of our colleagues in Clause 18 of the Bill (as it was introduced on 11th August 1952) will defeat the very object for which the Bill is said to have been framed and introduced.

3. *War time.*—During war time forward trading was altogether prohibited under the Defence of India Rules, but as this was found to be inconvenient, trading in a new category of forward contract, *viz.*, non-transferable specific delivery contract at a specified price to a specific party and for specific delivery was permitted. Even the elaborate definition of such contracts was found to be vague and difficult of interpretation. Whatever reasons there might have been for creating this new variety of forward contract during war time, the same do not exist any more and the Bombay Act passed in 1947 (*i.e.* after the war) makes no mention of this variety of contract.

4. *Present time normal.*—In normal times—and now eight years after the cessation of hostilities the war time abnormalities must be taken not

to be there—there can really be only two methods of transacting business: by making (a) ready delivery contracts and (b) Forward Contracts. The Bombay Forward Contracts Control Act of 1947 has recognised only these two categories of contracts and this Act has worked satisfactorily.

5. *Regulation of Forward Contracts necessary.*—In the case of ready delivery contracts there is no scope for speculation because the delivery of goods and payment of price therefor take place almost immediately. In the case of Forward Contracts there is a time lag between the date of the contract and the date of its performance with a likelihood of fluctuations in prices between these two dates. There is possibility of benefitting as also of losing by such fluctuations. It is conceded that within reasonable limits and under proper regulations, doing business on the basis of an intelligent anticipation of price variations is permissible and in some measure helps in stabilizing market conditions. Unfortunately it has been found by experience that the temptation to take advantage of the changing prices in the hope of making profits without much regard to the interests of the consumers proves too strong to a small section of the people. It is the effort of the Government to stop such undesirable activities and coercive powers of the law are acquired and invoked for the purpose. The present Bill is intended for achieving that object.

6. *Bill No. 109 of 1950.*—In 1950 when the Forward Contracts (Regulation) Bill was introduced in Parliament it contained a Clause that its Chapters III and IV should not apply to Non-transferable Specific Delivery Contracts. Responsible commercial opinion took objection to this exclusion on the ground that it would definitely leave a loophole for unhealthy speculation and that under its guise undesirable activities would go on unhampered. The matter was also raised in Parliament and it was pointed out that uncontrolled speculation was going on in Phatka (Jute) and oilseeds in various States by utilising the so-called non-transferable specific delivery contracts as ordinary forward contracts in spite of forward trading as such being not permitted. The State Governments were even asked by the Central Government to take action in the matter. When the Bill went up to the Select Committee in 1951 and was being considered by it in detail several instances were cited of the abuses of the exemption of non-transferable specific delivery contracts. It was shown to the Committee that such contracts virtually became in actual practice ordinary forward contracts and the exemption that was granted was thus abused.

7. *Report of Select Committee dated 20th August 1951.*—After taking evidence, the said Select Committee came to the conclusion that Clause 18 of the Bill required to be amended and the Clause was re-drafted providing that Chapters III and IV shall apply to non-transferable specific delivery contracts in such areas as may be specified in a notification issued simultaneously with the notification under Clause 15. This shows that the Select Committee was conscious of the fact that the area for regulation of non-transferable specific delivery contracts by a recognised Association would be smaller than, and not coterminus with, the larger area for which an association may be recognised under the Act for Forward Trading.

8. *Bill No. 109 of 1950 lapsed and present Bill introduced.*—Thereafter with the dissolution of Parliament the Bill lapsed. It was reintroduced in August 1952 practically in the same form in which it had been finalised by the Select Committee of 1951. Its Clause 18 provided that non-transferable specific delivery contracts should not be exempted from the operation of its Chapters III and IV as recommended by the Select Com-

mittee of 1951. The Minister for Commerce, Shri T. T. Krishnamachari, while introducing the Bill, in the House of the People on 11th August 1952 justified the bringing of the non-transferable specific delivery contracts within the purview of the Bill on the ground that if that was not done there would be "speculation outside the recognised Association under the guise of non-transferable specific delivery contracts".

9. *Select Committee's alteration of Clause* 18.—In the context of all this recent history, it is surprising that a majority of the present Select Committee which considered this Bill has now taken a different view and has recommended exemption to such non-transferable specific delivery contracts. We are unable to understand the reasons for this change of opinion. The cases of abuse cited previously have not been challenged. No fresh evidence has been brought to prove that the exemption does not really work as a loophole for facilitating unauthorised forward trading outside Government regulations. In fact the possibility of that abuse is as real today as it has been in the past and will continue to be so in future also. Obviously there is some misapprehension somewhere which has led to such a curious and, in my considered opinion, harmful amendment to the Original Clause. In practice it will tend to give rise to a large volume of unauthorised forward trading outside the recognised association, thereby creating unhealthy and chaotic conditions.

10. *Abuse of Non-transferable specific delivery contract.*—It may be argued that even in the Clause as it stands amended by the Select Committee provision has been made to enable Government to apply Chapters III and IV to non-transferable specific delivery contracts if it is found that their exemption from the operation of these Chapters does leave a loophole for unregulated forward trading. But the experience of the last few years has precisely been that such a loophole is inseparable from the fact of the exemption and that it is inevitably exploited in a manner which does harm to the interests of the community. It is much wiser to prevent the occurrence of the mischief and the damage that it is bound to cause than to permit it to be committed and to suffer its evil consequences before prohibitive action is taken.

11. *No* bona fide *trader affected by original Clause* 18.—There seems to be a belief in some quarters that if non-transferable specific delivery contracts are brought within the purview of the Bill, the small upcountry trader will be severely handicapped and that the *bona fide* trader may be greatly inconvenienced. Such a belief is entirely unfounded and misplaced. The recognised association will generally be recognised only for a city or for some such limited area and, except in a few exceptional cases its authority will not extend beyond that area. Even in the case of an association recognised for areas larger than a city area, the control of the Association over non-transferable specific delivery contracts would be limited to the city area. This was the intention of the original Clause 18 of the present Bill No. 90 of 1952. No *bona fide* upcountry trader will have, therefore, any difficulty whatever in carrying on his normal business and entering into contracts for non-transferable specific delivery. The imaginary conflict between the urban trader and the upcountry trader does not really exist. There is no question of big business being enabled to wipe out a small business because of the non-exemption of the non-transferable specific delivery contracts from the operation of the Bill.

12. *Bombay Act has worked satisfactorily.*—The Bombay Forward Contracts Control Act of 1947 has been in operation for over five years. As has been stated above it recognises only two categories of contract *viz.*, forward contracts and ready delivery contracts. Yet its working has not resulted in any dislocation in trade nor inconvenienced any *bona fide* traders. In fact the measure has been quite successful in effectively controlling forward trading without causing hardship to business or trade or anybody else.

13. *Restrictions on trade.*—After all, any law which is intended to regulate and control forward contracts will, in the nature of things, impose certain restrictions, but care has to be taken to see that such restrictions and regulations do not become so unduly rigid or so unduly pliable as to result in avoidable hardship or avoidable evasions. The attempt to regulate trade through the agency of properly organized associations and the introduction of unitary control in respect of vital commercial transactions are steps in the right direction. There cannot therefore be any valid objection to the work of regulating business in non-transferable specific delivery contracts (at least in specified areas) being entrusted to such associations. In fact that would be the proper course to follow. It cannot be construed, *prima facie*, as creating wittingly or unwittingly privileged conditions in favour of the members of recognised associations. The constitution, functions and powers of these bodies are subject to scrutiny, regulation and approval by the Government. That in itself is a sufficient safeguard against any eventuality detrimental to the interest of the country or the people.

14. *Conclusion.*—We are therefore, definitely of opinion that Clause 18 of the Bill as it was introduced on 11th August 1952 should stand as it was and that the amendment suggested by our colleagues should not be accepted. If the amendment is accepted the fundamental object of regulating and controlling forward contracts will be entirely frustrated.

TULSIDAS KILACHAND.

NEW DELHI;

G. D. SOMANI.

The 5th November, 1952.

III

I agree with this report of the Select Committee in its entirety. As I pointed out at the meeting of the Select Committee on the 7th October, 1952, I do not agree to the words "as well as the company" occurring in clause 22 line 47 of the Bill printed along with the draft report, briefly for the following reasons.

The Bill does not provide for any special procedure for the trial of offences for which penalty has been provided in Chapter V. Therefore, trial of all contraventions must needs be governed as provided for offences against other laws at the end of schedule II of the Criminal Procedure Code. But in the Criminal Procedure Code there is no provision for placing in the dock a company as defined in the Bill. Obviously making a company accused will militate against a number of provisions of the Criminal Procedure Code, example those relating to custody of accused, appearance of accused before courts, framing of charges and reading and explaining the

same to the accused. Moreover the retention of these words is redundant for the persons mentioned in sub-clauses (1) and (2) include almost all the persons whom it may be necessary or desirable to prosecute. I fail to appreciate who else is contemplated to be proceeded against by the addition of these words. Even as these sub-clauses stand the phraseology adopted therein is not happy as the provisions in the two sub-clauses may prove over-lapping. "Every person who was in charge of, and was responsible to the company for the conduct of the business of the company" of sub-clause (1) may be identical with "such Director, Manager, Secretary or other Officer" of sub-clause (2).

The only argument that was advanced for the inclusion of "company" in the array of accused was the ground that in two previous enactments the same wording has been employed. I respectfully submit that in Legislation customary prescription is hardly a valid ground. I refuse to bow before or recognise this argument.

On the contrary I can also give exemples of previous Legislation in support of my contention, where and I think wisely in accordance with law "company" has not been placed in the array of accused. One such example is found in section 12 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act III of 1947.

In my opinion it is more logical and legal to follow the example of this enactment and drop out the words "as well as the company" in sub-clause II of clause 22.

MUKAND LAL AGGARWAL.

