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THE
PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

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HOUSE OF THE PEOPLE

Saturday, 2nd August, 1952

The House met at a Quarter Past
Eight of the Clock

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

8-20 A.M.

MOTION FOR ADJOURNMENT

ANTI-HINDI AGITATION IN THE SOUTH

Mr. Speaker: I know the hon. Member, Shri V. Veeraswamy has sent a notice of an adjournment motion and I have already informed him that I cannot give my consent to the motion. If he is very keen, I might tell him why I am unable to give my consent. In the first place, it is vague. It does not refer to any specific incident. It merely says that a serious situation has been developing, because of some posters in Hindi being destroyed on the Railway Stations and Post Offices by some persons, who want to carry on an Anti-Hindi agitation. If anything, 'by a serious situation' he means the peace and tranquillity situation then that is the province entirely of the Madras State with which the Central Government have nothing to do.

RESIGNATION OF SHRI RASIKLAL
U. PARIKH

Mr. Speaker: I have to inform the Members that Shri Rasiklal U. Parikh has resigned his seat in the House of the People with effect from the 28th July, 1952.

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PREVENTIVE DETENTION (SECOND
AMENDMENT) BILL—contd.

Mr. Speaker: The House will now proceed with the further consideration of the following motion:

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

Dr. Krishnaswami (Kancheepuram): When the House rose last evening I was in the midst of an argument relating to the rights to be given to detenus by the State. On this question there has been considerable heat generated because we have not been able to distinguish between the security of the State and justice being done to the detenu. Only last evening I pointed out that if the State wished to claim privilege, it could do so in any case and that it was not necessary to insert a specific provision in the Preventive Detention Act to the effect that it could claim grounds of privilege and withhold grounds as well as particulars from the detenu. What can a detenu do if he is not given the grounds and particulars for making representations to the Advisory Board? So I think it will be recognized on all hands that since the detenu is under a cloud of suspicion there is a duty cast on the Advisory Board to give him all facilities and on the part of the Government also to extend to him all facilities, so that he might clear himself and take his place as an honest member of society.

There was another point which came up for discussion on which we had differences of opinion with the majority of our colleagues. That point related to materials being furnished to the Advisory Board. We wanted a mandatory duty to be cast on the Government to furnish all materials to the Advisory Board and the Advisory Board in its turn to have

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the opportunity of giving such particulars as in its opinion are justified to the detenu for making out his case. As regards legal assistance considerable argument has been indulged in, but I may point out for the benefit of the House that on this matter all Home Ministers are cousins and in the U.K. when Regulation 18B was discussed Mr. Herbert Morrison said that he could not think of advocates being engaged to take part in such cases and he put forward the argument that if the Government allowed an advocate to be engaged on behalf of the detenu, it would also have to allow another to be engaged to argue the case for the security of the State. But eventually as a result of discussion and compromise it was suggested that the Advisory Board whenever it thought fit should allow an advocate for the detenu to make his representations. As time progressed during the World War II itself due to conditions of security having improved more and more advocates were allowed to the detenus to argue their cases and on this matter the line of progress has been from few advocates for detenus to more advocates. After all these are vast emergency powers that are being given to the executive and it was considered to be unfair particularly to keep the detenu under very great handicaps. That is one of the main reasons why in many of these cases not only grounds but also particulars have been given. Speaking quite frankly on this matter I may point out that since the prejudicial act covers so many categories in our country, it would not be fair to deny legal aid being given to detenus. What, for instance, is the similarity between a detenu who is detained on grounds of having committed a prejudicial act, which is contrary to the maintenance of order, and a detenu who has committed a prejudicial act which imperils the defence or security of the State. The two do not stand in the same category, even though it might be convenient for purposes of official classification to bracket them together. In many of these instances, we must leave it to the Advisory Board to have discretion to allow lawyers to put forward the case of detenus. Nothing will happen which would affect the security of the State. Only yesterday hon. Members pointed out that the Advisory Board would partake of the character of a judicial tribunal. That is not the intention of those who make this suggestion. Our intention is that detenus should be allowed to place their case before the Advisory Board. If the Advisory Board in its discretion considers it proper to have witnesses summoned to testify to a

detenu's character, why should it not have the liberty to act thus?

We agitated that family allowances should be granted to the detenus. This is a very simple matter on which there need be no controversy at all, because even under Regulation III of 1818, family allowances were given to detenus. A detenu is not a convict and a realisation of this fact led the Leader of the House to suggest that the detenu should be allowed to contest even elections and take his seat in the various legislatures of the land. But even this proposal was rejected.

One more word, and I have done. The Home Minister towards the end of his speech referred to storms raging in many parts of Asia. I know there are very many difficulties in different parts of Asia. But, I would like to point out that that argument leads us nowhere. Unless and until it can be shown that these storms have an effect on our country, and that as a result of great disturbances elsewhere, new disturbances are generated in our country, there is no purpose served in conjuring up conditions of emergency and introducing restrictive legislation. After all, we have stability in this country. We have, according to the admission of hon. Members tided over difficult periods and we are in a relatively calm and quiet period. In fact, the Home Minister, in the course of his speech, pointed out with justifiable pride to the fact that we are having very few detenus in jail. If that be so, the question naturally prompts itself to many impartial observers, why should we introduce the Preventive Detention Act at all. This is an argument worth considering. I would like to point out that all these matters can certainly be solved by a certain amount of adjustment and compromise. In this debate, we have felt that there has been very little of giving in to points of view expressed by this side of the House. This is not a healthy attitude because on matters pertaining to the security of the country, and relating to the dangers which threaten the State, we all ought, at any rate, to see the different viewpoints and try to bring forward a united viewpoint so that it might be possible for us not only to preserve the liberty of the subject, but also a fair degree of unanimity on what constitutes the security of the State. No argument has been advanced to show that there are emergency conditions. One hon. Member speaking from the other side pointed out that there were very grave difficulties which faced us and that there were all sorts of activities that were threatening our country.

I am aware of recent developments. I am aware of the fact that after World War II, the rise of the fifth column is certainly a great factor which has to be taken into account and that like Attila's legions, they might infiltrate into the different parts of our activities and bring about a sapping of the administration. Today, we are not in that situation. If that is a danger which might arise in the future, I venture to suggest that my friends should really take more positive steps instead of attempting to tackle this problem with this Preventive Detention Act. What is needed is a strengthening of the intelligence services and an entirely different approach to this problem to find out where the mischief lies instead of applying merely the Preventive Detention Act which might be totally useless. I have this much only to say: if we are in such a situation, and if it is proved to the satisfaction of Parliament that such a situation exists and the Ministers are satisfied that that exists after due enquiry and after having had reports from reliable authorities, then, I do think that this Parliament will not hesitate to enact such legislation as may be necessary to meet the needs of the situation. But, up to now, no case has been made out and I do not think there is any danger facing our country in the near future. Only what hon. Members have said should make the Government more alert and lead them to have a better type of intelligence services which would be able to ferret out the guilty from the innocent. There is no use trying to bracket us all together, saying that we are going to apply the Preventive Detention Act, and as a result of our applying the Preventive Detention Act, things would be satisfactory. Things will not be satisfactory.

We have to realise that in this country there is also this feeling that the Preventive Detention Act may be applied against those who are politically opposed to the ruling party. That is a justifiable suspicion which is entertained by many on this side of the House. In order to obviate that suspicion we ought, as far as possible, to give sufficient assurances to the detenus and others. Therefore, I feel that this Preventive Detention (Second Amendment) Bill, apart from being unnecessary in the present circumstances, may not solve any of those major difficulties which my hon. friend has ventured up. These difficulties are not with us. Parliament should also have the opportunity of reviewing the Preventive Detention Act once a year. I do not agree with those who suggest that a fifteen days' debate on civil liberties by Parliament is a waste of time. I think that is an attitude

which ought certainly not to be viewed with favour by hon. Members of this House, because, so far as this Parliament is concerned, it will gain in prestige, it will gain in importance if it considers the civil liberties of our citizens, if it reviews at least annually the manner in which these liberties are curtailed. Besides, the executive will be on the alert, the citizens' rights will be interfered with not lightly but only after mature consideration and the abuse of powers by the executive for which there is considerable scope under the present Act will be kept at a minimum.

Mr. Speaker: I understand that it is the desire of all sections of the House to extend the general debate to Monday, up to one o'clock, inclusive of the hon. Minister's reply. I should have no objection, because the final terminus is fixed and the effect of it will be that there will be lesser time for the clause by clause discussion. If that is also sought to be prolonged, the Third Reading will come practically to nothing. I have no objection to adjustments as they like. But, I should urge hon. Members to be as short in their speeches as possible because this extension is sought on the ground that a large number of Members are keen, not so much to add their arguments, but to add their voice one way or the other.

Prof. Mathew (Kottayam): Sir, I hope I shall be very brief, in deference to the suggestion that you have just now made.

I should, in the first place, congratulate the Joint Committee for making certain changes in the direction of liberalisation of the provisions and at the same time for having refused to give up the very substance, the very basis of the Act, and for having refused to knock off the very bottom of the Act. I should congratulate the Joint Committee for having shown a sense of political realism which consists in facing the actualities of the situation. Again and again a fear has been expressed from the other side of the House that this is directed against some one political party, or perhaps against all parties in Opposition. Assurances have been given from this side that that is not so. I may be told that it is not a question of mere verbal assurance. But I do not honestly understand how the large Congress Party in this country can ever be accused of aiming at a kind of totalitarian regime, aiming at the putting down of all Opposition. If that were the policy of the Congress party, certainly the situation would not have been what it is now. Again and again it has been pointed out from this side of the House that if the Cong-

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ress had believed in a totalitarian regime, there would have been no Opposition. It has been replied that particular Members of the Opposition are there not through the favour of the Congress. Of course, in a superficial sense, it is true. No particular candidate other than a Congress candidate could have been supported by the Congress. But, that is not the point of the argument. The very fact that there is an Opposition and that that Opposition is given a very legitimate encouragement, is a solid token of the reality that the Congress Government does not believe in a totalitarian regime. It wants to give all legitimate encouragement to all the parties in Opposition. At the same time, I do admit that whichever party comes under a certain description, may have this Act applied against it. What is that description? Any group, any party that reserves to itself the right, if it may be called a right, to resort to violent subversive activities whenever it suits their purpose, well, I say, if there is such a group, if there is such a party, certainly it may be taken for granted that this Act may be used against it. If I am asked, are there such parties, are there such groups which reserve to themselves the right to resort to subversive and violent activities whenever it suits their purpose, why should I answer the question? Each party can ask itself whether it believes in it. Sir, whenever a simple question has been put to one party especially whether they have abjured, whether they abjure, this right to resort to subversive and violent activities, there has been shown a kind of restlessness. It is a simple question; but it has not been answered in a simple way. It has been said it is a sterile question, it is a negative question. Why all this verbiage? I shall put the question in a simpler way. I do not believe in extreme *ahimsa*. Violence, it may be contended, is permissible in certain circumstances. Where there is a purely totalitarian regime, where there is tyranny, where there is no democracy, it may be that citizens may be justified in resorting to violence. That is a question for political philosophers to discuss. But I change my question this way. As long as there is parliamentary democracy in this country, do you abjure all methods of violence? You may say that Gandhiji himself preferred violence to cowardice. But the question is not now one of a choice between cowardice and violence. The choice is between violence and parliamentary democracy. As long as there is parliamentary democracy in this country, will all the parties and groups

renounce once and for all the right—the so-called right, which cannot be a sacred right—to resort to subversive methods? Is it merely a question of possibility only? We should not proceed merely on the basis of possibility. We have to go by the facts of recent history in this country. I do not want to go into details, but in many parts of the country, there has been an effort to resort to violent and subversive methods. In fact there are parties which consider it as their main arm, who look upon parliamentary tactics as only the preparatory thing, something which paves the way for the more effective means of violence. I do not want to refer in detail to the particular happenings in Travancore. I do not want to exaggerate things. But during a few years, even in the course of a few months, police stations were attacked, and police officers were murdered. But I am more concerned with something else which I do not want to expatiate upon in the present context. The persistent tendency and the deliberate effort to work havoc in educational institutions touched me even more deeply. I shall not go into the details, but as an educationist, I was more affected by certain political parties trying to make the working of educational institutions impossible, and I have some documents in my possession which go to show that there were political parties interested in this kind of tactics. Now it has been said that freedom is in danger. Yes, that is precisely my point. The existence of certain political parties, the tactics adopted by certain political parties endanger the freedom of the honest citizen. Freedom is claimed rightly only for the honest law-abiding citizen. I do not like to use frequently the phrase peace and tranquillity. Tranquillity may suggest a kind of philosophical or religious goal as it were. I would therefore say 'the necessary conditions for ordered progress', have to be maintained, and the tactics of certain political parties would make that impossible. We are asked to read the signs of the times, and what are the signs of the times? We have to cast our eyes even beyond the borders of our great country, both towards the West and the East. Nations have gone under, and have lost their freedom—I shall not say, for ever—for a long time to come, because they had not been vigilant enough. The price of freedom, and of the maintenance of freedom is eternal vigilance. Now if there is free scope for subversive and violent activities, freedom for those who do not believe in parliamentary democracy, freedom for those who want to wreck the freedom of others, that will

mean the loss of freedom for our nation and for all honest and law-abiding citizens. Sir, this has been called a lawless law. If it is meant that it is a law against the lawlessness that may be created, in that sense alone, can this be called a lawless law.