NEW DELHI;
The 5th November, 1952.

IV.

I have gone through the copy of the Report of the Select Committee as well as the Bill and the Forward Contracts (Regulation) Bill 1952 as amended by the Committee. I find at the last clause of Section 7 it has been provided as follows:—

> "Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date."

It seems to me little ambiguous. In the first part of the said clause all contracts entered into and made before the date of notification have been clearly protected.

Under the circumstances it is not clear what is the necessity of a notification again to protect them over again. It makes the clause bit ambiguous. Perhaps by the last portion of the said clause it is intended to mean that the Government by Notification can provide the manner in which all these outstanding contracts should be performed. If that is so the word "due" is not appropriate. Instead of the word "due" I suggest the word "manner of" or the word "mode of" may be used. I agree with the Bill as amended subject to the above suggestion.

A. K. DUTT.

NEW DELHI;
The 5th November, 1952.

V.

I approve of the report of the Select Committee subject to these minutes.

The provision in Clause 20(1) and in Clause 21 cognizable needs a reconsideration. Offences of this nature are not easily classifiable as grave or tainted with any high degree of moral turpitude. Certainly they are not more serious than an offence under Section 477A of the Indian Penal Code which is noncognizable though punishable with seven years rigorous imprisonment.

The small traders and merchants have already too many technical offences acting as swords of Damocles over them and adding several more to these can only increase the dishonest interference with their legitimate business by the police.

We have no provision in our country whereby the police is made to compensate those who are harrassed without any reasonable or probable cause. Absence of this provision leads to every day harrassment of the general public and specially on such technical matters in measures which are embodied in anti-social legislation. There are hundreds of false cases where the police haye extorted moneys or have used this bogey of cognizable offences for their own dishonest ends.

It would be therefore in the interest of society that this clause be omitted from the Act.

U. M. TRIVEDI.

NEW DELHI;
The 5th November, 1952.

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(*Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*)

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.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Forward Contracts (Regulation) Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) Chapter I shall come into force at once, and the remaining provisions shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(*b*) "Commission" means the Forward Markets Commission established under section 3;

(*c*) "forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(*d*) "goods" means every kind of movable property other than actionable claims, money and securities;

(*e*) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);

(*f*) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;

(*g*) "option in goods" means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a put, a call or a put and call in goods;

(*h*) "prescribed" means prescribed by rules made under this Act:

(*i*) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

(*j*) "recognised association" means an association which is for the time being recognised by the Central Government under section 6;

(*k*) "rules", with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;

(*l*) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

(*m*) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;

(*n*) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract.

CHAPTER II

The Forward Markets Commission

3. Establishment and constitution of the Forward Markets Commission.—(*1*) The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

(*2*) The Commission shall consist of not less than two, but not exceeding three, members appointed by the Central Government of whom the Chairman * * * (* to be appointed by the Central Government) shall be a full-time member and the other member or members shall be full-time or part-time as the Central Government may direct :

Provided that one of the members to be so appointed shall be a person having knowledge of forward markets in India.

(*3*) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

(*4*) No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for reappointment.

(5) The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

4. Functions of the Commission.—The functions of the Commission shall be—

(a) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act;

(b) to keep forward markets under observation and to draw the attention of the Central Government or of any other prescribed authority to any development taking place in, or in relation to, such markets which, in the opinion of the Commission, is of sufficient importance to deserve the attention of the Central Government and to make recommendations thereon;

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;

(d) to make recommendations generally with a view to improving the organisation and working of forward markets;

(e) to undertake the inspection of the accounts and other documents of any recognised association whenever it considers it necessary; and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

CHAPTER III

Recognised Associations

5. Application for recognition of associations.—(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

(2) Every application made under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular, to—

(a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the association ;

(c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto ;

(d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks.

6. Grant of recognition to association.—(*1*) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.

(*2*) Before granting recognition under sub-section (*1*), the Central Government may, by order, direct,—

(*a*) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;

(*b*) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of, the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.

(*3*) No rules of a recognised association shall be amended except with the approval of the Central Government.

(*4*) Every grant of recognition under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

7. Withdrawal of recognition.—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the Official Gazette, the recognition granted to the said association :

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

8. Power of Central Government to call for periodical returns or direct inquiries to be made.—(*1*) Every recognised association shall furnish to the Central Government such periodical returns relating to its affairs or the affairs of its members as may be prescribed.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), where the Central Government considers it expedient so to do, it may, by order in writing,—

(*a*) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may require, or

(*b*) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representatives of the Central Government ; and

(*c*) direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government.

(*3*) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (*2*)—

(*a*) every director, manager, secretary or other officer of such association,

(*b*) every member of such association, *

(*c*) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm, and

(*d*) every other persons or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (*a*), (*b*) and (*c*),

shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject-matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

9. Furnishing of annual reports to the Central Government by recognised associations.—(*1*) Every recognised association shall furnish to the Central Government a copy of its annual report.

(*2*) Such annual report shall contain such particulars as may be prescribed.

10. Power of Central Government to direct rules to be made or to make rules.—(*1*) Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(*2*) If any recognised association, against whom an order is issued by the Central Government under sub-section (*1*), fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Central Government may think fit.

(*3*) Where, in pursuance of sub-section (*2*), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India, the rules so made or amended shall,

notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or any other law for the time being in force, have effect as if they had been made or amended by the recognised association concerned.

11. Power of recognised association to make bye-laws.—(*1*) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(*a*) the opening and closing of markets and the regulation of the hours of trade;

(*b*) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house;

(*c*) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(*d*) fixing, altering or postponing days for settlement;

(*e*) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;

(*f*) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(*g*) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;

(*h*) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(*i*) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;

(*j*) the levy and recovery of fees, fines and penalties;

(*k*) the regulation of the course of business between parties to contracts in any capacity;

(*l*) the fixing of a scale of brokerage and other charges;

(*m*) the making, comparing, settling and closing of bargains;

(*n*) the regulation of fluctuations in rates and prices;

(*o*) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;

(*p*) the regulation of dealings by members for their own account;

(*q*) the limitations on the volume of trade done by any individual member;

(*r*) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.

(*3*) The bye-laws made under this section may—

(*a*) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (*2*) of section 15;

(*b*) provide that the contravention of any of the bye-laws shall—

(*i*) render the member concerned liable to fine; or

(*ii*) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.

(*4*) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

12. Power of Central Government to make or amend bye-laws of recognised associations.—(*1*) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(*2*) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised association.

(*3*) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section (*2*), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (*2*).

(*4*) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

13. Power of Central Government to supersede governing body of recognised association.—(*1*) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, * after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the Official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the chairman and another of such persons to be the vice-chairman.

(*2*) On the publication of a notification in the Official Gazette under sub-section (*1*), the following consequences shall ensue, namely:—

(*a*) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(*b*) the person or persons appointed under sub-section (*1*) may exercise and perform all the powers and duties of the governing body which has been superseded;

(*c*) all such property of the recognised association as the person or persons appointed under sub-section (*1*) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(*3*) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body in superseded under sub-section (*1*), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may, from time to time, by like notification vary such period.

(*4*) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (*1*) shall, notwithstanding anything contained in sub-section (*1*), continue to exercise and perform their powers and duties.

(*5*) On the reconstitution of a governing body under sub-section (*4*), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (*1*) shall vest or revest, as the case may be, in the governing body so reconstituted.

14. Power to suspend business of recognised associations.—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time :

Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

CHAPTER IV

Forward Contracts and Options in Goods

15. Forward contracts in notified goods illegal or void in certain circumstances.—(*1*) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

(*2*) Any forward contract in goods entered into in pursuance of sub-section (*1*) which is in contravention of any of the bye-laws specified in this behalf under clause (*a*) of sub-section (*3*) of section 11 shall be void—

(*i*) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(*ii*) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(*3*) Nothing in sub-section (*2*) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract :

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (*a*) of sub-section (*3*) of section 11.

(*4*) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (*1*), enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract :

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16. Consequences of notification under section 15.—Where a notification has been issued under section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(*a*) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts;

(*b*) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (*a*) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contracts in certain cases.—(*1*) The Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(*2*) All forward contracts in contravention of the provisions of sub-section (*1*) entered into after the date of publication of the notification thereunder shall be illegal.

(*3*) Where a notification has been issued under sub-section (*1*), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15.

18. Special provisions respecting certain kinds of forward contracts.—(*1*) Nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in India (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or to receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area the provisions of section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

19. Prohibition of options in goods.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.

(2) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent, become void.

CHAPTER V

Penalties and Procedure

20. Penalty for contravention of certain provisions of Chapter IV.—(1) Any person who—

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (3) of section 8; or

(b) organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18; or

(c) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) of section 15, section 17 or section 19,

shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any person who enters into any forward contract in contravention of the provisions contained in sub-section (4) of section 15 shall, on conviction, be punishable with fine.

21. Ptnalty for owing or keeping place used for entering into forward contracts in goods.—Any person who—

(*a*) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(*b*) without the permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(*c*) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

(*d*) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

(*e*) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association; canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(*f*) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(*g*) makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts in respect of goods to which the provisions of section 15 have been made applicable,

shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both.

22. Offences by companies.—(*1*) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm

23. Certain offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any offence punishable under sub-section (*1*) of section 20 or section 21 shall be deemed to be a cognizable offence within the meaning of that Code.

24. Jurisdiction to try offences under this Act.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

CHAPTER VI

Miscellaneous

25. Advisory Committee.—For the purpose of advising the Central government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed.

26. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified, be exercised by such officer or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

27. Power to exempt.—The Central Government may, by notification in the official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

28. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the terms and conditions of service of members of the Commission;

(*b*) the manner in which applications for recognition may be made under section 5 and the levy of fees in respect thereof;

(*c*) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

(*d*) the particulars to be contained in the annual reports of recognised associations ;

(*e*) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

(*f*) the constitution of the advisory committee established under section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the advisory committee for advice;

(*g*) any other matter which is to be or may be prescribed.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

(*As amended by the Select Committee*)

GIPD—S3—817 PS.—8-11-52—1,400

HOUSE OF THE PEOPLE.

CORRIGENDA

to

the Report of the Select Committee on the Administration of Evacuee Property (Amendment) Bill, 1952, together with the Bill as amended.

. At page 4, in the heading, for "Minutes Dissent" read "Minutes of Dissent"

. At page 5, line 20, for "principal" read "principle"

. At page 10, in line 20, for "without" read "without"

. At page 13, in line 48, for "In section 47" read "In section 46"

. At page 14, in line 3, for "namelv" read "namely"

NEW DELHI,
THE 13TH NOVEMBER, 1952.

M. N. KAUL,
SECRETARY.

HOUSE OF THE PEOPLE

THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT
NEW DELHI
November, 1952

THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL, 1952

Members of the Select Committee

Pandit Thakur Das Bhargava—*Chairman.*

Lala Achint Ram

Shrimati Subhadra Joshi

Shri Jagannathrao Krishnarao Bhonsle

Shri Narendra P. Nathwani,

Shri H. C. Heda,

Shri Nemi Chandra Kasliwal,

Shri Ram Pratap Garg,

Pandit Chatur Narain Malviya,

Shri Jwala Prasad,

Giani Gurmukh Singh Musafir,

Shri Syed Mohammed Ahmad Kazmi,

Col. B. H. Zaidi,

Shri Digambar Singh,

Shri Mulchand Dube,

Shri Kanhaiya Lal Balmiki,

Shri Syed Ahmad,

Pandit Lakshmi Kanta Maitra,

Shri Basanta Kumar Das,

Shri Radha Charan Sharma,

Chaudhri Hyder Husein,

Shri Rohini Kumar Chaudhuri,

Shrimati Sucheta Kripalani,

Shri V. P. Nayar,

Shri Vishnu Ghanashyam Deshpande,

Shri Bhawani Singh,

Dr. Manik Chand Jatav-vir,

Shri Avadeshwar Prasad Sinha,

Shri P. N. Rajabhoj,

Shri Ajit Prasad Jain.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Administration of Evacuee Property Act, 1950 was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

2. Upon the changes proposed which are not formal or consequential, it may be noted as follows:—

Clause 4 (*original*).—The Committee has omitted this clause which purports to transfer the power of appointment of Custodians from State Governments to the Central Government because the Committee were given to understand that the State Governments desire that the existing position should continue.

Clause 4 (*original clause 5*).—The Committee felt that there should be some restriction upon the power of the Custodian to take charge of the management of a company. It has accordingly been provided that the Custodian shall not exercise such power except with the previous approval of the Central Government.

Clause 5 (*original clause 6*).—The Committee has limited the power of the Custodian to cancel prepartition leases to two specified cases, namely: (i) where the lease has been sublet; and (ii) where the lessee has used the property for a purpose other than that for which it was leased.

Clause 6 (*original clause 7*).—The Committee was of the opinion that where tenancy rights vest in the Custodian some provision should be made for safeguarding the interests of the original lessor. The Committee has accordingly provided that in such cases the Custodian shall not have the power to grant, without the consent in writing of the original lessor—(a) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; and (b) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease.

Clause 7 (*original clause 8*).—It has been made clear that where an application under section 16 is rejected there will be nothing to prevent the applicant from establishing his title to the property in a civil court.

Clause 8 (*original clause 9*).—The Committee felt that the words 'for any default of the evacuee' were far too sweeping. It was of the opinion that the exemption from eviction should apply only where an evacuee has made any default after he became an evacuee or within a period of one year preceding the date of his becoming an evacuee. Section 18 of the principal Act as substituted by this clause has been amended, accordingly.

Clauses 12 and 14 (*new*).—The amendments are consequential upon the omission of Chapter IV relating to 'intending evacuees'

Clause 13.—The limit of five thousand rupees in respect of exemption from confirmation of a transfer has been reduced to three thousand rupees. It has also been provided that in the case of transfers in respect of which the consideration exceeds such limit as may be prescribed by rules, the previous approval of the Custodian General shall be necessary. The position with respect to pending proceedings

for confirmation of transfers has been made clear. A few drafting alterations have also been made.

Clause 16.—The amendments proposed to sub-sectoin (3) of section 56 have been omitted in view of the omission of clause 4 of the Bill. It has also been provided that in future all rules made by the Central Government shall be laid before Parliament.

Clause 17 (new).—This new clause has been inserted to clarify the effect of repeal of Chapter IV relating to 'intending evacuees'. It has been provided that notwithstanding such repeal any property which is already vested in the Custodian under section 22 and any proceedings which are pending under that section shall not be affected.

3. The Bill was published in the Gazette of India, Part II, Section 2, dated the 9th August, 1952.

4. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

THAKUR DAS BHARGAVA,

Chairman of the Select Committee.

NEW DELHI;

The 5th November 1952.

Minutes Dissent

I

I disagree with the report of the Select Committee on the Administration of Evacuee Property (Amendment) Bill, 1952. There can be no two opinions about the policy of providing all possible facilities to all the loyal citizens of this country in their ordinary transactions. If there are any genuine cases where this Administration of Evacuee Property Act is causing injustice to the members of a particular community, such injustice has to be removed. But in our anxiety to do justice to those few genuine cases we must not do anything whereby the Evacuee Property pool which has already considerably dwindled, would diminish still further and at the same time the relaxation in rules should not help those persons who had always the intention of leaving India and settling in Pakistan and are just waiting for opportunity to do so. After keeping the above mentioned principle before our eyes, I feel that the Bill in the present form will do greater harm than good.

In the first place the sweeping manner in which the sections in the Principal Act relating to the intending evacuee have been removed, is bound to re-act very unfavourably against the interests of India. In fact it was necessary to strengthen the sections regarding the intending evacuees instead of relaxing them. It is argued that the sub-clauses giving the definition of the intending evacuee have been incorporated in the definition of the evacuee itself by the addition of new clause; but I would like to point out that the date given in the definition was 14th day of August 1947 and now the Bill, as amended, gives the definition of evacuee as "who has, after the 18th day of October 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends". This means that a person who has transferred his assets before 18th day of October 1949 would escape the consequences of having done so. In fact there are many cases where the intending evacuees have acquired huge properties in Pakistan and transferred considerable portion of their properties from India to that Dominion and are waiting in India only to dispose of the remaining property. By this elimination of the clause relating to the intending evacuee and relaxation regarding the date, the work of these intending evacuees has become much easier. I would suggest that in addition to retaining the old date of 14th day of August 1947, we have to add a clause whereby persons whose families including the wife and children are continuously staying in Pakistan should come under the category of the intending evacuee. The proposal to drop the clause which includes "any person against whom an intention to settle in Pakistan is established from his conduct or from documentary evidence" is also giving latitude to those persons who want to leave India and go over to Pakistan. In no case persons against whom there is documentary evidence or against whom it can be established from their conduct that they are intending to go to Pakistan, should be exempted from the operation of the Administration of Evacuee Property Act.

(2) I also oppose the clause 6 of the Bill as amended by the Select Committee. The restoration of evacuee property ought to be entrusted to some judicial authority and not even to the Custodian or Custodian-General. The Custodian even, though quasi-judicial authorities, are

actual administrators of the evacuee property and hence would not be able to apply judicial mind to the question and hence I propose that this matter be referred to some judicial officer of the grade of the District Judge. In no case it should be left to the discretion of the Government. Previously this authority was vested in the Custodian-General who was a quasi-judicial Officer and now it has been left entirely to the discretion of the Government.

(8) I also oppose Clause 13 of the Bill as amended by the Select Committee which deals with the validity of transfers respecting property subsequently declared to be evacuee property; though reducing the limit of property transferred to Pakistan from Rs. 5,000 to Rs. 3,000 is some satisfaction. On the whole the Section 40 as amended will do greater harm to the citizens of India than to those who want to leave this country. The Custodian while giving sanction to any transfer should have the power to refuse sanction to any transaction if there is an evidence that the person who is transferring his property is intending to opt to Pakistan provided that the intention to opt to Pakistan is established from the conduct of such person or from some documentary evidence.

It is really unfortunate that the majority in the Select Committee though agreed in principal to the point of view presented by the minority, could not see its way to support the amendments proposed by members belonging to minority groups. It is further to be noted that considerations of prestige particularly on the issue of vesting power into the Judicial Officer of exempting any properties from the operation of evacuee property came in the way of fair discussion on these clauses and hence the report on the Admininstration of the Evacuee Property (Amendment) Bill cannot be said to be the outcome of free discussion on the merits of the case, and hence I disagree with the report.

A promise was given on the floor of the House by the Hon'ble Minister that the Refugee Associations would be consulted and opportunities would be given to them to express their views on this important Bill. But it is unfortunate that the All India Refugee Association which wanted to place its views before the Committee was not given an opportunity to do so on the grounds that it was too late to do so. In fact such a measure should not be passed in a hurry and opportunity ought to have been given to Refugee Organisations to express their views.

V. G. DESHPANDE.

NEW DELHI;

The 5th November, 1952.

II

The provisions relating to the intending evacuees are sought to be softened as some of our politicians think they are too rigid. But in view of the present position it appears we are not justified in totally removing the provisions relating to intending evacuees. The Pakistan Government has not changed its attitude in any manner whatsoever and the proposed

limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause.";

(*b*) clause (*e*) shall be omitted;

(*c*) in clause (*f*), for the words beginning with "evacuee property" means' and ending with the words "to the extent of such right or interest," the following shall be substituted, namely :—

'"evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40.'