Just one point more, Sir. One of the great sources of fallacy in thinking is this—to observe a certain limited domain of experience, to arrive at certain concepts, and then to seek to extend them beyond the legitimate province of that experience. There are laws, and there are observations which are true of normal conditions, but to seek to extend them beyond the borders of that limited experience, to seek to apply them when normal conditions are not prevalent, is a source of fallacy. There are factors present today which are extraordinary, and not to face them in the proper way would be a sign of weakness. Therefore it is in the name of freedom, the freedom to be enjoyed by the honest and law-abiding citizen, that I give my support to this Bill which in a way is a little extraordinary, but that is because the conditions also are to some extent extraordinary.

With these few words, without covering the grounds which have already been covered, I give my hearty support to this Bill.

Shri Damodara Menon (Kozhikode): Yesterday the hon. Home Minister, while moving the motion for consideration, referred to the fact that the Members of the Opposition went into the Joint Committee with a mental reservation. I would prefer to call it not mental reservation, but an abiding faith in certain democratic principles. It is with that faith that we went into the Joint Committee. I know the members of the Congress party and its leaders had the same burning faith in those principles at one time. But today unfortunately for the country it is getting more and more dim. I specially remembered this, when I heard the hon. Home Minister refer to this Act as a model measure of legislation. We wanted the House to bless this Act because it was a model piece of legislation. A Bill which seeks to restrict the elementary civil rights, which seeks to do away with the basic principles of personal freedom, cannot be termed a model piece of legislation. When I heard the Home Minister refer to this Act in those terms, I said to myself: "What a fall my countrymen", because it is the faith of the people of this country in democratic principles that is being destroyed by this measure. We of the Socialist-Praja Party do not believe in methods of violence. We want to effect radical social and economic re-

forms in this country through the process of democracy, and we believe that democracy can thrive in this country only if we respect the basic principles of democracy, notably the personal freedom of the individual.

We went into the Joint Committee with a belief that it may be possible for us to make certain amendments in the Act which will at least do away with some of the obnoxious aspects of the Bill. I refer first to the term of the Act. The Home Minister said that 27 months is a short time. He wants the Act to be extended to 27 months. In support of that contention, he said that the existence of this Act is necessary for the preservation of law and order in this country. We asked for figures and the figures he gave showed that there has been a progressive decrease in the number of cases which came under the Preventive Detention Act. What did it show? It really showed that the situation in the country had definitely improved and the Home Minister said that this improvement was due to the existence of the Preventive Detention Act. This is dangerous logic. What will be the ultimate result of thinking in this strain? The Home Minister may say that the moment this legislation is removed from our Statute Book, the country will again revert to a disorderly state of affairs. My contention is that the improvement in the situation is not due to the existence of the Preventive Detention Act. You cannot maintain peace in this land, you cannot suppress a people by legislation like the Preventive Detention Act. The members of the Congress Party know it from their own experience. Were the British Government able to suppress the freedom movement in this country by Preventive Detention and other obnoxious Acts? We fought many a heroic battle against the onslaughts of British imperialism against personal freedom, and that created a sense of exhilaration in the country, and everybody was willing to follow our lead. Today when you are using this Preventive Detention Act on the plea that it is necessary to preserve peace in this land, when you fail to recognise that there has been a change in the attitude of many of the political parties in the country, and that is why there is peace in the country you are simply following the practice of the British imperialists.

Now, my hon. friend Prof. Matthew referred to the situation in Travancore-Cochin. I do not want to go into details about that, but what happened there? In Travancore-Cochin I know there were acts of violence. That is an old story. But when the elections

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came, many of those people who were under detention and were underground stood for election, and they were returned with a thumping majority. Why did that happen? I tell you it was not because the people of Travancore-Cochin generally believe in acts of violence. They were really recording their protest against the way the Executive was clapping persons into jail without proper trial. The people were reacting really in this manner because we taught them to react in that manner. Congress propaganda all along was that the basic right of the individual must be protected, and when the people found that many of the persons were clapped in jail without proper trial, they wanted to record their protest and the Congress suffered defeat. In all those places where the Preventive Detention Act was put in force in a ruthless manner, the Congress suffered defeat.

My hon. friend the other day referred to Saurashtra, and he said that in Saurashtra the Congress was returned with a thumping majority. It was true. It happened because, as he himself pointed out, the Congress there stood for a progressive principle. They wanted to liquidate feudalism, and they were fighting against feudalism and the people responded and returned them to power. Yesterday my hon. friend Shri Hirendra Nath Mukerjee pointed out that probably this legislation will not do to suppress feudalism. I want to ask the Congress Members of the Parliament as well as our Government why they are not liquidating feudalism in this country, especially in Saurashtra. Why are they not taking stern measures—and this cannot be under the Preventive Detention Act, it may not so long enough—but why should they not take courage in their hands and liquidate feudalism once and for all in this country? If such a step is taken, I am sure every section of this House will stand behind them. It is not a question of violence or non-violence as my hon. friend Prof. Mathew pointed out a few minutes ago. Now, that is an academic issue. We believe in non-violence, non-violence in the sense that we want to bring about social and economic changes in this country through the process of democracy. But if you place this academic issue before the country, before the villager, he does not understand it. He thinks you are putting forward this plea of non-violence to preserve the existing social order, that your conservatism is being hidden under this specious plea. That will not do. Therefore, if we are launching upon really radical measures, if you are really giving the people of Saurashtra

what they want, the liquidation of feudalism, I am sure you may not, you will not need this Preventive Detention Act which is against the elementary rights of individual freedom.

I was on the point of the extension of the Bill for two years. I said the Home Minister's plea that it was because of this Act that there was improvement of the situation in the country, cannot be sustained. It is dangerous logic. He said another thing, that it was a waste of time to bring this measure every year before Parliament. He amended it later on and said a resolution may be allowed in this House and discussion may be permitted. I am glad that he changed his view to some extent today. But about the extension of the Bill itself and his first statement to the country in Parliament as well as in the Joint Committee that it will be waste of time for Parliament to consider this measure is a surprising proposition. I cannot subscribe to that point of view at all. As my friend Dr. Krishnaswami pointed out just a few minutes before, this Parliament has a right to go into this Act from time to time.

Now, we were told of what Sardar Patel said when he introduced this Bill for the first time in Parliament. He said that he spent two sleepless nights before he thought of introducing this Bill. The condition in the country at that time was quite different according to the admission made by the Government, quite different from what it is today. And even at that time Sardar Patel had an uneasy mind. It was because he was thinking of our old history, he was thinking of the battles he himself led against this kind of legislation in this country and, therefore, when India was having for the first time a democratic, sovereign Republic, he felt that it should not be his duty to see—and he had pain in his mind—that this elementary right of the individual was being circumscribed in this way. Therefore, he said he spent two sleepless nights, but our Home Minister, Sir, is in a happy position. He does not remember what happened in 1931, 1940, 1942 and even 1950. He is in the position of a happy-go-lucky person who wants to think only of the present moment. Therefore, the mental anguish of Sardar Vallabhbhai Patel did not assail him. Sardar Patel wanted to limit the Act only to one year. He wanted to give an opportunity to this House to discuss it once more and make necessary amendments at that time. Today when the condition in this country has improved, our Home Minister does not want to give an opportunity to this House to review the position and

make such changes as Parliament may deem necessary from time to time.

My hon. friend, Mr. Shiva Rao, gave the history of this Act. He said that from time to time, from 1950 there has been a progressive improvement in the Act. Now, Sir, after one year this Parliament may feel that the condition in the country, even according to the Government, has improved to such an extent that there is no necessity for this Act. Why should we not give an opportunity to Parliament? The Government may say that if they so think, they may bring in an amendment. But the prevailing attitude, I mean the present attitude of the Government is that this Act is necessary, this instrument is necessary for them to preserve law and order in this country. So long as that attitude remains, this kind of legislation will continue and, therefore, I am afraid, Sir, that our country is being led in the wrong direction, especially in regard to its democratic principles. I say so particularly because the Home Minister said yesterday—and I was surprised when he said that—that when he visited the detention camp in Murshidabad he found the detenues there so happy that he referred to it—I do not know whether he meant it seriously, probably he may have said it as a matter of fun—as a 'liberty hall'. I want to consider that. Now, even as a matter of fun to refer to a detention camp as a 'liberty hall' shows a process of reasoning, Sir, which is revolting, to say the least. I want to ask the Home Minister whether it is his intention to create such kind of liberty in India and to turn the entire Indian State, the Sovereign Democratic Republic of India into a 'liberty hall' of the type he saw in that detention camp. Is that his intention? He is, I know, a lover of liberty. Is this the way he is going to extend liberty in this country? Is that his intention—it may not be, I am quite willing to grant that he may have referred to it as a matter of fun—but it is a sad thing that our Home Minister even as a matter of fun should refer to a detention camp as a 'liberty hall'.

So, that is the attitude with which members of the Congress Party are viewing this proposition. By way of illustration, I want to say one or two things more. My hon. friend, Mr. Gadgil, said the other day—and he illustrated it by a simile—that this Act was similar to the action of a horticulturist. He said that a good horticulturist puts a fence round a sapling so that it might be protected. Now, one can understand that simile very well. But, no horticulturist will seek to protect a sapling with a fence which will eat up the sapling itself. That is no

protection at all. Sir, there is a saying in my language. The poet says—I will give the English version—(*Interruption*). Please let me proceed in my own way. The poet says: "If the fence itself will eat the plant, what can cattle do?" Now, that is the situation in which we find ourselves today. The fence which my hon. friend, Mr. Gadgil, wants and also the Government wants....

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Dr. P. S. Deshmukh (Amravati East): The cattle can go in for the owner.

Mr. Speaker: Order, order.

Shri Damodara Menon: If the fence with which my hon. friend, Mr. Gadgil and the Government seek to protect the plant is of a nature that it will sap the vitality of the plant then you cannot say that it is there offering protection to the plant. I say that because this Bill seeks to do away with elementary personal rights. Freedom is not worth the name if we are not in a position to preserve these rights.

Now, Sir, some of my friends think that this Bill is a normal one. That has been the state of mind of the Congress Party members for a long time—I correct myself—recently. They are viewing the problem in a subjective attitude. Some of them were autobiographic. I do not find my hon. friend, Mr. Pant, here. He referred to his experience in childhood. He was a naughty child and his father used to lock him up in a room, preventive detention according to him, and that improved him. He used to throw stones and also set fire to files—all sort of mischief he used to do. Therefore, to improve him, his father kept him in a room. That was the experience that I heard from him. I thought in my own mind it was a good thing that the parents of Mr. Pant did not whip him. If they had whipped him, he would have come and pleaded that whipping was the remedy for all these. He would have advised the Home Minister that whipping is the best punishment therefore, let us whip all those people publicly. Now, this is a flippant attitude. This is not the way to consider such a serious proposition which destroys the basic foundations of democracy. When you are considering that, let us not be flippant, let us be serious.

Now, I come to the other improvement we wanted to effect in this Bill. That was, that even if you are going to enact this Bill, let the detenu get legal assistance. Let him be given a chance to adduce evidence in defence of his case. Now, yesterday my hon. friend, Mr. Shiva Rao, read the grounds

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of Mr. Gopalan's detention. I do not want to say anything about that because the Communist Party members are quite capable of defending themselves. But it occurred to me that these were mere grounds probably, they might be false, they might be true too; but is it not our duty to give Mr. Gopalan even a chance when such serious allegations are made against him, a chance to prove that he is innocent? Should he not also be given a chance to adduce such evidence as is available to him and also seek legal assistance? About legal assistance, Dr. Katju yesterday spoke in bitter terms. Mr. Chatterjee said one of the tragedies in a law court was the spectacle of a defendant defending his own case. There was another tragedy to which Dr. Katju referred yesterday. Dr. Katju was an eminent lawyer. He is a very eminent lawyer and he has spent 40 years of his life in the legal profession. Now after 40 years of experience in law courts and having spent a good part of his life in that profession, he comes here and makes a confession: that lawyers are a nuisance. Look at the tragedy of that statement.... (An Hon. Member: Are you a lawyer?) I am not a lawyer. I find that this realisation comes at a very late stage in his life and today I do not know whether he must be repenting that he wasted so much of his time in pursuing a profession which is a 'nuisance' to society. Now, that is a real tragedy. I am sorry my hon. friend Mr. Chatterjee, did not notice that. Now whatever that may be we in this House,—since I am not a lawyer, I do not know whether lawyers are a nuisance, they may be—if we can evolve a society here in which these lawyers may not have any place, I shall be the happiest person. But under the existing conditions when the ignorant client of the ignorant defendant has to plead his case before learned Judges—and there are so many technicalities involved in it—we want the detenus to have legal assistance. What is the harm in giving it? Please do not go about saying that it is for the benefit of the detenu. I am reminded of what Bernard Shaw said in one of his prefaces. He told the hunter who went hunting animals as a pastime. "Please do that as a pastime for yourself, but do not go about saying that you are doing it for the benefit of the hunted animals" That is a wrong approach. In the same way, if you are irritated by the presence of lawyers, say that you are irritated, that you do not want them, that the Government do not want them, but do not say it is being done for the benefit of the detenus themselves. That

would be wrong. Many of us were detenus ourselves but we at that time did not think of any defence, but here are many friends who were detenus who have come forward and stated their bitter experience and said that they wanted legal assistance for the detenu. Why cannot you be generous about that? It is a small concession. The Congress Members were repeating at length about the generosity shown by the Government in the Joint Committee. In the Joint Committee our experience was that on no material point was there any concession made by the Government. Of course changes were made: from tweedledum to tweedledee —if that is a change, of course, they have made it. But no material change was ever made. Therefore, I request the hon Minister to consider this proposition: Why not give legal assistance to the detenu, why not give him an opportunity to prove his innocence?

One more point. Referring to section 3, Dr. Katju said yesterday that there were Members who wanted to delete the reference to maintenance of public order as well as relations with foreign Powers from the ambit of section 3. He said with a certain amount of annoyance: "I do not want to mention names but there were Members who wanted that." As if Members who advocated that, were doing something very wrong, something which is against all civilised notions of society, something revolting to a sense of justice of all right-thinking men. It is not anything so obnoxious as that. Our position is just. Take the case of relations with foreign Powers. What is it that you want to prevent here? Whom do you want to detain under this section? Suppose I write in a paper tomorrow that the Korean policy of the U.S.A. is wrong and that is going to lead the world to another war, and I criticise it very very severely. Would you say, "We are in friendly relationship with the U.S.A. This article of the Member is likely to endanger that relationship, so he must be taken into custody on that account"? Or take our relationship with Pakistan or England or Russia. In several countries things are said about this country—we may also like to reply to that, do you want to prevent that? If you do not want to prevent that then why do you preserve this clause here? Do not say, "It is in the Constitution itself, we have simply quoted verbatim from the article." You are not bound to do so. You need not quote the article as it is. You can delete as many portions from it as you think necessary. So also in respect of maintenance of public order. It is our

experience that this clause is capable of wide misuse by the executive authorities. Any kind of legitimate agitation against the policies and programmes of the Government may be treated under this section as coming within the purview of the Act and the persons may be clapped in prison. Now, the hon. Minister himself said, "You are free to express your opinion but you should not speak in a provocative manner." I do not know what he means by that. Every man who feels sincerely about a proposition will speak of it in a provocative manner because he wants the thought of the people to be provoked, he wants that people must think about it. So, when he uses such expressions they may be taken by his lieutenant, the District Magistrate, as being very bitter criticism against the Government and anybody who does that may be clapped in jail under this section. Therefore we feel that these two clauses are capable of wide misuse and that is why we wanted to have them deleted. There is nothing unreasonable about it. I hope the hon. Home Minister will realise this.

I do not want to continue much longer, I would only make another appeal to the Congress Government that they should not carry on with this measure, or, if they want it, they must make at least some reasonable changes which will satisfy public opinion. I think it was Prince Kropotkin who said that an individual Minister may be very good, there is nothing wrong in an individual Minister—he becomes bad only when he tastes power. The intoxication of power alone makes that individual bad. We are here to build a new society, build a democratic State. Let not the taste of power go to the head of the Congress Party. Let them sympathise with the feelings of the people here who are very very earnest about a democratic State, who feel that this Preventive Detention Act is creating a condition in this country whereby the faith of our people in democracy may be destroyed. Let them appreciate that position. Let them also appreciate that whatever may have been the past experience of most of us here today, there is a definite change in the attitude of our political parties: they are taking to Constitutional methods. My friend Mr. Gopalan, my friend, Mr. Hiren Mukerjee in Parliament are far less dangerous than they are in a detention camp or underground. Let the Government appreciate that, and therefore in order to preserve democracy let them at least amend the provisions of the Act with a view to satisfy the just demands of the Opposition.

One thing more, Sir, though, strictly speaking, it does not pertain to this question. During the debate on the Bill yesterday, Mr. Hiren Mukerjee referred to the *Bhoodan Yajna* of Vinobha Bhave as charity-mongering, acrobatics. I am sorry he used that expression. Probably they have a particular attitude towards this, but we Members of the Kisan Mazdoor Praja Party as well as of the Socialist Party believe that it is a move in the right direction. We do not for a moment think that by carrying on this programme of *Bhoodan Yajna* the land problem in this country is going to be solved, but let us not forget the fact that that great movement led by that great man is creating in this country the necessary condition, the psychological atmosphere for land reform. What did Gandhiji do when he wanted to remove untouchability and throw open the temples to Harijans? At that time Mahatma Gandhi appealed to private individuals to lead the way and several private individuals showed a conversion of their hearts and threw open their temples. That created the necessary atmosphere for the State to come in and legislate. Therefore, we feel that this great movement of Vinobha Bhave will result in creating the necessary atmosphere in this country and force the hands of the Government to introduce radical land reforms. I hope my hon. friend will understand the significance of that great movement in that light.

Shri Tek Chand (Ambala-Simla): Sir, I rise to support the Bill as it has emerged from the Joint Committee. I rise to support it root and branch. The debate on this Bill has furnished manna for the critics in order to indulge in blast and fury. We have had a barrage of words, and an endeavour was made to drown the Bill under a cascade of eloquence. Yesterday I listened almost spell-bound, almost in awe, when my learned colleague, Shri N. C. Chatterjee brought to bear on the subject his great gifts of forensic eloquence. I was equally spell-bound when another distinguished Member brought into play his high gifts of histrionics. I also had occasion to watch the speeches of some hon. Members which with all deference to them, I can only style as hysterical. This occasion, if I may say so, is memorable, histrionically, historically and possibly hysterically.

Let us examine the Bill as it stands in principle so far as its roots are concerned in particular and also so far as its branches are concerned. Let the measuring tape, the yardstick judge

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the cogency of the Bill, be its desirability, the logic, behind it and the exigencies of the moment and not by wrath, not fury, not blast.

A distinguished Member styled this Bill as an obnoxious law. I happen to be in agreement with him. I do not join issue with him. It certainly is an obnoxious law for obnoxious people. But it has a curious quality. When this obnoxious law comes into contact with obnoxious people, it ceases to be obnoxious and it converts the obnoxious people into unobnoxious people. That is the great quality of this Bill.

This Bill has been assailed on the ground that in principle it is undemocratic. It negatives liberty. It is the negation of the high principles of freedom. Abstract liberty, absolute liberty, is a desideratum, is a goal, in pursuit of which, in realisation of which, many sacrifices have been made and will be made. But in order to achieve absolute liberty, we must develop a society almost Utopian. For purposes of acquiring or for retaining absolute liberty, there must be eliminated at least mentally from the country, elements whose activities are subversive, who are not in a position to tolerate the view-point of others.

By freedom I understand that I have a right to exercise my rights, but not to destroy the rights of my neighbour. I forfeit my rights to liberty when I do not recognise similar rights of my neighbour. All lawyers are familiar with the maxim *sic utere tuo ut alienum non laedas* use your rights in a manner that you do not jeopardise or assail the rights of others. If that were taken into consideration, if this simple maxim could be absorbed into the day to day life of the citizen, there will be absolutely no necessity for a measure of this type. But if by liberty is meant my right to assault the rights of my neighbour, my right to destroy the freedom of my neighbour, my right to make speeches whereby dying embers of hatred may be raked up so that they may burst into flames whereby the property, the possessions of my neighbours may be destroyed, that is not what is intended by liberty. If this Bill lays an axe on the roots of such liberty, it is a most laudable measure. Liberty is not all rights; liberty means also responsibilities. Therefore, having regard to notions of liberty in mind we have got to see whether in our country there are elements or there are not, who are willing to lay their axe on the roots of liberty, that is, liberty of others. Liberty of their neighbour. Eliminate

such elements from the body politic and you have no necessity for a measure like this. For a Utopian society you have no necessity for any penal measures, even the Indian Penal Code will become an obnoxious law.

But have we got that society? Are there people inhabiting this land who are willing to obey the laws, and respect the laws, who are unwilling to preach what is forbidden by the law? Learned speakers one after the other cited examples from the laws of England. I am aware of *Liversidge v Anderson*; I am aware of *Rex v Halliday*. I am also aware of similar cases where strictures were passed by the Judges against the harshness of the laws. But those who have been citing the law and practice of England, the permissive provisions which safeguard the liberty of the citizen, are they also aware of the condition of society prevailing in England? Are they willing to concede in all fairness, in all reason, that in that country subversive elements exist and their propensities are of an equally violent and sinister character. I must pay due homage, and tribute to those people whose country has been the nursery of freedom since centuries. I am also aware that in that country there is an inbred, or ingrained respect for the laws. People have only to know, or people have only to be told, that what they are doing is something opposed to law, and that is enough corrective; that is sufficient to prevent them from committing breaches of the law.

I recall to my mind the hectic days, the exciting days of 1926 in England when I was an undergraduate at Oxford. Those were the days of the general strike in England. The people went on general strike, and it was thought that if the general strike attains the proportions that it was feared that it might, there would be revolution in that country. I believe the statement of Lord Simon, then Sir John Simon, a distinguished advocate who gave an opinion that according to his opinion a general strike was contrary to law, which was sufficient to take the wind out of the sails of those who wanted the general strike. That realisation, that knowledge, was enough *viz.*, that a general strike is contrary to the laws of the land and the laws of the land are meant to be obeyed and not flouted. The general strike fizzled out.

Therefore my colleagues on the Opposition benches when they are citing the examples of England or of America should remember that those illus-

trations are only partially good. Does the same atmosphere prevail in this country? If you are honestly of the opinion that the state of society, so far as its responsiveness to laws is concerned, in England is the same as in this country then by all means compare and contrast the measures. But you should admit, and no fair-minded person can but admit that the conditions of society so far as the responsibility, so far as responsiveness to law, so far as respect for the law is concerned, is totally different there. Therefore I submit that parallels to be drawn from the case law, from the dicta of the Judges of England or from the statutes of England are absolutely valueless. But if the object is to mislead, their analogy is most admirable.

Coming to the Bill, it has been attacked on grounds which I may group under two heads, the principles and the provisions. So far as the principles of the Act are concerned, the main principles advanced are, that nobody's personal liberty should be placed in a state of jeopardy, that he should be given a fair opportunity to put forward his defence in a court of law, assisted by a lawyer. That is the abstract proposition of law. I yield to none in this House or outside in paying homage to the correctness of the principles as laid down. And I contend that nobody is more anxious than perhaps the hon. Home Minister for bringing into this country a state of affairs whereby such a measure may become a dead letter, and unnecessary. But even in England, that nursery of democracy, that home of freedom, under certain conditions it has been considered necessary that a citizen may be interned without his having the facilities which are available in normal times to an ordinary accused person. Therefore, when you are citing the example of England please remember also, at least please do not forget, what was stated in the speeches of the distinguished Members of the House of Lords in the case which came up before them. Similar regulations were known to England as early as 1914 under the Defence of Realm Acts. Halliday's case came up before the House of Lords in 1917. And there, one of the Members of the majority party in the House of Lords observed: "It may be necessary in a time of great public danger to entrust great powers to His Majesty in Council and that Parliament may do so feeling certain that such powers will reasonably be exercised."