3. Omission of section 3, Act XXXI of 1950.—Section 3 of the principal Act shall be omitted.

* * * * *

4. Amendment of section 10, Act XXXI of 1950.—In sub-section (*2*) of section 10 of the principal Act, after clause (*l*), the following clause shall be inserted, namely :—

"(*ll*) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company:

Provided that the Custodian shall not take charge of such management of the Company except with the previous approval of the Central Government."

5. Amendment of section 12, Act XXXI of 1950.—In sub-section (*1*) of section 12 of the principal Act,—

(*a*) for the words "where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947" the following shall be substituted, namely:—

"whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act."

(*b*) the following proviso shall be added, namely:—

"Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(*a*) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(*b*) has used or is using such property for a purpose other than that for which it was leased to him."

6. Insertion of new section 12A in Act XXXI of 1950.—After section 12 of the principal Act, the following section shall be inserted, namely:—

"12A. *Special provisions with respect to transfer of tenancy rights of evacuees.*—(*1*) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(*2*) On the making of any such declaration as is referred to in sub-section (*1*),—

(*a*) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(*b*) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (*1*) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(*3*) Nothing contained in this section shall—

(*a*) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest—

(*i*) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(*ii*) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease;

(*b*) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (*b*) of sub-section (*2*), or

(*c*) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian."

7. Amendment of section 16, Act XXXI of 1950.—In section 16 of the principal Act, for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"16. *Restoration of evacuee property.*—(*1*) Subject to such rules as may be made in this behalf, the Central Government or any person authorised by it in this behalf may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and, on being satisfied that it is just or proper so to do, grant

to the applicant a certificate stating that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, shall be restored to him.

(*2*) If the evacuee or, as the case may be, the heir to whom a certificate has been granted under sub-section (*1*) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian and in respect of which the certificate has been granted, the Custodian shall, on the production by the applicant of the certificate and subject to the other provisions contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(*2A*) On receipt of an application under sub-section (*2*), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry into the claim in such manner as may be prescribed shall—

(*a*) if he is satisfied with respect to the title of the applicant to the property, make a formal order restoring the property to the applicant; or

(*b*) if he is not so satisfied, reject the application, without prejudice to the right of the applicant to establish his title to the property in a civil court; or

(*c*) if he entertains any doubt with respect to the title of the applicant to the property, refer him to a civil court for the determination of his title thereto:

Provided that no order for the restoration of any evacuee property shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof."

8. Substitution of new section for section 18, Act XXXI of 1950.— For section 18 of the principal Act, the following section shall be substituted and shall be deemed always to have been substituted, namely :—

"18. *Occupancy or tenancy rights not to be extinguished.*— Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—* * *

(*a*) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(*b*) the Custodian."

9. Omission of Chapter IV, Act XXXI of 1950.—Chapter IV of the principal Act shall be omitted.

10. Amendment of section 24, Act XXXI of 1950.—In section 24 of the principal Act, in sub-section (*1*),—

(*a*) the word and figures "section 19" shall be omitted ;

(*b*) in the proviso, for the words, brackets, letters and figures "sub-clause (*iii*) of clause (*d*) of section 2, or that the property is not evacuee property within the meaning of sub-clause (*2*) of clause (*f*) of section 2," the words, brackets, letters and figure, "sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2," shall be substituted.

11. Amendment of section 25, Act XXXI of 1950.— In section 25 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person aggrieved by an order under section 7 declaring his property to be evacuee property on the ground that he is an evacuee within the meaning of sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2 may prefer an appeal, in such manner and within such time as may be prescribed, to the district judge nominated in this behalf by the State Government."

12. Amendment of section 26, Act XXXI of 1950.—Sub-section (*3*) of section 26 of the principal Act shall be omitted.

13. Substitution of new section for sections 40 and 41, Act XXXI of 1950.—For sections 40 and 41 of the principal Act, the following sections shall be substituted, namely:—

"40. *Validity of transfers respecting property subsequently declared to be evacuee property.*—(*1*) No transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(*2*) Nothing contained in sub-section (*1*) shall apply to the transfer for valuable consideration of any such property as is referred to therein in any of the following cases, namely:—

(*a*) where the transfer has been made with the previous approval of the Custodian before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952;

(*b*) where the transferor has not left or does not leave India for Pakistan within a period of two years from the date of the transfer:

Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement;

(*c*) where the transfer is made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, and—

(*i*) the value of the property transferred is less than three thousand rupees:

Provided that the transferor does not transfer any other property belonging to him within a period of one year from the date of the transfer; or

(*ii*) the value of the property exceeds three thousand rupees but the transfer is made with the previous approval of the Custodian or in the prescribed cases with the previous approval of the Custodian General.

(*3*) An application under sub-section (*1*) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (*1*) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to any such application.

(*4*) Where an application under sub-section (*1*) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(*a*) the transaction has not been entered into in good faith or for valuable consideration; or

(*b*) the transaction is prohibited under any law for the time being in force; or

(*c*) the transaction ought not to be confirmed for any other reason.

(*5*) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the Custodian has rejected any application for confirmation thereof solely on the ground—

(*a*) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(*b*) that the application was barred by limitation,

then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a civil court or other authority, but subject to any rules that may be made by the Central Government in this behalf, the Custodian may exercise any of the following powers in respect of the transfer, namely:—

(*i*) confirm the transfer if the consideration paid for the transfer is adequate;

(*ii*) confirm the transfer, if the transferee agrees to pay to the Custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(*iii*) if the transferee agrees, take possession of such part of the property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(*iv*) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(*v*) if the transferee does not agree to any of the courses referred to in clauses (*ii*) to (*iv*) inclusive, auction the property and if the sale proceeds exceed the amount actually paid by the transferee, pay to the transferee the amount paid by him and take over the balance and if the sale proceeds are equivalent to, or fall short of, the amount actually paid by the transferee, pay the entire sale proceeds to the transferee.

Provided that where any application for confirmation of a transfer is rejected on the ground specified in clause (*b*) of this sub-section the powers conferred on the Custodian by this section shall not be exercised unless the Custodian finds that the transaction has been entered into in good faith.* * *

(*6*) If the application is not rejected under sub-section (*4*), the Custodian may confirm the transfer either unconditionally or on such terms and conditions as he may think fit to impose.

(*7*) The Custodian may, in respect of any application for confirmation of a transfer pending before him on the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, which is liable to be rejected on either of the grounds specified in clauses (*a*) and (*b*) of sub-section (*5*), exercise any of the powers conferred on him under that sub-section.

(*8*) For the removal of doubts, it is hereby declared that every property transferred in contravention of the provisions of this section which does not confer any rights or remedies in relation to the transfer on the parties thereto shall be deemed to be property declared to be evacuee property within the meaning of sub-section (*1*) of section 7 and to have vested in the Custodian in accordance with the provisions of section 8.

41. *Transactions relating to evacuee property void in certain circumstances.*—Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

14. Amendment of section 46, Act XXXI of 1950.—In section 47 of the principal Act, clause (*b*) shall be omitted.

15. Substitution of new section for section 52, Act XXXI of 1950.—For section 52 of the principal Act, the following section shall be substituted, namely:—

"52. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to or in relation to any class of persons or class of property."

16. Amendment of section 56, Act XXXI of 1950.—In section 56 of the principal Act,—

(*1*) in sub-section (*2*),—

(*a*) after clause (*b*), the following clause shall be inserted, namely:—

"(*bb*) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian General in respect of cases pending before any officer subordinate to him;";

(*b*) for clause (*q*), the following clause shall be substituted, namely:—

"(*q*) the manner in which applications for the previous approval of the Custodian may be made under section 40 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section:";

* * * * * * *

(*2*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) All rules made under sub-sections (*1*) and (*2*) after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952 shall be laid for not less than fourteen days before Parliament as soon as possible after they are made."

17. Effect of repeal of Chapter IV, Act XXXI of 1950.—(*1*) The repeal of Chapter IV of the principal Act shall not affect—

(*a*) any property which has vested in the Custodian under section 22 of the principal Act before the commencement of this Act, or

(*b*) any proceeding pending under that section on such commencement,

and any such property shall continue to so vest and any such proceeding may be continued as if this Act had not been passed.

(*2*) Save as aforesaid, on the repeal of Chapter IV of the principal Act, every order passed under section 19 of the principal Act declaring any person to be an intending evacuee and every attachment of property effected under that section shall cease to have effect and every proceeding pending under that section shall abate.

(*3*) Save to the extent to which it is otherwise provided in this section, the mention of particular matters in this section shall be without prejudice to the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

Report of Select/Joint Committees presented during First Session, 1952.

S.No.	Title of Bills	Date of presentation of Report.
1.	The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Bill, 1952.	18.7.52
2.	The Notaries Bill, 1952	18.7.52
3.	The Commissions of Inquiry Bill, 1952.	25.7.52
4.	The Preventive Detention (Second Amendment) Bill, 1952	30.7.52
5.	The Reserve and Auxiliary Air Force Bill, 1952	1.8.52
6.	The Delimitation Commission Bill, 1952	
7.	The Constitution (Second Amendment) Bill, 1952	
8.	The Forward Contracts (Regulation) Bill, 1952	
9.	The Administration of Evacuee Property (Amendment) Bill, 1952	

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THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

Members of the Joint Committee

House of the People

Shri M. Ananthasayanam Ayyangar—*Chairman.*
Shri Halaharvi Sitarama Reddy.
Shri Balvantray Gopaljee Mehta.
Shri Narendra P. Nathwani.
Shri Ganesh Sadashiv Altekar.
Shri Hari Vinayak Pataskar.
Shri B. Shiva Rao.
Shri A. M. Thomas.
Pandit Algu Rai Shastri.
Shri Venkatesh Narayan Tivary.
Shri Tribhuan Narayan Singh.
Shri Feroz Gandhi.
Shri Narahar Vishnu Gadgil.
Shri Kotha Raghuramaiah.
Pandit Lakshmi Kanta Maitra.
Shri Syed Ahmed.
Shri A. K. Basu.
Shri S. V. Ramaswamy.
Shri Dev Kanta Borooah.
Shri Jaipal Singh.
Shri Jaswant Raj.
Dr. Kailas Nath Katju.
Shri Hukam Singh.
Dr. A. Krishnaswami.
Shri N. C. Chatterjee.
Shri Sarangadhar Das.
Shri K. A. Damodara Menon.
Shri A. K. Gopalan.
Shri Shankar Shantaram More.
Dr. Panjabrao S. Deshmukh.