Even there, internment without trial was conceived, was executed, and its necessity was understood. Similar ob-

servations are to be found in the dicta of Lord Maugham in the case of *Liversidge versus Anderson*, a case to which reference was made by one hon. Member the other day, but he chose to refer not to the judgment of the majority but to the dissenting judgment. Dissenting judgment was not the law, but it was the judgment of the majority, to which, however, there was no allusion made. That was the case of *Liversidge versus Anderson*.

Even in England from where the critics of this Bill draw their inspiration, such a state of affairs is conceivable, is in contemplation, and a similar measure is provided for.

The next question to which I wish to turn is: what is the nature of the Act? A sharp distinction has to be made—and this distinction is not simply academic—between a measure which is punitive and a measure which is preventive. Even from the procedural point of view this distinction has to be borne in mind. A measure which is punitive takes into consideration the facts on the strength of which a crime is alleged to have been committed. With the assistance of the lawyers the courts go into those facts as stated and then come to the conclusion whether the facts as alleged are true, and if true whether they fall within the ambit, four corners of the particular provision of the penal measure. But where the object is preventive, no offence has yet been committed. The entire psychology behind the legislation is different. It is a precautionary measure, it is an anticipatory measure. It contemplates that a person possesses certain dangerous propensities, he has certain proclivities which will lead him to commit serious breaches of the law, and that mischief which he is about to do has to be nipped in the bud. The object is to prevent him from committing a crime. Therefore in a measure which is essentially precautionary, which is essentially preventive, what has to be considered is: does the information available to the Government justify recourse to such a measure, to such a step? There are no facts in the sense that certain things have been accomplished and you have got to prove or disprove them. All that has to be taken into consideration is whether he is about to enter upon some dangerous pursuit whereby he is likely to endanger the security of the State or the other objects for which the Act is there. Therefore, in so far as it is a preventive measure—and I say so in all seriousness—it is a measure of repose, it is a kindly measure, it is a generous measure. (Some Hon. Members: Ha, ha!) And I say so despite the ha-ha's

Bill

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of the Lord Hawnaws there. I say so because I want them to visualize such a state of affairs. Now, for instance X is about to commit a number of murders, may be political, or communal. If he is not prevented immediately, there may be a number of lives lost. And if he is caught after the foul deed has been committed, he is going to swing on the gibbet. If you bring immediately to your service such a measure, you save the life of the murderer-to-be; you also save the lives of the victims-to-be. What you are doing precisely at the moment is that you are depriving him of liberty, maybe for three months or a year, maybe for a couple of months more. But what are you saving? You are saving his life and the lives of his intended victims. Therefore this measure is desirable in so far as it helps at a very early stage the detenu in making a realization that the pursuit after which he intends to bend his energies should be foiled and is dangerous.

One of the criticisms levelled against the Bill is that it is apt to be abused, that there are not sufficient safeguards. Grant me, Sir, the indulgence to reply to that argument. I submit this is a measure which contains ample safeguards within and there are ample safeguards without. I wish to examine them with your permission hurriedly, and separately. Let us examine what are the safeguards available to him without. It is wrong, and if my friends on my side are under the same erroneous impression it is high time that that erroneous impression should be dispelled. It is wrong. I make bold to say that the lawyers have no say in the matter. If a breach has been committed under articles 21 or 22, but relief is available under articles 32 and 226 of the Constitution. Relief has been granted by High Courts in umpteen cases and if my friends so wish, I am in a position to read extracts from these judgments.

Mr. Speaker: I am afraid the hon. Member will remember the appeal which on behalf of the House I extended to all. All those points were touched practically by the hon. Home Minister in his opening speech. He may not deal with them in detail. He may just touch on those points if he is very keen on touching them, but he will realise that there are so many other hon. Members who, as I said, wish to add their voice this way or that way. Practically no new argument is left now, let us not dilate on them. If he wants to read the extracts—he has already taken 20

minutes—he should at least show some consideration to the other Members who are anxious to speak.

Shri Tek Chand: I feel very grateful to you, Sir, but may I just take a couple of minutes of the precious time of the House and deal almost in a telegraphic language and very hurriedly. May I now deal with safeguards, without the Act. You prove to a High Court or to the Supreme Court want of good faith where particulars are so incorrect as to disclose that the authority detaining did not apply its mind at all. You can knock at the door of the High Court or the Supreme Court and escape the detention. Then you may go and show that you have been a victim of personal malice or spite and the High Court will order your release. Similarly if you establish that the ulterior object of the measure was not really preventive but punitive then appropriate relief will be granted by High Courts. Where facts supplied have no *prima facie* connection with the grounds or where considerations are wholly irrelevant on the ground of irrelevance, you can go to a court of law with all the ponderous weight of your learned lawyers and prove your allegations and you will succeed. Lastly, you go and allege that the grounds are insufficient such as in the leading cases of State of Bombay against Atmaram, and of Mehr Singh and of Sohan Singh and so many others. The Supreme Court and the High Courts in our country have interfered despite the fact that the man was behind the bars under preventive detention. These are one set of safeguards. Then there are other safeguards provided by the Act itself. The High Court Judge is the Chairman of the Board and the detenu has the right of personal appearance. There is the right of written representation. I may say this that the right of written representation is akin to furnishing of written arguments and grounds of detention are available and written grounds can be submitted with the assistance of a lawyer. I know of several cases where that has been done. Then the maximum detention is for twelve months. Then there is the automatic review by the State Government and failing that another automatic review by the Central Government is provided and then there is the 'Advisory Boards' I am sorry to say is a misleading expression; it is a misnomer and it has given opportunity to the critics misuse it. So far as the Advisory Boards are concerned I wish they were styled as "Detention Review Boards". My learned colleague, Mr. Chatterjee said it yesterday and that they are only quasi-judicial tribunals...

[MR. DEPUTY-SPEAKER in the Chair]

The Advisory Board's opinion if they express an opinion in favour of the detenu, is binding. It is directory; the man must be released whether the Government likes that opinion or not, whether the Government agrees with it or not, whether the Government considers it to be in consonance with their own opinion or not. Therefore, to style these powers as merely 'advisory' is a very unfortunate expression that has led to an unnecessary debate on this measure. These Advisory Boards are going to be presided over by a High Court Judge, and detenu can present written representation as drawn up with the assistance of counsel. The Advisory Boards can call for any further information from the Government to examine any records, to consider all materials including the most confidential information which is in the possession of the Government and after going into that, and after giving a hearing to the detenu if he so likes after investigation, if they can be so persuaded, into such information as is available to the detenu, the Advisory Board comes to the conclusion, that the man does not deserve to be detained, he cannot be detained for a minute longer. Not only that. If on the other hand they are of the opinion that he deserves to be detained, then alone their opinion is advisory. Then it is only a suggestion; it is open to the Government either to accept or reject it. Therefore, they are merely tribunals. Then a learned colleague said: "Oh, two years; that is a long time." Whether the measure is for two years or 20 years, you may review it every six months if you wish. It was said that there should be an annual review of the measure. I suggest that this is absolutely unnecessary. This is a power retained in reserve by the Government. It is to be exercised on special occasions. It is to be exercised when there is a genuine and real emergency. If there is no emergency, this power need not be exercised. The House may be amused if I tell them one startling fact. Centuries ago sheep stealing in Scotland was an offence punishable by death. Will it surprise the House to know that the statute which provided that sheep stealing should be punishable with death had been retained on the Statute Book of England till lately. Twenty years ago on paper sheep stealing in Scotland according to that statute was still punishable with death, but can anybody say that therefore sheep stealers were sentenced to death and had been executed. If this power is kept for a longer period than necessary, it will not be exercised. If

will remain a dead letter; it will be requisitioned into service only if and when required.

There is one more word I have to say. A good bit has been said about foreign relations in criticism.

Mr. Deputy-Speaker: The hon. Member must try to control himself.

Shri Tek Chand: It is not a correct representation of the law or the facts, to suggest that this provision contemplates any criticism of foreign relations to be of such a nature that it exposes the critic to the jeopardy of being detained. The measure is intended to be applied if you carry on activities against a foreign power with which this country is on friendly relations. If you criticize a foreign Government in a manner by which you provoke retaliation which may lead to war or to the cessation of friendly relations, then you are doing something which might lead to war and so those activities of yours have to be prevented. With these words, I support the measure.

Dr. Lanka Sundaram (Visakhapatnam): Sir, "rebellion to tyrants is obedience to God". As I listened to the speech of my hon. friend the Home Minister yesterday morning, who, with his vast experience as a lawyer ranging nearly over half a century, had the temerity to describe this Bill as a model Bill, my mind flashed back to what happened in this very Chamber, from this very seat, 15 years ago, when the late Mr. S. Satyamurthi rose and spoke for two days on his motion for the repeal of all repressive laws. Sir, I remember, sitting in one of the galleries above and watching that heroic performance made by one of the most powerful speakers ever produced in this country, in the name of the Congress party to repeal all that was obnoxious on the Statute Book of this country. I am not here to go into legal arguments, because I am not a lawyer. But, I was rather amazed when my hon. friend Mr. Tek Chand, who sat just now, after making a very erudite speech, quoted a number of Latin phrases in support of his defence of this measure. He quoted Latin phrases, being the lawyer he is, which I am not, to suggest that every citizen has duties, that liberty cannot be licence and so on and so forth, if I have understood him properly. I can also quote back, without being a lawyer, phrases taken from the *Magna Carta*: "*Nullus vidimus, nulli negabimus...etc.*". "*To none shall we deny justice*", etc. I consider that this is not a matter or a hunting ground for lawyers. It is a matter deeply concerning the liberties of the individual. With your permission, Sir, I propose to be very brief in

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regard to my approach to this Bill, and I here shall show to my hon. friend the Home Minister how a law-abiding citizen like myself will be brought remorselessly within the mischief of this Bill at least on three counts.

Before I deal with each one of these points, I would like to dispose of one preliminary issue raised by my hon. friend Mr. Gadgil on the previous occasion, Mr. Gadgil, for whom I have the greatest personal regard as one of the elder statesmen of the Congress, and as one who was in the Government for nearly four and a half years till very recently, made an appeal to conscientious objectors to stand neutral when this Bill goes for division lobbies. As a conscientious objector, I listened to him with very great respect. I would put to him a counter proposition: whether he would use his good offices as a Member of the great Congress party which is behind the Government today, to give a relaxation to the three line whip which has converted him and most of my hon. friends behind the Government today into a muzzled and muffled lot.

Some Hon. Members: No, no.

Shri Gadgil (Poona Central): The hon. Member knows democracy and party rule.

Dr. Lanka Sundaram: If one can understand the statements made by friends opposite privately in the lobby and outside. I cannot have better words than I have used just now, with the greatest respect.

Today, in this country, a new psychosis has been sought to be created by my hon. friend the Home Minister, who spoke of an emergency, an imminent emergency both on the domestic and international fronts. On the international front, I have no quarrel at all with my hon. friend the Home Minister. But, as regards the domestic front, I have got a very serious quarrel. I am not going to indulge in any expression of personal opinions in answer to what he has said yesterday morning. I would only make a reference here to what the Chief Minister of Madras, Mr. C. Rajagopalachari, his very distinguished predecessor, who had the opportunity of moving the second version of this Bill last year in this House, said exactly four days ago. What did the Chief Minister of Madras say on the floor of the House in Madras about four days ago? He said, there was not one single political detenu in the State of Madras. He also said something else. The only black-marketer still detained under this law had been released. But my hon. friend here, standing in his

House, talks of a crisis, of an emergency on the domestic front. Where is it? If I am not mistaken, coming from a part of the country which is very much mixed up with Telangana,—Telangana which I know personally and which I entered before any one of my friends opposite dared to enter two years ago.....

Some Hon. Members: You are a brave man.

Dr. Lanka Sundaram: ...in October 1950, I can say, the whole issue is this. We talk of an emergency very glibly. If there is an emergency, I as a law-abiding citizen, as one who is willing to respect the Constitution, would consent to give the power sought by the Government. I would rather ask the hon. Home Minister one simple question: instead of coming here with a specious argument of emergency, why can't he make this a permanent law of this land? I have no quarrel with that. I can understand that. I will demand from this House honestly that he may soon convert this measure into a permanent law of the land. I have no quarrel with that because I can understand that.

Apart from legal arguments, and doctrinaire and abstract questions of civil liberty and so on, as I said, this Bill would put an ordinary, law-abiding citizen like myself, who has no political party or ideology behind him, under the clutches of this law at least on three counts. I was amazed to see such an innocuous recommendation made by an elder statesman of the type of Pandit Kunzru in his Minute of Dissent regarding foreign affairs, not being accepted by my hon. friend the Home Minister.

As one whose good fortune it has been for a quarter of a century to try to read and understand and interpret foreign affairs, I am definitely bound to come within the mischief of this Bill if it is allowed to go on the Statute Book in its present form. I would like to talk with a sense of restraint and with dignity. It occurs to me that a new spirit of intolerance has overtaken the Government, especially as regards the study and discussion of foreign affairs. I am quoting here Pandit Kunzru's Minute of Dissent, only one sentence. It runs like this:

"It seems to me highly undesirable to use this power to detain a person because of his criticism of Indian foreign policy."

It occurs to me that owing to the progressive increase in the spirit of intolerance shown, by those in power today as regards the conduct of foreign

affairs, one placed like me, who, as I have said, has made it a point to study, to understand and to interpret foreign affairs, would come within the mischief of this particular law. That is why I said I object to it, not only in principle, but also in regard to its practical operation.

Then, I will give you another example, leaving aside the political parties and so on and so forth which are likely to come under the penal provisions of this law. The other day, last week, when the hon. Minister replied to the debate on the first reading, he made certain very strange remarks. In fact, he made a reference to the agitation on the part of those who want linguistic provinces. I have said so before; and I repeat again now, that I am an unashamed advocate of linguistic provinces. I want the hon. Home Minister to tell me in reply whether he proposes to use this legislation in terms of what he said in reply to the last debate, against those people like me who want to advocate linguistic redistribution. We would like to know straightforwardly, honestly, frankly where we are. If that is the case, if I am not misinterpreting him now in terms of what he said on the previous occasion, I am here to say that south of the Vindhya the law of this Government will not run if you are going to enforce this particular law against those people who are going to advocate linguistic redistribution. I may say that on the 15th of August, on Independence Day, the All-India Linguistic States Conference is going to meet at Amraoti, and I will have the honour of presiding over it. Is the Government going to bring me within the mischief of this Act on the issue of linguistic agitation?

Shri Syamnandan Sahaya (Muzaffar-
pur Central): You will be left scot-free.

Dr. Lanka Sundaram: Please read his speech on the last occasion.

Another important point to show as to how a law-abiding citizen like myself is likely to be brought within the mischief of this legislation is.....

The Minister of Home Affairs and States (Dr. Katju): Would my hon. friend read the passage to which he has referred?

Dr. Lanka Sundaram: It is in the library.

Dr. Katju: What I said was, and I repeat, that if incitement for violence was urged anywhere on any occasion, then action should be taken.

Dr. Lanka Sundaram: Then, I will be the first man to give you my sup-

port. You used the words "linguistic provinces".

Dr. Katju: Yes, I did, deliberately.

Dr. Lanka Sundaram: I submit violence is a category by itself, whether it is used by those who advocate linguistic provinces or those who are going to sell India to foreign countries, whether the U.S.S.R., or the U.S.A., it does not matter, then the law should take its own course.

Dr. Katju: Sir, it is very unfair to criticise without quoting the passage to which objection is taken.

Dr. Lanka Sundaram: I have got it here, but I do not propose to take up the time of the House. I am only illustrating a point.

The third point is this. This Bill is directed against genuine Trade Union movement in this land. On this I speak with a certain amount of personal knowledge and authority. Politics is very greatly mixed up with the conduct of Trade Union affairs. I am aware of it. For the past 25 years I have ploughed a lone furrow on this front, viz., not to have politics. All the Unions I am connected with, not one of them is affiliated to any All-India parent body.

Dr. Katju: Then, it will not apply to you. You need not have any fear.

10 A.M.

Dr. Lanka Sundaram: I am telling you what is going to happen. Please have a little patience. In some places it is happening, just now in my constituency, on the Trade Union front. I know what my hon. friend Mr. Giri in his utterances inside the House and also outside recently said, viz., the need for the spokesmen of labour and the spokesmen of the employers to come together without the agency of the courts and so on and so forth. A new situation is fast developing. I will explain, Sir. Up to the moment, during the past 30 or 40 years under regime of the International Labour Organisation, the Government is the buffer as between the employers and the workers. A series of statutes has been passed, giving the worker certain assistance as regards adjudication of disputes. My hon. friend Mr. Giri—and I had the opportunity of telling him on the previous occasion when the Demands for Grants on the Ministry of Labour were discussed here,—has pronounced a new doctrine, viz., it is the intention now of Government not to allow these cases to go to court; they prefer the employer and the worker to sit together and come to an agreement. In principle I have no

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objection to it. But its practical operation would be such that the worker would not have the bargaining power and the power to sit with the employer fact to face and get justice done. The result will be that there will be a great amount of unrest.

I have seen things personally. In fact, I have appeared on behalf of my Union, one of the Unions in Andhra Desa, for 13 months in an Industrial Court, and have got no justice. My hon. friend Mr. Giri says: "Sit with the employer; he will give you justice."

New situations are developing. I am very much concerned with the possibility, the certainty of this legislation being used against the genuine Trade Union movement. If there is sabotage, I have no objection to the Government using this power. I am entirely with them, and support them to the extent one individual can support any Government.

Sir, you are yourself connected with the Trade Union movement. Last year in August an explosive situation on the Railways was developing. If something had happened about the strike, most of us would have been behind prison bars under the Essential Services Law.

I will give one or two instances from my own experience. In Anakapalli, the second big city in my constituency, the Municipal conservancy workers have been asking for certain privileges. And what are the privileges? First, the city has doubled in its population, size and extent during the past ten years, and they want a few more hands to be employed to relieve the work; second supply of uniforms; third, a little more basic wage; fourth, housing allowance, and so on. What is happening there? In fact, I know the next time I visit my constituency, end of this month, I may be behind the prison bars under the operation of this law, because for the past two years I have been fighting not only with the Municipality, but also with the Provincial Government on this question. What has happened there? My hon. friend Dr. Katju should listen to this particular point. I have seen arrest warrants issued against ordinary Municipal conservancy workers for having demanded these elementary rights. Children are helping their parents in the carrying of the night soil because they could not get the additional allotment of a few hands to cope with the increased work in the town which has doubled within the last ten years.

Shri Syamnandan Sahaya: Was it under the Preventive Detention Act?

Dr. Lanka Sundaram: No, the Essential Services Law which is mentioned in the Statement of Objects and Reasons. There is a number of inter-related preventive laws which is to be remembered in the present context, and if I am not mistaken, in the Statement of Objects and Reasons of the present Bill—I have got it here—it is clearly laid down:

"to interfere with the maintenance of Supplies and Services essential to the community."

It occurs to me that the remorseless process through which this particular law is going to operate will destroy the very basic foundations of genuine Trade Union movement in this country.

So, I do not propose to detain the House longer, because as a doctrinaire it is quite possible for people like me to expound the principles of individual liberty in relation to the State and so on and so forth. I have given you three categories. This Bill is of a bulldozer variety, if you will permit me to say so. I would rather as I have said earlier, that the Government come forward with a statement of exactly the categories of people against whom they want to enforce this Bill. It punishes the innocent. Under the sweeping powers it has got, it takes into count every category of people who have got possible genuine grievances against the State, against the community, against the operation of law and order. I have no more to say on this point. I again repeat, as a law-abiding citizen, I am for giving Government all the power it requires. I am prepared to consent to any demand for additional power provided that power is justified. To my mind it is not justifiable, I have quoted the hon. Chief Minister of Madras, and to the new psychosis which the hon. Home Minister is trying to create in this country. There is no emergency. If there is emergency, take the power. But since you want to bring in legislation of this character when there is no emergency, I ask you to make it a permanent law of the land. Then alone I will understand the proposition. You cannot have it both ways.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): We have listened to a large number of speeches in this debate. Many of them have been eloquent. Many have been full of individual instances, and sometimes personal autobiography. Many have referred to

democratic principles, and how this Bill is a breach of those principles. I confess, Sir, that I have had a feeling during this debate, a feeling of unreality as if—I say so with all respect to the House—we were discussing something that is not this particular Bill before the House, but something entirely different which we had in our minds, our own personal experiences, may be, or our future hopes of what we should do or should not do, and we have by-passed this Bill, the context of this Bill in the country, and even the language of this Bill. We have discussed these high concepts of democracy and I claim I have some feeling for democracy. Democracy as I know it is not merely a certain structure of government,—though that is important of course—it is not merely certain laws and the rest of it, though they are important also, but it is essentially a sense of values and standards in life. It is an organic growth, it is how you act, how you think, whether as an individual or a group or a nation. I do not mean to say everybody thinks alike or should think alike. But I do mean to say that there is a fundamental approach to political and other problems which may be called the democratic approach, and there are other approaches which are not democratic. Now if that is the test, let us examine not only this Bill, but the context of things in India from that point of view. That might lead us to some results and if there is anything basically wrong in the Bill, let us scrap it by all means.

So far as I am concerned, and so far as all my colleagues in the Cabinet are concerned, we gave the most earnest consideration to this measure as we have had to, because such a measure which apparently or really limits in a measure the normal freedom which the citizen enjoys must be looked at with the greatest care and it is right that this House should look upon it with the greatest care and vigilance. So we in the Cabinet considered it very carefully, considered the old Act as it was, considered the amendments that we wanted to bring in and finally came to certain conclusions. We came to the conclusion that it is necessary, not only desirable but necessary to have some such measure at the present moment in India, or if you like, to continue the old measure with certain important and basic changes in it. Now then if that was once agreed to or understood, then the other question remains as to what the changes should be, and how far we should go in ensuring that this Act or legislation was not misused. Hon. Members have pointed many cases

where according to them it was misused. I have no doubt—I do not know of those individual cases—that in many cases it may have been misused. I agree and I accept that for the moment without going into details. Let us again consider whether it is possible to prevent any such misuse in so far as we can assure that. Nobody can be absolutely certain, but we can have safeguards to prevent such misuse. But when one talks about misuse of a measure, one must not think *in vacuo* one must always think of the particular set of circumstances when that act was used. An hon. Member has pointed out 'Let us see what happened in Hyderabad and in the Telengana.' I accept that for the moment without analysing each case, and as I said, there were a number of cases of misuse, or if you like, of grave misuse.

Shri Vittal Rao (Khamman): What action has been taken against those who have misused it?

Shri Jawaharlal Nehru: But I should like the House to remember again the context of this—the context of the greatest misuse of any kind of liberty that an individual achieved in this country. The context was something near approaching war and challenges to the authority of the State, the context was civil war.

Shri Vittal Rao: Nothing of that kind.

Shri Jawaharlal Nehru: I do not wish to import any heat or passion in this debate. If they do not like the word 'war' I would not use it. The context was armed fight, with arms on both sides.

Shri Vittal Rao: What is there? It was armed self-defence.

Mr. Deputy-Speaker: I would not allow this kind of interruptions any more.

Shri Jawaharlal Nehru: I am putting it to the House. When arms are used on two sides by troops, that is normally called war, it may be civil war, it may be international war, or it may be a private war, if you like. Whatever that may be, arms were used and deliberately used, and if I may remind the House, up to this day there is a refusal to give up those arms. Is that not a very extraordinary thing? I accept that those arms are not used at the present moment. I accept that there is a great change for the better. Undoubtedly so. And if there is a great change for the better, I should like the House to consider how far the Government, which I have

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the honour to represent is to be given credit for that change for the better and the policy they have proceeded with. The change for the better has not come off by itself, but because a certain policy was pursued by this Government month after month and year after year under circumstances of great strain and stress. So, it is better, but even so the fact remains—and it is a large fact—that groups of persons in this country who are known to have arms want to lay down conditions before they lay down these arms. I have heard and the House also knows that there are all kinds of truce parleys in Pan Mun Jon. Are we supposed to be dealing with independent entities or independent nations here having arms, fighting the Republic of India and dealing with the Republic of India who say “on this condition we lay down arms only if you do this or that”. Sir, it is an amazing conception. And hon. Members come here and talk of democratic principle and the freedom of speech and all that, when they possess arms. If you possess arms, and you do not give them up, why do you not give them up? It is because at the back of your mind you want to use them at some time or other. Why else? You want to use them under certain circumstances. Whatever that may be, I do not mean to say that hon. Members who have changed their policy recently do not mean to abide by that change. I accept that change, I welcome it, and I am glad of it, and I welcome them here, but I do say that undoubtedly at the back of their minds, there must be that thought. Otherwise why not deliver up those arms? I do not wish to lay any great stress on this matter, but I merely mentioned it in passing.