Council of States

Diwan Chaman Lal.
Pandit Sitacharan Dube.
Shri R. C. Gupta.
Shri Bhalchandra Maheshwar Gupte.
Shri K. S. Hegde.

Shri Jaisukh Lal Hathi.

Pandit Hirday Nath Kunzru.

Shri P. S. Rajagopal Naidu.

Shri K. P. Madhavan Nair.

Acharya Narendra Deva.

Shri Osman Sobhani.

Shri P. Sundarayya.

Report of the Joint Committee

The Joint Committee to which the Bill further to amend the Preventive Detention Act, 1950, was referred have considered the Bill, and I now submit this their Report with the Bill as amended by the Committee annexed thereto.

2. The procedure followed by the Joint Committee in the consideration of the Bill was to consider in the first instance the provisions contained in the several clauses of the amending Bill and any further amendments directly arising out of such provisions and thereafter to consider any further amendments which may be proposed to the parent Act.

3. Upon the changes made in the Bill, the Joint Committee note as follows:—

Clause 4.—The words limiting the particulars to be furnished by the officer under sub-section (3) of section 3 to such particulars as have a bearing on the necessity for the order have been omitted so that the officer concerned would be required to furnish to the State Government all particulars which in his opinion have a bearing on the matter. The Joint Committee have also reduced the period within which the approval of a State Government should be obtained from fifteen days to twelve days.

Clause 6.—This new amendment is being inserted to ensure that the disclosure to the detenu of the grounds of the order is made not later than five days from the date of the detention.

Clause 7.—This is a new clause. The Joint Committee feel that there should be a Chairman for every Advisory Board who should be a person who is or has been a Judge of a High Court and provision has been made accordingly. It is also provided that in the case of a Part C State, the Judge of the High Court of a Part A or a Part B State may be appointed as Chairman with the approval of the State Government concerned. Incidentally, the proviso to sub-section (2) of section 8 is being omitted as spent.

Clause 8 (New).—The Joint Committee have reduced the period within which a reference to the Advisory Board has to be made from six weeks to thirty days and have omitted clause (a) of sub-section (2) of section 9 as spent. The whole of section 8 has been re-drafted accordingly.

Clause 9.—The further amendments proposed are consequential upon the amendments to sections 9 and 10(1).

Clause 10.—The Joint Committee think that the new section 12A may be more appropriately numbered as section 11A.

Clause 11.—The Joint Committee have completely recast sub-section (2) of section 13 so as to make it clear that a fresh detention order can be

passed against a person only on the basis of fresh facts arising after the date of the revocation or expiry of the last detention order.

4. The Bill was published in Part II, Section 2 of the *Gazette of India* dated the 19th July, 1952.

5. The Committee think that the Bill has not been so altered as to require circulation, and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.
Chairman of the Joint Committee.

NEW DELHI;

The 30th July, 1952.

Note

The Preventive Detention (Second Amendment) Bill 1952 has been most carefully examined in the Joint Select Committee with a double objective namely to see first of all whether the continuance of this extra-ordinary piece of legislation is necessary and if so for what period, and in the second place what safeguards can be incorporated in order to avoid both hardship and injustice.

Under British rule, during the leadership of Pandit Motilal Nehru, similar legislation was opposed by the Swarajya Party on the basis firstly that the foreign Government ruling our country had no sanction of the people behind it and secondly it was, keeping the principles of non-violence as enunciated by Mahatma Gandhi, in view, the bounden duty of all of us to do whatever lay in our power by legitimate means to subvert the alien government ruling over us.

Now it cannot be said today that the Government of the day or the various State Governments have no sanction behind them. These Governments are the creation of the peoples' will, and therefore any attempt to subvert such Governments is no longer a patriotic duty as in the days before the achievement of independence, but on the contrary an act of treason and disloyalty to the nation. Further there are political groups active in the country which no longer believe in the creed of non-violence and whose declared policy appears to be to do whatever lies in their power to subvert the Peoples' Governments established under the law of the land.

In such a case, therefore, it has become necessary however abhorrent and extraordinary the legislation may be, to prevent individuals and groups from acting in a manner prejudicial to the maintenance of law and order, or to the maintenance of Essential Supplies and Services required by the nation or to the continued existence of the Constitution adopted by the nation. It is necessary, of course, that due safeguards should be adopted to see that the maximum protection is given to an individual against whom action is taken. For this purpose it has been made possible, if the person so desires, for him to appear in person before the Advisory Board, and challenge the material put before him and argue his case. This is an important advance on the previous position. Further no longer will the Officer ordering the arrest be capable of holding back any relevant material from the Government whether favourable to the detenue or otherwise. Since all such relevant material which in his opinion bears upon the matter must be placed before the Government concerned. Finally no longer will it be possible for a fresh order to issue against the detenue unless it is based on fresh material.

In my opinion the working of this measure should be carefully watched and the measure amended in the light of experience gained during the next twelve months.

D. CHAMAN LALL.

NEW DELHI;

The 30th July, 1952.

Minutes of Dissent

I

We are unable to assent to the majority Report of the Joint Select Committee as we are convinced that the refusal by the majority to amend any section or any part of the Principal Act (Act No. IV of 1950) is a

grave mistake and is bound to create unfavourable impression in the country. All lovers of liberty and upholders of 'rule of law' will regret that detention without trial and without the essential attributes of a fair hearing is to be continued in Free India.

2. When the Prime Minister responded to the appeal of the Opposition, he announced in the House of the People that the Select Committee should go thoroughly not only into the Bill but also into the principal Act.

3. Accordingly instructions were given by the House to the Select Committee on the basis of Sardar Hukam Singh's suggestion that the Select Committee should consider all amendments even to those sections of the principal Act of 1950 which were not sought to be amended by the present Bill sponsored by the Home Minister.

4. We regret to say that we are disappointed. We expected that the Committee would approach the consideration of the entire measure with an open mind and would permit modification of the much criticised and retrogade features of the principal Act. But not one of the amendments suggested by the Members of the Opposition to the principal Act was accepted. We should record that even the sober and reasoned recommendations of the All-India Civil Liberties Council with regard to affording full information to the detenu, providing facilities for legal assistance, calling of evidence and the modification of section 3 of the principal statute as to "prejudicial" acts so as to make impossible the use of the Act as against political parties were all turned down by the Committee.

5. We pressed hard that at least in peace time the preventive detention law in India should not be more drastic than what the analogous law was in England during war time. Surely it is not too much to ask that India should today pay at least as much respect to preserve liberty in peace time as England did in war. We put forward suggestions that the power of detention should not be left to the unfettered discretion of an executive or police officer, but should be consigned to the satisfaction of a responsible member of the Cabinet, *viz.*, the Home Minister as was provided in Regulation 18B of the Defence of the Realm Regulation, 1939. But we regret to say that the majority turned down this proposal.

6. We made our position clear on the floor of the House that we did not accept the principle of the Bill and were not committed to anything. We were, however, prepared to consider the desirability of extending the Preventive Detention Act with suitable amendments, provided the Honourable the Home Minister gave us facts and figures to justify the continuance of this measure which is repugnant to the principles of democracy and the fundamental postulates of justice. We regret to say that we got no facts and figures. We were supplied by the Honourable Minister with a statement showing the number persons released on the advice of the Advisory Boards and the number of detentions upheld by the said Boards and the number of releases ordered by the Government *suo moto* during the period from 22nd February 1951 to 31st May 1952. During this period the Advisory Boards ordered the release of 1241 detenus. The Advisory Boards upheld the detention of 3206 persons. Out of this the Government ordered the release *suo moto* of 1889 persons. Thus 1319 persons were kept under detention at the end of the said period. The very fact that about 30 per cent. of the persons ordered to be detained were released by the Advisory Boards in spite of the unsatisfactory procedure and lack of opportunity of fair hearing, shows that the principal Act deserved drastic

amendment so as to eliminate the possibility of innocent persons being deprived of their liberty on the mere information of informers on whose report the executive or the police officers have to take action under section 3 of the Preventive Detention Act.

7. The principal points on which we should draw the attention of the Parliament and should recommend that suitable modifications of amendments of the Act and the Bill should be effected are as follows:—

(*1*) *Legal Aid.*—The three essentials for a proper functioning of an investigating body or tribunal are (a) that full information concerning the facts and circumstances in which the detenu has been ordered to be detained should be made available to him; (b) that the detenu should be allowed to appear in person or by legal parctitioner of his choice to put forward his defence; and (c) that he be allowed to call evidence and cross-examine witnesses.

None of these pre-requisites of a fair and free enquiry are provided by the Preventive Detention Act as sought to be amended by the present Bill. All these conditions were satisfied to an appreciable extent under the procedure adopted by the Advisory Committee in England.

We recognise that the prohibition of personal attendance has been relaxed but the ban on legal assistance is still maintained. It is wholly unsustainable and should be removed.

We cannot possibly subscribe to the amazing doctrine propounded that the detenus can put up their defence properly before the Advisory Board which will be in effect a quasi-judicial tribunal. From our experience we note that for the majority of detenus it is not possible to put their cases properly before the court, and the Supreme Court and the High Courts had often to provide counsel to argue the cases *amicus curice*. In England competent persons have pointed out that the majority of the detenus are quite incapable of presenting their own cases. In India having regard to the standard of literacy and the lack of training it is impossible for the detenus to present thier own cases before the Advisory Boards. Mr. C. K. Allen in his well-known work on 'Law and Orders' states as follows:—

> "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."