The point is that we are discussing this question in rather academic terms of—if I may call it so—the British nineteenth-century democracy. We are in the middle of the 20th century and in the territory of India. How far those terms are applicable *in vacuo* to any situation, I do not know. I accept hundred per cent. the basic principles of that democratic approach to life, that is a sense of democratic values and standards, and I hope that this Government which I have the honour to serve will always accept those principles and I hope other Governments that come will also agree with them, but that does not mean that we should merely think in terms of phrases and clichés forgetting those very principles which are represented by those terms and phrases. I ask, not only the Members of the Opposition but even

my colleagues on this side of the House, how many of us accept those basic values in life which are termed ‘democracy’? And in the present moment especially when we talk of democracy, this structure of democracy, this spirit of democracy and this approach of democracy, how far and in what continents of this wide world, how many countries do that? I put it to this House to look at it and say how many countries in this wide continent of Asia do that or in Europe, for the matter of that? There are some, undoubtedly. But this whole concept is coming up against all kinds of inner difficulties. My hon. friends opposite or at least some of them will call it “inner contradictions”. Well, I admit that whatever it is. Let us examine it. Let us not use a certain phrase in one context and act in a completely different way in another context. Here I am Prime Minister of this great country with a tremendous responsibility to shoulder, and with my colleagues sharing that responsibility. Are we merely, to appease somebody, to forget that responsibility?

The House knows very well that any Government that brings forward a Bill of this kind which can easily be attacked and which can easily be criticised, can make the Government unpopular and it is a matter, if I may say so, with all respect, of courage for a Government to bring forward such a Bill. (Applause and laughter). Hon. Members laugh. Their laughter, I am sorry to say, is rather cheap. One should not laugh too soon. Here a Bill like this could only be brought forward by a Government that feels an utter responsibility for the burden it shoulders. It may err, it may make mistakes; that is a different matter, we are all liable to err. But it can only do so if it feels that responsibility and wishes to discharge that responsibility, come what may. If the people of India do not want us, well they can push us out. It is all very well for an hon. Member here or there to issue challenges about the elections and the like. Surely we have had the elections only a little while ago; it is not so long. Surely this very Detention Act was very much harder then than the one we are now proposing; it was talked about and criticised by Members of the Opposition in this election campaign all the time.

Shri H. N. Mukerjee (Calcutta North-East): Was that an issue in the elections? Did any Congressman anywhere defend the Detention Act?

Shri Jawaharlal Nehru: Was this an issue? There were a hundred issues

in the election. If you want one, in my city of Allahabad the major issue was the Hindu Code Bill.

Pandit Thakur Das Bhargava (Gurgoan): In the whole country it was.

Shri Chattopadhyaya (Vijayavada): Where is it now?

Shri Jawaharlal Nehru: Where is it now! Hon. Members know that it is in the programme of Government and Government is going through with it. So in another place there was some other issue. In this great country, normally elections were governed by local issues, but this broad fact, the record of this Government generally and the record of this Government in regard to this particular Bill was talked *ad nauseam* in many places in this election. And yet the result of the election was what you see.

Hon. Members talk glibly about a police State. I put it to them, to think a little more calmly in their calmer moments, if there is the remotest justification for the use of that word in regard to the present structure of the Government of India. I put it to them to compare the structure with many other structures. It is not my function, nor do I like to criticise any other country; they are not my responsibility and it is unbecoming for me to criticise the ways or structure of a Government or the policies pursued by any other country, big or small. I do not know what their problems are. It may be that their way is right for their country; I cannot judge for them. I know what my problems are; I judge about it and I shall certainly refuse to submit to anyone imposing his way on me. That is a different matter. Therefore, I do not criticise, but I do submit, when you talk about a police State, look around all the countries in Asia, look around the countries of Europe. I do not say there are not some countries that have in a good measure this democratic setup that we are following; nevertheless, compare what India is and compare the functioning and the authoritarian ways—I am not saying it from the point of view of criticism, but mere comparison—of some countries, and what I object to, if I may say so, with all respect, is the use of this loose language. Was it a police State which had an election in which we were returned and in which the hon. Members opposite came in? So it is in this context that I should like this House to consider this.

Now, when you consider this Bill with a large number of individual cases or instances, good, bad or indifferent—let us treat them separately

if you like, let us give punishment where that is due, that is a separate thing entirely—but we have to consider this fact, whether in the totality of circumstances in India today it is desirable to have some measure like this in the armoury of the State's laws? If so, then the other question arises, how far we should try and safeguard the rights of the individual citizen, so that as far as human ingenuity can devise, he should not be subjected to harassment and injustice. Those are the two major questions to be considered.

Now, somehow or other this question has been dealt with rather as if this Bill was aimed at the activities or the future activities, if I may say so, of a certain group or party. Well I think that is a wrong view to take of it. I am perfectly straight about what I say. We have had in India, broadly speaking, four types of what I call anti-social activities. There is the communal activity—I am only referring to activities indulged in with violence, for the moment, not expressions of views—then there is the Communist activity—and when I say Communist I am not confining my words to the Communist Party's activities, it is a loose word I have used because there are so many groups and parties separate from one another, I do not know all their names, we can make a long list of them such as, R.S.P. etc. with all respect, is the use of this any number of groups which float in and out of the scene of action, which are under no discipline, not even their own discipline and which create an enormous amount of trouble—thirdly there are what I may call purely terrorist activities and lastly there are what I would call—broadly speaking again—the Jagirdari activities. These are the four main, violent approaches...

Shri Chattopadhyaya: What about Congress activities.....

Mr. Deputy-Speaker: The hon. Member will kindly control himself. (*Interruption*). No, no. I will not allow the hon. Member to interrupt like this. The hon. Member can speak.....

Shri Jawaharlal Nehru: The hon. Member can also make a long list of violent activities if he reads the reports in the courts everyday of cases going on. We are not talking of individual misdeeds. There may be—the hon. Member may be right—some cases of misbehaviour on the part of Congressmen. He may be right. Obviously, in the very nature of things, the Congress cannot, live apart

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from its training and principles, cannot live differently and indulge in mass violence. It is patent, on the face of it. It may indulge in wrong activity, it may indulge in occasional suppression of an individual, I mean the Government party. But let us examine it. These are the four heads and—I repeat them—Communal, then Communist—but as I said it goes beyond the Communist Party and the Communist Party is not responsible for all those marginal groups which function in this way—then terrorist and lastly Jagirdari.

Now, the other day an hon. Member opposite referring to what happened, I think, in Calcutta mentioned those "broad masses in action", "the sweep of history putting the masses in action!" Well, broad masses have been in action and have brought about big changes for good or bad. But to call the kind of thing we have seen in Calcutta or elsewhere occasionally as the broad masses in action, seems to me not only a complete mis-judgment of what is happening but a complete misuse of words. Let us take this Calcutta incident, that very thing, to which my hon. friend referred. It was a most amazing thing. The demand was that a certain assurance given by the Government of India and the Government of West Bengal in regard to a food problem in Calcutta and West Bengal had not been fulfilled. Now, on analysis we found that the question of fulfilment—if you like—or part of it would have come six months later. At that time every single part of that programme had been fulfilled by the Government of India and the West Bengal Government. Calcutta had plenty of wheat—not only wheat but rice. The question arose as to whether six months later a certain part of the programme would be fulfilled or not, and, if I may say so, a notice was issued that marches would take place to demonstrate. I was amazed because the reason for it was that the assurance of the Government of India had not been fulfilled. I was astounded because we had fulfilled it. The leaders of those people who had issued notices were sent for by the Chief Minister of West Bengal. He gave them facts and figures. They said, "You are right, you have fulfilled it." They agreed to it. They saw that their position was wrong. They went back and next day came back with that procession and there was this trouble. In a City like Calcutta hon. Members can well imagine that it is very easy for a hundred or two hundred or five hundred persons to create trouble, if they are so inclined. If that is called

the broad masses in action, I do not know the meaning of that phrase. I remember, two or three years ago, when, again, in Calcutta City—this great City of three or four million people, facing grave difficulties, terrible difficulties, because of the large influx from East Bengal, because of the housing problem, because of so many other difficulties—there was a state of semi-terror because every day some odd bomb would be thrown at somebody, at a policeman, at a shop, at a tram-car, tram-cars would be burnt. An extraordinary state of affairs that in a great city life should be interfered with and should be held up—the broad masses were functioning by occasionally throwing a bomb here or there or at a policeman! Just about that time I went to Calcutta and I saw the broad masses. They came to my meeting, a million of them, and at that very meeting a bomb was thrown, a live bomb, which resulted in the killing of a police inspector and two or three others as well as wounding the man who threw it. But that vast audience that was there behaved with discipline. I had told them beforehand. "It does not matter if there is murder or if anything happens, you must not move, you must behave with discipline, we will deal with the situation." And they behaved with discipline. And I spoke to them, and after that the broad masses began to take action against the bomb throwers. They did not like them at all, they said, "We are not going to be imposed upon by these individual terrorists", and all this stopped. That is what I call the broad masses in action against those elements who create trouble.

Now are you going to have the City of Calcutta or the City of Delhi or the City of Bombay held up by one hundred people or by five hundred or one thousand, and thus hold up the life of millions? I submit life would be impossible in these Cities if that happens. Here in the City of Delhi the other day—was it two or three weeks ago or a month ago—there was an incident, an entirely private affair, of some proposed marriage, in which nobody was greatly interested—whether it was right or wrong it was none of our concern. I never heard of it till these incidents occurred. Now, I observed certain elements in the City immediately go and start breaking the windows of the court-house, hitting people in Chandni Chowk and generally creating trouble. If the Delhi police had relaxed on that occasion, no doubt, disturbances would have spread and you would have found in large parts of Delhi this kind of thing happening. We had not forgotten yet what happened from Delhi up to

East Punjab and in the Pakistan areas from August to September and October, 1947. I shall never forget it, the horror of it which I saw whether it was in Pakistan, whether it was in East Punjab or whether it was in Delhi. People were incited to do this, good people incited to do this kind of inhuman things, barbarities. It is easy to incite them, and it is easy to do all these kinds of things. And if in the name of democracy you want to undermine all the structure, this proud structure of the democratic State we have built up, you are welcome to it, but that is not my conception of democracy.

Therefore we have to look at these things in this context of India as it is. Let us examine: It is our duty to protect the liberty of the individual to see that there is no misuse of the law, to see that there is every safeguard that we can think of provided, but let us also at the same time remember that the major safeguard that we have to think of is the safety of the country and the community. And it is that major responsibility that this Government has to shoulder, and to the best of its ability it is going to shoulder it. Unless the State is perfect and every individual is perfect there is always some conflict between the freedom of the individual and the needs and the security of the State. You have extreme cases, as you have in some countries, of the State being put above everything, above every single individual freedom—the State becomes the God there. We have in great countries those cases—it is not for me to criticise them. For my part I cherish the freedom of the individual. I do not want even in the name of the State the freedom of the individual to be crushed. But undoubtedly the freedom of certain individuals has to be curbed for the safety of the State, if occasion arises. After all in time of war every democratic country curbs the freedom of the individual because the State is in danger. I do not mean to say that we are living in times of war in India. Undoubtedly we have progressed a great deal—and many hon. Members of the Opposition have stated how greatly we have progressed in this respect and how stable our country is compared to many other countries. Probably, if they had been speaking in some other context they would have said that we have made no progress at all. In fact, they do say that, but in this particular context we get quite a number of bouquets about the progress we have made in stability and security. Well, I am grateful for those bouquets and we hope that we shall go further in that direction. But the essential question remains about the

conflict between the security of the State and the liberty of the individual and the line to be drawn varies according to circumstances. In war it goes far towards the State, in peace time it should go far towards the individual, the State always being there—you cannot ignore the State or endanger the State. Now, we have taken a good part of our Parliament and many of our laws too from the practice which has long prevailed in the United Kingdom. Hon. Members opposite refer to the practice in the United Kingdom in this matter or in any other, and rightly—they are perfectly entitled to do so.

Yet, I do submit that there is an essential difference between our country and that compact little island called England and Scotland, with a long background of disciplined behaviour, a long background of following certain conventions and laws and practices and imposing self-discipline, which I admire. Only in the last few years has our great country emerged from a state of servitude, struggling hard to make good, making good certainly here and there, advancing, sometimes stumbling, still picking itself up and going forward amidst all kinds of forces, all kinds of disruptive tendencies, whether they are provincial, State, or communal, religious, social or economic. We have to hold together and as I have stated before in this House, the basic thing that this House, this Parliament and this Government have to keep before them always is the integration of India—not geographically, not politically, the map is there, but an integration of minds and hearts, the psychological integration of the people of India. We have to consider the various problems in their particular context, whether it is linguistic provinces, or whether it is something else. But behind these problems you see these different pulls; you see these disruptive forces and so long as you do not get over these pulls and until all of us begin to think more and more in a unified way, there is always danger of perhaps, sometimes, the disruptive influences overcoming the country.

Therefore, it becomes necessary for us to look at this broad picture and looking at that broad picture, I came to the conclusion that some such measure is essential at the present moment. Having done so we gave serious thought to this measure before we placed it before this Parliament. It is another matter as to how the details are worked out by this House; but even in regard to those details we considered them with the greatest care. May be of course that something escaped our mind; other suggestions if

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they had been made we might have accepted them. Anyhow it is not like some Bills which are occasionally passed by us in a hurry. It is a very serious measure for us to rush through the House.

Hon. Members, some of them, said that in the Joint Committee not many changes have been made. It is true some important ones have been made. In the Joint Committee many changes have not been made, because before the Bill went to the Joint Committee many an informal Committee thought about it and talked about it and discussed it and looked at it from many aspects. Because it had passed through so many sieves of thought, it represented the concentrated effort of ours. Of course, that does not mean that it cannot be changed or improved. That is a different matter. But it does show that it was a carefully thought-out measure that was placed before this House and placed before the Joint Committee.

About one matter great stress has been laid—about lawyers and legal advice being available. I am afraid I am getting a bad reputation in that large and very estimable community of lawyers in India, because estimable as they are, I do not admire their profession. It is not their fault of course. It is the structure, the judicial structure that we have inherited from the British, which encourages inordinate delay, inordinate expense and anything however good it is, if it means delay and expense means injustice in the end. But I shall not go into that matter.

I would submit to the House that if you like to have a full-fledged trial have it by all means; but do not mix up these ideas. It is a peculiar mixture. Here you have, as suggested now, three eminent people, Judges of the High Court and the like, and the House knows very well that the Judges of the High Court and the Judges of the Supreme Court are not in the slightest bit dependent on the executive authority. They have been very critical of the executive authority. Therefore, whatever else might be said about them, they are not likely to favour executive authority in this matter. They will be impartial. They look at cases from their point of view. If you leave the burden on them and the accused goes before them and they speak to him, listen to him and get such other information as they can, they are much more likely to be favourably inclined and take a lenient view of the detenu or the proposed detenu.

If you convert it into a semi-trial, the Judge although he is responsible does not feel that sympathy for the person before him on account of the presence of the counsel on either side. Anyhow, how can you, I do submit, in all cases like this have this semi-trial staged there? If you have lawyers on the one side there are lawyers on the other too. Then, I submit that the whole purpose of this measure is defeated. Of course we must give the detenu or the proposed detenu facilities to go there, see them, and see what the charges against them are and such other facilities that might be possible. That is entirely a different matter.

There is another point which this House should consider. In normal trials the facts are established by evidence of witnesses or documents. Now, in the nature of things, in cases of this kind and it does not matter in what category the particular detenu falls in the four categories I put to this House.....

An Hon. Member: What about black-marketeers?

Shri Jawaharlal Nehru: My hon. friend reminds me of black-marketeers. In whatever category he falls the witness stands in danger of his life.

The House will remember that even in the last General Elections in Rajasthan and Saurashtra men were killed, openly killed, so that they might not vote for a particular party, that is the Congress, by the jagirdar elements there. It was openly stated in posters—it is not a hint that I am giving that he who votes for the Congress would be killed and many people were killed. Now, if that was so about voting, can you imagine then, if we have an enquiry into the Saurashtra affair in open court, where many jagirdars and princes are brought in, what the fate of that unhappy wretch would be who gives evidence against his boss, against the jagirdar or the prince. So that, on the face of it if you start doing this and bringing in this question of evidence, etc., you will either not get that evidence, or you will have to organise an enormous system of protection of individual witnesses and in effect you will have to put in detention practically every witness that you may have. So that the whole conception of this falls to the ground. Here the sole conception depends on two or three factors. I would beg the House for the moment to forget—for the moment, I say—to forget the past. Look at this Bill as it is, with its various safeguards.

Much has been said about the district magistrate, about the police. Now, I am not here as an apologist

for every district magistrate or every policeman. But I do submit to this House that it is not right and not fair to run down our services *en bloc* like this. There are good, and there may be bad and indifferent people—like all of us anywhere. But this method of running down people who have to shoulder heavy responsibilities and have often to face crises and difficult situations, who may occasionally make a mistake, make an error but who try to function according to the best of their lights, I submit, is not fair to them. They cannot answer back or explain their actions unless privately, if we ask.

Something has been said about our State Governments. Our State Governments too have to shoulder directly an immediate responsibility which we of the Government of India sitting in New Delhi do not. We have to shoulder the broad responsibility of India; they have to shoulder the responsibility of the day to day life of their people and their problems. And I should like to pay a tribute to our State Governments for the way they have discharged those responsibilities. And may I say specially, because I understand an hon. Member spoke harsh words about the Government of Saurashtra, that the Saurashtra Government is one of the most efficient and able Governments in India? I want to tell this House that the Saurashtra Government was so reluctant to take action in Saurashtra that repeatedly I had to write to the Chief Minister and tell him, "You must not allow the situation to develop, you must take action". And now I am told that he goes about arresting people and behaving like some Chengiz Khan or Tamurlane or what not, I do not understand. I do not know how many hon. Members know the Chief Minister of Saurashtra. He is one of the humblest and ablest and quietest of men in India.

So, these State Governments and our services have to deal with the situation. They may make mistakes. Let us make a law which will prevent that. Now, whether the district magistrate takes action straight off or not, almost in all cases except in a case of grave emergency he does not take action till he refers the matter to his Home Minister. The Home Minister comes into the picture there. Suppose in a case of emergency he does not refer it to the Home Minister. You provide for him to come into the picture in twelve days, or whatever it is. You Pandit Jawaharlal Nehru on the main becomes then of the State Government. You provide for reference to the Advisory Council. You provide for intimation to be sent to the Govern-

ment of India. And you provide for the Advisory Council to consist of three eminent Judges or persons of judicial experience. I submit that you may vary, add something or not to them. But I do submit that you have given quite enough safeguards to prevent injustice being done. And if suppose injustice is done, even so—as it might be done. I cannot guarantee it—surely, this House is here, the hon. Members of the Opposition are here. They will not let a single case go by without drawing the attention of the wide world to it, if injustice is done. And I welcome their drawing attention our attention, India's attention, to it. So that, it is here. And in State Governments there are Assemblies where attention will be drawn. So that, if you analyse it, it becomes an exceedingly difficult thing in this set of circumstances, first of all that injustice will be done, secondly that if any injustice is done it can endure for long. Somebody will have to be pulled up and it will have to be remedied.

I therefore submit that subject to such minor amendments and variations as in the judgment and wisdom of the House are to be accepted, the main approach of this Bill is not only right but is fully democratic.

Dr. S. P. Mookerjee (Calcutta South-East): Sir, the Prime Minister has spoken today very frankly, very eloquently, and there is much in the general estimate which he has made of the great problems which confront the country today with which I shall be in agreement. I shall deal with a few of them a little later.

But there is one aspect of his speech which I consider to be most unfortunate. He started by saying that the debate on this Bill has gone on and many irrelevant things have been mentioned but very little has been said about the provisions of the Bill.

Shri Jawaharlal Nehru: I did not use the word 'irrelevant'.

Dr. S. P. Mookerjee: Well, 'unnecessary'.

Shri Jawaharlal Nehru: 'Academic'. I said.

Dr. S. P. Mookerjee: Sir, I stand corrected. He said that many academic things were said. I am glad he reminded me about that, because his speech itself was an academic essay and was hardly relevant to the main provisions of the Bill.

Sir, what is it that we are discussing here? I would make an appeal to provide for that. The responsibility crux, the fundamental provision of the

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Bill to which we object, and that is that you arrest a man and detain him without trial, without placing him before a court of law.

He referred to the serious conditions obtaining in different parts of the country—murder, loot, arson, communal and Communist violence and so forth. No one suggests that if there are acts of violence in the country, if murders take place, if there is loot and arson, the Government will sit tight and say "we will allow unrestricted freedom to the people of this country". Nobody made any such demand from the Government. He talked of Saurashtra. I said something of Saurashtra. If I said something which was not correct, I am open to correction. But the main point which I made out was this, that if there were murders going on in Saurashtra, if there were lootings going on—I care not whether it was done by Bhupat or the jagirdars or the ruling princes or anybody—if these happenings were taking place in Saurashtra, what was the Government doing? Was there not a Preventive Detention Act available before the Government—Preventive Detention Act which means that the C.I.D., the Intelligence Department must have been working, which means information must have come to the authorities that if certain persons could be put under arrest then greater mischief could be prevented. Why were not the provisions of this very Act put into operation in Saurashtra? The Prime Minister said, "an able Government, an efficient Government", and the House clapped. And he said "I had to ask the good, honest and dignified Chief Minister of Saurashtra and tell him 'please take action, murders are taking place, loots are being committed, please take action'". Why should the Prime Minister of India ask the Chief Minister of any State to take action? Is the latter not capable of taking action? That is our complaint against the Saurashtra Government; why did not the Saurashtra Government take action immediately, then and there? During election time murders took place, it was pointed out. We have never claimed that murders should take place during times of election and the Government should keep quiet. Undoubtedly, if murderers were there, they should have been arrested. They say there are jagirdars.

Dr. P. S. Deshmukh: He wants to have it both ways!

Dr. S. P. Mookerjee: It is the hon. interruptor who wants it both ways. I

want it only one way, that is the right and the proper way, not in any other way. They say that big jagirdars were involved. Get hold of them. Why under the Preventive Detention Act? Have a special law. Try them, put them before a court of law, hang them if they are murderers. We are not holding any special brief for those who deliberately violate the provisions of the law. That is not our purpose. Our purpose is short, brief and pointed. To that I expected some spirited defence from Pandit Jawaharlal Nehru. As I said at the beginning, you are taking this extraordinary power to arrest people without placing them before a court of law. That is the principle. What is it that the Opposition has said. We have conceded that a time may arise in the history of any country when such an extraordinary precaution may have to be taken by any Government. We have conceded that. Does that situation exist in India today? I would have expected Pandit Jawaharlal Nehru to deal with this fundamental point. That is our objection. How is the case made out through informers, spies, secret reporters? Is that the case in India that Pandit Jawaharlal Nehru is contemplating—that you want to have a piece of legislation which will spread throughout the length and breadth of the country a net work of spies, agents provocateur and other paid agents of the Government, who will go and manufacture cases and on that basis persons should be put under arrest. We have not said that if a man is guilty he should not be put up for trial. Pandit Jawaharlal Nehru tried to slip away from the main contention: You talk of England; you talk of the 19th century England. I say I am not talking of the 19th century England, but I am talking of the England of today. Read Harold Laski's book. He is a friend of Pandit Jawaharlal Nehru and this book he wrote only a couple of years ago, where he described how on this very issue the utmost care and precaution have to be taken by Government when you arrest a man and that when the executive does it, you must put him before a court of law for trial and you must tell the person what the charges against him are and make it possible for that person to defend himself. That is the simple proposition that the House is discussing.

Sir, the other day I quoted from Pandit Motilal Nehru's speeches. Some of the Members said the other day that I am quoting from speeches delivered at a time when the British Government was in power. Am I to understand that eternal truths regulating the freedom of people and the conduct of

citizens of a free country will change from time to time? Is that the suggestion made by those who occupy the Congress benches today? (An Hon. Member: You are misrepresenting.) I am misrepresenting whom?

Pandit Balkrishna Sharma (Kanpur Distt.—South cum Etawah Distt. East): Yourself.

Dr. S. P. Mookerjee: I am misrepresenting myself! Undoubtedly. When I say that I am quoting Pandit Motilal Nehru, I am misrepresenting myself. If I quote Sir James Crerar I shall represent Pandit Balkrishna Sharma, but I do not wish to quote him. I shall rather quote Pandit Motilal Nehru and he said in very clear words, the words which I read out the other day. I shall read it out for the benefit of Pandit Jawaharlal Nehru because it answers the question which has been under discussion.