The English practice will be seen from the statements of responsible ministers in the British House of Commons. "The Advisory Committee have before them all the evidence which is 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".—Home Secretary (October, 31, 1939) "Witnesses can be called, and are called in many of these cases"—Home Secretary (July 23, 1941).

(*2*) *Composition of the Advisory Boards.*—We pressed for the amendment of the Act so that the Advisory Board shall consist of a sitting Judge of the High Court who shall be the Chairman of the said

Board. But even this recommendation was not accepted and a person who is a Judge or had been a Judge of a High Court is going to be appointed as Chairman of the Board.

(3) *Family Allowance.*—We pressed very strongly for the grant of family allowance to the detenue. It is the barest minimum justice which the State depriving a person of liberty merely on suspicion can render to him. Detenus have been detained without trial and kept behind the prison bars for months and years and it is only fair that such allowance should be paid to the members of their families who are dependent on him for their subsistence. Even under Regulation III of 1818 family allowance was provided. There was good deal of criticism when leading members of the Congress were detained under Preventive Detntion statutes or regulations and adequate family allowances were not granted. Our national Government should not imitate the practice of the imperialist rulers.

(4) *Operation and extent of the Act.*—We put forward amendments suggesting that the Act should be extended only to such areas as would require the application of the Act. Such a drastic statute need not apply to the whole of India and if any particular area or State wants such drastic powers for dealing with an emergency then it should be applied to that State and that area. Even this suggestion was turned down.

(5) *Restriction of the scope of prejudicial acts.*—We wanted that the very vague expression "public order" which is a term of widest amplitude should be deleted. This will eliminate the possibility of abuse of the statute. We also desired the deletion of "the relations with foreign powers because this may be used as a handle for checking justifiable criticism of India's policy towards certain foreign States. But our suggestions were negatived.

(6) *Placing of material before the Advisory Board.*—We earnestly pressed an amendment so that all materials available to the Government should be placed before the Adviosry Board and the same should also be made available also to the detenue so that the person who has been deprived of his liberty should have a fair chance of proving his innocence. The withholding of information considered by the detaining authority against the public interest to disclose the same is unknown in any country. The Chief Justice of the Bombay High Court in one case depricated the way grounds were furnished to the detnus:—

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

8. We consider the following amendments to the principal Act as incorporating the essential safeguards against the possible abuse of the statute:—

Section 1.—Short Title, extent and duration.—Sub-section (2): The Act should not be made applicable to the whole of India all at once. It should be applied to such States or parts or areas which in the opinion of

the Central Government require having regard to the special conditions prevailing therein the application of such an extraordinary measure.

Sub-section (3). The duration of the Act should in no case extend beyond one year from the 1st October 1952 and the Parliament must have an opportunity of reviewing the whole position in the country next year, to decide whether really any emergency exists to justify the prolongation of this measure.

Section 3.—Power to make orders detaining certain persons.—We suggest that this section should be substantially altered to restrict the scope of possible abuse and to curtail the ambit of power of the executive or the police officers concerned to order detention.

We suggest the deletion of the words "the relations of India with foreign powers" in item (i) of sub-clause (a) of sub-section (i) of section 3.

We also suggest the deletion of the words "or the maintenance of public order" in item (ii) of sub-clause (a) of sub-section (1) of section 3.

We propose the substitution of the following sub-section in place of present sub-section (2):—

"(2) The power conferred by sub-section (1) of section 3 shall be exercised by the Minister for Home Affairs of the Central Government or by the Home Minister of a State Government or, in a State where there is no ministry, by an officer of the State Government specially authorised in that behalf;

Provided that the Minister passing an order of detention has reasonable cause to believe that the person against whom the said order is going to be passed has been recently concerned in acts prejudicial to matters mentioned in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1) aforesaid or in the preparation or instigation of such acts and by reason thereof it is necessary to exercise control over him."

Section 4.—Power to regulate place and condition of detention.—In clause (a) we propose the insertion of "family allowance" after the word "maintenance".

Section 7.—Grounds of detention to be disclosed to persons affected by the order.

We suggest the deletion of sub-section (2).

It is not fair to keep back any relevant facts from the detenu. Otherwise, the right to make representation to the Advisory Board will be rendered ineffective or nugatory.

Section 8.—Constitution of Advisory Boards.—We propose that the section should be altered as follows:—

For sub-section (2) of section 8, the following shall be substituted namely:—

A. "(2) Every such Board shall consist of

(*a*) A Judge of a High Court who shall be the Chairman of the said Board; and

(*b*) Two other persons who have been or are qualified to be appointed as Judges of the High Court."

B. After sub-section (2) of Section 8 *add*:—

"(3) The Judge of the High Court who shall act as Chairman of the Board as aforesaid shall be appointed by the Chief Justice of the High Court concerned and the other persons shall be appointed by the Central Government or the State Government as the case may be."

Section 9.—Reference to Advisory Boards.—In section 9— after the words "the grounds on which the order has been made" *add* "and all the materials in the possession of the said Government on which the order of detention has been made."

Nothing should be kept back from the Advisory Board.

Section 10.—Procedure of Advisory Boards.

We strongly recommend that the detenu should not only be given a chance of appearance before the Advisory Board but he should in all cases be given the right to have his case represented by a lawyer.

9. We also recommend that the detenu and his lawyer shall be permitted to call evidence and to cross-examine witnesses.

N. C. CHATTERJEE
SARANGADHAR DAS
S. S. MORE
JASWANT RAJ MEHTA
A. KRISHNASWAMI
HUKAM SINGH

NEW DELHI;
The 30th July, 1952.

II

We are generally in agreement with the minute of dissent signed by Shri N. C. Chatterji, Shri S. S. More and other colleagues. We wish, however, to make the following supplementary observations on this important matter:—

(1) We are opposed to the underlying principle of the amending Bill as it is repugnant to the right of freedom and inviolability of the individual guaranteed to all citizens of the state. Freedom of person is a valuable right cherished by all freedom-loving persons, and every democratic and progressive constitution ensures the personal liberty of the subject. In Britain and the U.S.A. liberty of person is restricted or withheld only when an emergency has been declared. Preventive Detention in these two countries has been authorised only when war is imminent or hostilities have actually broken

out *i.e.*, only when there is a clear threat to national security. In these countries it is always a war time measure. Unfortunately our constitution has more or less followed the retrograde Government of India Act, 1935, and therefore in those Articles of the Constitution which deals with fundamental rights, has tried to restrict and limit them at the same time.

(2) The Preventive Detention Act is a peace time measure and the life of the Act is sought to be extended for another two years although there has been admittedly a marked improvement in the situation.

(3) One of the objectives of the Act is also the suppression of the goondas and black-marketeers. But the ordinary law of the land should be enough to meet the menace of these classes. The existing law could be made more strigent and drastic. Nobody has ever heard of a preventive detention act being enacted to meet such a menace. With the exception of one or two states, the position of law and order is quite normal and there is no interference on any appreciable scale with the supplies of commodities which are essential for the life of the community. In Britain an Emergency Powers Act was passed in 1920 to secure commodities which are essential for the life of the community. In order that the Act should be put into operation it was necessary that His Majesty should issue a proclamation of emergency. The proclamation remained in force for a month only. Regulations that were framed in pursuance of the Act provided for trials by courts of summary jursidiction and the maximum sentence awarded was three months only. It is therefore evident that at least in this matter the Government are not guided by wholesome British practice and precedent and are enacting an obnoxious measure which, without sufficient cause and justification constitutes an undue interference with personal liberty of the subject.

(4) It is also significant that some of the safeguards which were considered essential in Britain and the U.S.A. in the interest of personal liberty of the subject even in war time are not being provided in the present Bill for the protection of the detenu even when it is a peace time measure. It is not enough that the Government should advise the detenue of the specific grounds for his detention, but should also give him notice of such further facts presented to the Advisory Board. The detenue should also be given sufficient opportunity to prepare his defence, and if he feels it is necessary that he should be allowed to consult a counsel of his choice in the preparation and defence of his case, he should be permitted to do so. The detenue should also have the right to produce witnesses and submit such documentary evidence as may be considered relevant to his defence. The American Emergency Detention Act however goes much further. It is the Attorney General who issues the warrant; the person arrested is brought before a preliminary hearing officer, who is to issue a detention order if he finds that probable cause

for detention exists. The accused is given opportunity to consult counsel, allowed to present evidence in his own behalf and permitted to cross-examine his accusers. 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 information. If it is not in public interest that a certian fact be disclosed, we do not insist that such a fact be furnished to the detenue, but all other material facts which are supplied to the Advisory Board should be given to the detenu without disclosing the source of information. In the U.S.A. there has to be also a Detention Review Board which reviews the detention order passed by the preliminary hearing officer and in such a case the Attorney General must supply to the detenu all particulars including the identity of informants, subject of course to the national security proviso. The detenu has also got the right to seek a judicial review of an order of the Board confirming detention.

(5) The present Bill, however, does not take sufficient care to protect the rights of the citizen as against the State. It is eminently desirable that increased protection should be provided to the individual specially when the situation is not abnormal and is continuously improving instead of deteriorating. In the absence of such safeguards the danger is that innocent persons may be deprived of their personal liberty against the officers who are responsible for their arrest and detention.

(6) Again it is stated in the Bill that the maximum period of detention shall be twelve months from the date on which the order of detention has been confirmed. The maximum period within which the Advisory Board may submit its report to the appropriate Government is ten weeks and some more time will elapse before the confirmation takes place. It is, therefore, recommended that the maximum period shall be counted from the date of arrest and not from the date of confirmation of the detention order and shall not exceed 6 months.

(7) The Government has been given the right to issue a fresh order of arrest and detention against the same person after release, on the basis of fresh facts and in view of this additional power it is quite unnecessary to keep a person in detention for a very long period.

(8) In our opinion the life of the Act shall not be extended beyond one year.

NARENDRA DEVA

SARANGADHAR DAS

K. A. DAMODARA MENON

NEW DELHI;

The 30th July, 1952.

III

We the undersigned are forced to submit this note of dissent from the majority report, to the Parliament. on the Preventive Detention Bill referred to the Joint Select Committee.

We do hold that the very principle of detention without trial is abhorrent to the canons of civilised democratic administration. Yet, Detention Acts have been a regular feature throughout the Congress Administration, for the last five years. Thousands of citizens are put under detention, some for more than 3 or 4 years. during the last five years. The Government is not satisfied with the ample powers provided to it under Criminal Procedure Code, Indian Penal Code, Criminal Law Act and such other measures. It has become the habit of the Government to bypass the Courts and resort to Preventive Detention. As such when for the first time, this black Act comes before the elected Parliament, for a further lease of life, it is only proper that the representatives of the people must be very reluctant to agree to such a measure unless there are sufficient grounds for enacting such an Act.

We do hold that the situation in India does not warrant any extention of the Preventive Detention Act. There is no internal disturbance worth mentioning nor the situation is such that it can be remotely said that there is a threat to the security of India or any part of it or even to the maintenance of public order and maintenance of essential supplies and services. Ordinary demands of the people for radical agrarian reforms for living wage and security of jobs, for food and shelter, instead of being tackled by measures that would be beneficial to the vast masses of the Indian people, are being met by the repressive measures and by resorting to Preventive Detention. The only conclusion that can be drawn, is that the Government is arming itself with this power of detention to preserve and safeguard the landlord and big monopoly interests in the country and to suppress the peoples' genuine interests.

In the Joint Select Committee, we have moved amendments to restrict the scope and duration of this Black Preventive Detention Act and also amendments that would have afforded some protection to the detenue from the tender mercies of the Governmental machinery, but none of these have been accepted.

Preventive Detention only in Emergency

1. We do hold that the Preventive Detention Act should come into force only when the President of Indian Republic proclaims an emergency under Article 352 of the Constitution in whole of India or any part of it, as he may by notification declare from time to time.

Even a modest amendment that the Preventive Detention Act must be applied only when the Government declares any area a disturbed area was not acceptable to the majority which only goes to show that the Government instead of relying on ordinary process of law, wants to continue its policy of relying on Preventive Detention.

Not satisfaction of the Officer but sufficient proof must exist for detention.

2. To prevent the abuse of Preventive Detention Act, we suggested that there should be sufficient proofs in the hands of the Government that the person concerned is going to commit overt acts, before it can pass a detention order.

The majority refused to accept this. They held mere satisfaction of the Officer concerned as sufficient. They even rejected another amendment that the detention order must be passed only if the officer concerned is satisfied on the basis of reasonable evidence in his possession. Their whole anxiety is, not to allow, this arbitrary detention from being questioned by the Courts of the Land. When the Government is given powers to detain a person on certain grounds, it is but proper that the Courts be empowered to look into the matter whether the grounds adduced by the Government are sufficient to detain a person. This is not debarring the Government from detaining persons without trial but once these powers are granted the right of Courts to look into the grounds of detention, is only a safeguard to see that the Government does not misuse those powers.

Grounds of detention:

3. The grounds for which detention can be ordered should be sufficiently grave and as such that they cannot be dealt with under the ordinary laws of the land. Yet our amendments to omit as grounds of detention the maintenance of public order, or the maintenance of essential supplies and services were rejected. It is a well known fact that Preventive Detention was extensively used to throttle public agitation for redressal of genuine grievances under the plea of maintenance of public order. Similarly many a Trade Unionist were arrested and detained only because they were organising workers and get their grievances removed (redressed) or leading working class strike struggles. The Government's plea has always been that they are interfering with the maintenance of essential supplies and services. Under the head of essential services, every conceivable branch of working class has been brought.

That is why we do hold that the Preventive Detention Act should not be applicable for the so-called maintenance of Public Order or for the so-called maintenance of essential supplies and services. These can be governed by ordinary process of law.

Anything prejudicial to the relations of India with foreign powers is a ground for Preventive Detention in the present Act. It is too sweeping a power in the hands of the Government. Any sustained criticism or continued agitation exposing the policies in its relations with the Governments of foreign powers or exposure of foreign powers. doings in our country could be brought under the mischief of this Act. The majority refused to omit this from the grounds of detention.

Who is authorised to detain?

4. The Act provides that even District Magistrates and Commissioners of Police are authorised to order detention. Detention itself is an evil act. And when the power is given to any District Magistrate, it becomes much more dangerous. There is nothing in the Act which enables a detenue to sue the officials who maliciously detain persons. Our amendment to the effect has been rejected. We are opposed to clothing the District Magistrates with this power of detention, and make detention an easy thing. Let the order of detention be passed under the signature of the Minister in charge of the port-folio and not any District Magistrate or any Office Secretary of the respective Government.

The Magistrate is merely asked to supply the detenues with grounds of detention, as soon as possible, not later than five days after arrest to enable him to make representation to the Government. If there is material

already enough on the basis of which the Magistrate concerned is satisfied that the detention in that particular case is necessary, what makes it impossible for him to supply these grounds and particulars to the detenues forthwith or within 24 hours, so as to enable the detenue sufficient time to make his representations before the Government before it passes the confirmation order?

The Magistrate is asked to send "all other particulars, as *in his opinion* have a bearing on the matter". Why should the Magistrate be left the right to choose what the particulars are that have bearing on the matter? We do hold that all particulars having a bearing on the matter be submitted to the appropriate Government. The time before which the appropriate government should pass the Order of confirmation can well be reduced to ten days instead of twelve days.

Preventive Detention should not be made punitive detention:

5. A person is not tried. He is detained at the more satisfaction of an officer. He has been denied the protection of the Courts. Every man should be presumed innocent till he is convicted through the due process of law, is given the go-by. Yet a detenue is treated as a criminal. In many a province he is given the rations given for convicted persons, forced to work like an ordinary convict, humiliated and handcuffed and roped, the persons whom he can interview are to be agreed to by the police and in many a case his nearest relatives are denied interviews. Newspapers and books are restricted or even totally denied. They are given as a privilege and not as a right of detenue. Paying of family allowance is not obligatory on the Government and thousands of detenue families are left to starve. The detenue is far removed from his usual place of residence to another corner of the State. They can even be removed from one province to another. This makes it impossible for his family people to come and see him.

We hold that the Parliament must enact rules fixing the conditions of detention, place and amenities to the detenues. It must lay down that a detenue's family must be paid an allowance for the period of detention. In fact a detenue must be allowed all the rights which a citizen outside the jail gates enjoy except for the confinement to prevent him from doing things which the government claim to be prejudicial.

6. We do hold that non-compliance to obey a detention order should not be considered as an offence, when you are not prepared to bring persons to trial in the courts of law, the case of the Government is to be deemed as hopeless and the person concerned is to be presumed as innocent of crime. As such, he is not bound to obey an illegal order. And not complying with an illegal order can never be a crime. But the Government wants it to be treated as an offence and propose to confiscate the property of the person concerned, thus starving the family for no crime of them. This savours of nothing but that of theory of hostages or that story of lamb and the wolf.

We do hold that neither his property be confiscated nor he be tried for the so-called crime of not complying with the notification to surrender himself to detention. Even our amendment that the sentence should not exceed three months or a fine not exceeding Rs. 250 is also rejected by the majority in the Committee.

The Composition and Authority of Advisory Boards:

7. When proper Courts are not allowed to prove into the Government's orders of detention, the Advisory Boards at least must be enabled to go through the cases properly.

(a) Our suggestion that Advisory Boards must consist only of High Court Judges is rejected. Our contention is that retired High Court Judges or those who are qualified to be appointed as High Court Judges are open to abuse and to other influences because they may expect promotions or other jobs from the Government.

(b) Our suggestion that Advisory Boards be furnished with all the particulars concerning the case referred to it, is rejected, on the ground that the Advisory Board can ask for further material and the Government is bound to give it. Why should the Government wait till the Advisory Board demands and waste the time of the Board and keep the detenue remain in jail longer?

(c) Our suggestion that whatever material was placed before the Advisory Board be made available to the detenue was also rejected. We consider it highly objectionable that certain material to be placed before the Advisory Board on the basis of which it is influenced, while the detenu cannot disabuse the minds of members of the Advisory Board of these allegations levelled against him by challenging the varacity of these allegations. ...

(d) Our suggestion that the detenu be allowed to have the right to be represented by the lawyer before the Advisory Board was also rejected. There were thousands of cases where the detenus could not by themselves represent their cases. And it will be only proper that he be given the help he requires.

Similarly, our suggestion that the detenu be given the opportunity to produce evidence to rebut the allegations levelled against him is rejected.

The argument of the majority is that then it becomes a trial held *in camera* instead of Open trial. Secret trials are bad enough. But even to deny it is much worse. Further, how could it become a trial *in camera*, when the evidence act and the ordinary laws are not applied, but only the detenu is allowed to produce informally that evidence to rebut allegations levelled against him.

When the Government wants to detain a person for a period of 15 months, it is but just that he be enabled to represent his case and rebut the allegations with evidence before the Advisory Board, at least informally and in *camera*.

(e) Our suggestion that the Advisory Board should submit its report within 2 months of the date of detention or within a month of the matter being referred to it is rejected.

(f) Our suggestion that the Advisory Board should review the case after a period of three months after its last report is also rejected.

We could understand the Government's reluctance to allow any evidence being adduced or its refusal for periodical review, if the period of detention is limited to 6 months, *i.e.*, 3 months more than it is entitled to detain a person, under the Constitution, without referring to an Advisory Board. But when it wants to keep the detenu for a period of 15 months, it is but

proper that it allows his case for detention be reviewed every three months by the Advisory Board and allow the detenu to produce evidence against the allegation levelled.

The Maximum Period of Detention:

8. (a) We do hold that no person should be detained for more than three months under any conditions, if the object of the Government is only to prevent him from doing any overt act prejudicial to the Government etc... By that time the Government can bring him to trial before the Courts of the land. If it cannot, then it must release him.

An amendment that the maximum period of detention should not exceed six months was also rejected by the majority in the committee.

(b) Another amendment that the period be calculated from the date of detention and not from the confirmation date after the Advisory Board Report, even that was rejected. By rejecting this amendment, the maximum period of detention is made 15 months. Why does the Government quibble with the words? Why does it not openly say that the maximum period of detention is 15 months from the date of detention and not 12 months?

(c) For those who are already in detention even though they might have been already in detention for more than 2 or 3 years, they still have to rot in detention till 1st April, 1953. All our efforts to persuade the Minister concerned and the majority in the Committee to accept our suggestion to release the detenus who have been in detention for more than a year was of no avail. Our amendment to reduce that term to 1st January, 1953 at least, is equally rejected.

9. We hold that the period of two years imprisonment prescribed in the Act for a detenue on parole for failure of surrendering is too high. When the period of detention itself is fifteen months, to prescribe two years for a detenue who has to serve most probably another six months looks fantastic. It need not in any case be more than what is prescribed for a person who fails to surrender when called to do so after the detention order is served.

The right of the Parliament to review the working of the Act:

10. An amendment was moved that every six months the Government must place before the Parliament specifying the number of detenues, classifying the grounds on which they are detained, *i.e.*, under which subsection of Section III, 1(a). What was the decision of the Advisory Board on such detentions.

This was rejected on the grounds that it was waste of time of the Parliament to go into these matters too often. The same argument was advanced to reject an amendment restricting the life of the Act till December, 1953. This is strange and dangerous argument. We do feel that the Parliament must demand the six monthly report on the working of the Preventive Detention Act.

11. (a) We do hold that the Preventive Detention Act must not be applicable to members of the Parliament and members of State Legislatures. This violates the immunity of Peoples' Representatives. The Government should not be allowed to detain without prior sanction of the Parliament or State Legislature. This is the practice in France, and in a number of other countries. This is necessary in our country too.

(b) Another suggestion that was put forth that members of Parliament or of State Legislatures even if they are detained, must be allowed facilities to attend the sessions of the Parliament or State Legislatures was also rejected.

(c) Similarly, another amendment, that the Legislature or Parliament shall inquire into the propriety of the detention order served on a Parliament member was also rejected.

This will only undermine the faith of the people in the Parliament, if they see that their representatives can be arrested without trial and detained.

12. We hold that in no case this Black Act should be on the Statute Book beyond the 31st December, 1953.

CONCLUSION: We hold that this Black Act of Preventive Detention is not only not necessary, but dangerous to the Democratic life of our people. We recommend that the Bill be dropped or in case the Government persists, it must be modified on the lines suggested above.

If the Government persists, and is not prepared even to modify it on the lines suggested above the only conclusion that will be drawn by the wider sections of our people, is that Government unable to solve the agrarian problem, unable to feed and shelter our people, unable to find employment and guarantee a living wage to our workers, unable to rehabilitate millions of refugees, wants to resort to rule by Prevention Detention.

There cannot be a democratic life or administration with a Democle's Sword of Preventive Detention hanging over the head of the people and of the democratic parties.

P. SUNDARAYYA.

A. K. GOPALAN.

NEW DELHI,

The 30th July, 1952.

IV

The Preventive Detention Act which came into force in February, 1950, has been on the Statute Book for about 2¼ years. In view of the seriousness of depriving a person of his freedom without trial both the Act and the amending Bill brought forward last year by the Government to improve it in certain respects were subjected to a great deal of criticism in the Provisional Parliament. It was, therefore, necessary that the Government in order to assure Parliament that the powers conferred by the Act on the executive were not being misused should have asked the Chairmen of the Advisory Boards of some of those states where it has been largely used to appear before the Select Committee to give information about the manner in which the Act was being used and the Boards were functioning. It is very regrettable that Government gave no thought to this important question before the Select Committee met. It was suggested in the Select Committee that some of the Chairmen of the Boards referred to above should be invited to meet the Committee but the suggestion was unfortunately turned down by the Committee. The Commitee, therefore, discussed the Bill without any accurate information of the working of the Act.

The most important amendments considered by the Committee related to the extension of the life of the Act and its scope and the facilities given to the detenue to meet the charges against him. But with one exception all the amendments were rejected by the Committee.

The Preventive Detention Act when passed in 1950 was to be in force for a year only. It was continued for a year more by the amending act passed in 1951. As this law is of an exceptional character it is necessary that the position should be reviewed every year so that the Act may not remain in force for a day longer than is necessary. For this reason I do not agree with the proposal in the Bill that the Act should continue till the 31st December, 1954.

Section 3 of the Act allows the authorities to detain a person if they are satisfied that it is necessary to do so "with a view to preventing him from acting in any manner prejudicial to the Defence of India, the relations of India with foreign powers or the security of India". It seems to me highly undesirable to use this power to detain a person because of his criticism of Indian foreign policy. Even though it may be quite unfair it is far better to place the correct facts before the public than to deal with the unjustifiable criticism in this way.

The Bill gives the detenu the right which he did not previously enjoy to appear in person before the Advisory Board. This amendment is satisfactory so far as it goes but it may not be sufficient to enable him to represent his case properly to the Board. The procedure followed in England during the last war under the Emergency Powers (Defence) Act was much fairer to the detenu than the procedure laid down in our Preventive Detention Act. The well-known Regulation 18B which authorised the detention of certain categories of persons without trial laid down that the Chairman of an Advisory Committee should inform the detenu of the grounds of detention and "furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case". Apart from this the detenu could be allowed to have the assistance of a lawyer in preparing his reply. The Home Secretary stated in the House of Commons on the 28th January, 1943 that the general practice would be to allow British subjects detained under this Regulation to have consultations with their legal advisers out of the hearing of an officer. The detenu could also be allowed to call witnesses. I am strongly of the opinion that the facilities that were allowed to the detenu in England during the war should be allowed to him in India in peace time.

H. N. KUNZRU.

NEW DELHI,

The 30th July, 1952.

THE PREVENTIVE DETENTION (SECOND AMENDMENT) BILL, 1952.

(AS AMENDED BY THE JOINT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Joint Committee; asterisks indicate the omissions).

A

BILL

further to amend the Preventive Detention Act, 1950.

BE it enacted by Parliament as follows :—

1. Short title and commencement.—(*1*) This Act may be called the Preventive Detention (Second Amendment) Act, 1952.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1, Act IV of 1950.—In sub-section (*3*) of section 1 of the Preventive Detention Act, 1950 (hereinafter referred to as the principal Act), for the words and figures "1st day of October, 1952" the words and figures "31st day of December, 1954" shall be substituted.

3. Amendment of section 2, Act IV of 1950.—In section 2 of the principal Act, in clause (*a*), for the words "Chief Commissioner" the words "Lieutenant-Governor or, as the case may be, the Chief Commissioner" shall be substituted.

4. Amendment of section 3, Act IV of 1950.—In section 3 of the principal Act,—

(*i*) in sub-section (*3*), for the words "have a bearing on the necessity for the order", the following words shall be substituted, namely:—

"have a bearing on the matter, and no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.";

(*ii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order."

5. Amendment of section 6, Act IV of 1950.—Section 6 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after that sub-section as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence under clause (*b*) of sub-section (*1*) shall be cognizable."

6. Amendment of section 7, Act IV of 1950.—In sub-section (*1*) of section 7 of the principal Act, for the words "as soon as may be", the words "as soon as may be, but not later than five days from the date of detention" shall be substituted.

7. Amendment of section 8, Act IV of 1950.—In section 8 of the principal Act,—

(*a*) in sub-section (*2*), the proviso shall be omitted;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) 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:

Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952, to dispose of any reference under section 9 pending before it at such commencement."

8. Substitution of new section for section 9, Act IV of 1950.—For section 9 of the principal Act, the following section shall be substituted, namely:—

"*9. Reference to Advisory Boards.*—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."

9. Amendment of section 10, Act IV of 1950.—In * * * section 10 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) for the words "if in any particular case it considers it essential", the words "if in any particular case it considers it essential so to do or if the person concerned desires to be heard" shall be substituted;

(*ii*) for the words "from the date specified in sub-section (*2*) of section 9" the words "from the date of detention" shall be substituted;

(*b*) in sub-section (*3*), the words "to attend in person or" shall be omitted, and for the words "legal representative" the words, "legal practitioner" shall be substituted.

10. Insertion of new section 11A in Act IV of 1950.—After section 11 of the principal Act, the following section shall be inserted, namely:—

"*11A. Maximum period of detention.*—(*1*) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 11 shall be twelve months from the date on which the said order has been so confirmed.

(*2*) Notwithstanding anything contained in sub-section (*1*), every detention order which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date on which it was confirmed under section 11, whichever period of detention expires later.

(*3*) The provisions of sub-section (*2*) shall have effect notwithstanding anything to the contrary contained in section 3 of the Preventive Detention (Amendment) Act, 1952 (XXXIV of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."

11. Amendment of section 13, Act IV of 1950.—For sub-section (*2*) of section 13 of the principal Act, the following sub-section shall be substituted, namely:—

"(*2*) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made."

JOINT COMMITTEE OF PARLIAMENT

Report of the Joint Committee on the Bill further to amend the Preventive Detention Act, 1950.

(As amended by the Joint Committee)

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