Dr. Katju: On a point of order, I should like to say this. It is not a personal matter, but the custom in the House of Commons which every Member quotes so much, is to refer to the Prime Minister as 'Prime Minister'. My hon. friend over there is always in the habit of raising his little finger at and calling him by name. Personally I take very strong objection and I am very sorry to say so. I think we should have the House of Commons practice of referring to Members by their constituencies. I am very sorry that I do not know the names of constituencies but I suggest that it is highly desirable we should conform to that practice. I tell you it is irritating to me. It may be pleasing to Pandit Jawaharlal Nehru, but I do not like it.

Dr. S. P. Mookerjee: I am extremely sorry. I did not know that Pandit Jawaharlal Nehru, the Prime Minister needed the protection of the hon. Home Minister. I thought he was well able to protect himself.

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Dr. Katju: I am speaking not as a member of the Government.

Dr. S. P. Mookerjee: I withdraw completely. I shall refer only to the Prime Minister of India. I shall not mention the name of Pandit Jawaharlal Nehru.

Pandit Thakur Das Bhargava: With your permission, Sir, I would like to say that now at the stage when the Select Committee report is before us, and we are dealing with it, when humbler persons rise up, we always say they should be relevant, but we are going again to the original practice of not observing the rule. I beg of the hon. Member to come to brass tacks

and deal with the report according to the rule and not to indulge in irrelevancy.

Dr. S. P. Mookerjee: Hon. Member raises points of order when I rise to speak. Why did he not do so when the Prime Minister was on his legs? There should be no discrimination with regard to the raising of such points of orders.

Mr. Deputy-Speaker: The hon. Member has spoken at length at an earlier stage. He will have the restricted scope of the Bill before his mind's eye. I do not propose to ask him to curtail what he has to make by way of observations in reply to what the hon. Prime Minister has said. I do not want to interfere. The hon. Member knows his business quite well.

Dr. S. P. Mookerjee: I was just dealing with the unrestricted references made by the Prime Minister on the subject-matter of discussion, and then I will come to the restricted scope of the present Bill within a few minutes. The reason why I mentioned the name of Pandit Jawaharlal Nehru was that I found that when rising to speak hon. Members are always in the habit of mentioning me by name and not as a Member from South-East Calcutta, which is the House of Commons practice. I hope they would follow the House of Commons practice. Let us all do it and refer to each Member by the particular constituency which he represents. Let us follow it without any distinction whatsoever. In any case, let us not stray away from the main point....

Mr. Deputy-Speaker: So far as the Leader of the House is concerned it is always desirable that we give respect and take respect.

Dr. S. P. Mookerjee: There was no intention of showing any disrespect to Pandit Jawaharlal Nehru, I mean the Prime Minister.

Shri Jawaharlal Nehru: If I may intervene, I would like to say that it is exceedingly difficult to refer to each other by constituencies and it will be a great burden on each one to remember the constituencies. I am afraid that is not possible and I do not myself see why we should slavishly follow every custom of the British House of Commons.

Dr. S. P. Mookerjee: The point which I was mentioning was this. Now the Prime Minister is here—the Prime Minister who has his moods—and who in the magnanimity of his heart sometimes does get up and accept some of

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the useful suggestions made by the Opposition. I am not without hopes even now and I would very seriously and earnestly appeal to him to consider the main crux of the Opposition to this Bill,—that your very fundamental approach is wrong. Pandit Motilal Nehru had said: "The poison is there to taint the fountain of justice and the man is not made acquainted with the allegations and evidence against him. Please don't give me these three Judges; give me three men from the street, produce all your evidence before these three men and let me criticise and cross-examine that evidence and then you can do what you like with me. There is no use giving three High Court Judges. You might give me three Privy Councillors. With that restriction on their powers, they cannot help the victim. You call this justice? Can there be anything more barbarous than this."

Is it to be seriously suggested that this fundamental principle will change because India has become politically free and the British representatives do not occupy the treasury benches for the time being? I do not think, Sir, that this is the case even with the Prime Minister of India. This is the law which must govern India now, and for all time to come.

The Prime Minister spoke about lawyers. Pandit Motilal Nehru wanted himself to cross-examine: as a lawyer, of course; not as a Member of Parliament. The Prime Minister himself put on the black robes when he found that he had to defend the unfortunate I.N.A. soldiers about five years ago. This change which has come about that lawyers are no good, or that they have only become a nuisance as the Home Minister said,....

Dr. Katju: Nothing of the kind.

Dr. S. P. Mookerjee: ...at any rate did not apply to Shri Jawaharlal Nehru as he then was, when he had to appear before the Red Fort trial in his barrister's robes. It was a great day for India that he came down from his great political height and became the defender of the oppressed and stood before the tribunal for fighting the cause of truth and justice.

That is apart. The point which we are discussing now is, what will the Advisory Board do? You have your police evidence created by police informers. It is well known to many Members here, known to the Ministers themselves and it passed through my experience also. I do not wish to quote a long story. But I know of persons who are still in the Government of

India, against whom—at least one I know whose name I should not, of course, disclose here—but against whom there was a complaint of his association with communistic activities. Summarily an order of dismissal was served on him. This happened when I was a Minister here about three years ago. When I brought the case to the notice of the then Home Minister, Sardar Patel, he promised to look into it. He sent for me and showed me the file. The Home Minister can send for the file and verify; the notings are there. When I went to Dehra Dun, the whole file was shown to me. It was such a cast iron case that I could not say anything. Sardar Patel said, "here you see the police evidence; so many distinguished individuals have reported independently; I cannot interfere; the man has to go." When I narrated a portion of that to the person concerned,—there was one spicy story there, that he was in the habit of coming into close contact with Shrimati so and so in the evenings; I remembered that name and mentioned it to this unfortunate person—he was amazed and said, "She is my wife; what harm is there if I go and see her every evening?". I brought that matter to the notice of the Home Ministry. The matter was again gone into. Not that this person could have any chance of cross-examining those people. But there was a deep-rooted suspicion and after going through the whole matter, the same Sardar Patel not only withdrew the order of dismissal, but also reinstated him. He is occupying an important position in the Secretariat at Delhi today. You can say, it is an isolated case. But still it shows the danger of the procedure which you are following. What amazes me, what pains me is the attitude of this galaxy of intellectuals. There is no regret in their minds, there is no hesitation that they are doing something which is extraordinary, that they are being compelled under the force of circumstances to resort to a procedure which is unknown to any democratic country in the whole of the civilized world today. There may be circumstances when this may be necessary. But, the question is, do those circumstances exist today?

Some Hon. Members: Yes.

Dr. S. P. Mookerjee: That is the question. Some illustrations were given by the Prime Minister. Calcutta was mentioned, I was present at the meeting that he referred to, when the bomb was thrown. We saw what happened. But, in all those cases, it was not a question of the application of the Pre-

ventive Detention Act. As he rightly pointed out, the number of people who are doing mischief are very few. They were arrested and put under trial. Many of them are undergoing punishments now. But, the sort of incidents that happened in Calcutta are rare. It is not a question of mass action. It is a question of the correct psychological approach and none,—I can say this without hesitation,—is capable of making that psychological approach as the Prime Minister is. He rightly claims that he knows mass psychology more than any one else. Why does he not study this mass psychology? Is he really seriously suggesting that all these thousands of people who are marching on, just did it because some mischievous persons took it into their heads to ask them to do so. No. It was not a question of the Government of India or the Government of West Bengal not fulfilling the promises which they had given. It is something far deeper than that. The whole province is suffering. Some parts of the province have been in the grip of a famine. You have the obnoxious provisions regarding controls, and also the failure to supply rations and other necessities of life. People in various parts of the province want a solution and a quick solution. I find in today's papers that the hon. Mr. Kidwai is reported to have said at a Press Conference, "Well, if the problem is that the new scheme outside greater Calcutta should be brought into force now and not after six months, I am prepared to look into it, and I feel that I shall be able to implement it immediately". That is the solution. If you ignore the real cause of the agony and sufferings of the people, if you only pay your attention to the external manifestation and think that the only remedy is section 144 throughout the length and breadth of the province, what happens? And why section 144 had to be withdrawn? Because, it became farcical. The police were chasing the people from lane to lane, from street to street and from quarter to quarter. Ten, twenty, fifty, sixty, hundred people came out. They were still being chased; some of them were beaten; then they got exhausted. It spread to so many districts and towns of West Bengal. Rightly the Chief Minister of West Bengal did not stand on false prestige. He withdrew section 144 and he released all these people who had been arrested, some of them under the Preventive Detention Act. Now discussions are going on as to on what basis and how to implement a scheme which will remove the legitimate grievances of the people. The illustration that the Prime Minister gave was hardly apt so far as the discussion of this question is concerned.

As you pointed out, Sir, the House has accepted the principles of the Bill and this Bill is going to become law. So, I like the approach of the Prime Minister. That is why I said, there are certain aspects of his speech that I liked. He said, 'Let us see how to mitigate the rigours of this law'. I am not saying so much about mitigating the rigours of the law as about providing against the possibility of its application against innocent persons. Whatever you may do, let the House understand that the principal obnoxious feature of the Bill, namely, a man's being liable to be arrested on police reports, on secret reports which may or may not be placed before him, with no opportunity to cross-examine the informers, stands there. That point mentioned in the speech of Pandit Moti Lal Nehru is there.

Shri Gadgil (Poona Central): *Hala-hal*.

Dr. S. P. Mookerjee: What can be done to rectify it? One suggestion has been made is how far the evidence can be disclosed.

There is one provision that if there is a portion of evidence which is against the public interest, that cannot be disclosed. A similar provision did exist even in England. But supposing a certain portion of the evidence is disclosed and the detenu goes and puts forward his plea which is contrary to what has been alleged against him, you will have oath against oath. What else can you possibly have? So, naturally, the question arises: should or should not the detenu at that stage be at least permitted to do either of two things: cross-examine the persons who have charged against him, so that they may stand face to face before each other; and secondly, adduce fresh evidence? Then and then alone will the Advisory Board be able to decide on the materials representing the cases from both points of view as to who is right and who is wrong. The question is, how far can we go in this regard? Now, here, there are two ways of doing it. One is: Government may say that they will allow such evidence to be given. Government may say that they will allow such cross-examination to take place. That will undoubtedly be most desirable. On the other hand, Government may say: "No, we cannot go to that extent, but we will allow the Advisory Committee to decide whether in view of the conflicting nature of the evidence placed before it, on the one hand by the informers, the Police etc., and on the other by the detenu himself, the Advisory Committee would allow this fresh evidence to be placed before the Committee." Well, that would be

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some safeguard. That safeguard is non-existent in this report of the Joint Committee as it has come here. Then there is another possibility of safeguard and that was also in existence under the British law. The provision is that if the officer concerned, if the authority concerned, is satisfied that so-and-so should be detained, should be arrested, then the order is passed. Why not add here "on reasonable evidence"? The Home Minister at once appreciates because the lawyer in him is not dead completely, it is lying dormant.

Dr. Katju: I appreciate it, but what I wish to say is...

Dr. S. P. Mookerjee: In the negative way? The Home Minister appreciates it in this way. I shall myself advance the reason. It has his support because it goes to a Court of Law before which the Home Minister stood for 40 years and earned his fortune. Now, what will happen there? "Reasonable evidence" means that immediately the Court's authority will be attracted. If the party finds that the evidence which has been placed is not satisfactory, then the Court at least will be able to decide, without going into the details of it, whether the evidence was reasonable or not. Now, that was a provision which was in existence in England during war time, mind you. All that we are asking for now is: give us in peace time at least those provisions which were in existence in England during the last world war. The Prime Minister should be able to concede it.

Sir, the Home Minister on the first day referred to two countries to which he would look for some sort of inspiration, the United Kingdom and the U. S. A. Now, I do not know whether the Government has seen that there is a Preventive Detention Act in the United States of America today.

An Hon. Member: No.

Dr. S. P. Mookerjee: There is. In 1950—I have not brought the book with me because I was not expecting to speak now. I was inspired by the Prime Minister to speak. I thought I would speak in the afternoon—but you can take it from me that in 1950 a Preventive Detention law was passed in America. President Truman first refused to give his assent to it, and then it was approved by both the Houses, and then he gave his assent. And that is directed only against, straight against the Communist Party. There is no humbugging there. The Americans' distaste for Communism

and also for the activities of the Communist Party is well-known. Right or wrong, it is there. And therefore they passed this law. But there are certain very special provisions there which I would ask the Home Minister to study during the week-end.

He shakes his head. He will never learn anything, forget everything and make a mess of everything.

There, Sir, it was said...

Mr. Deputy-Speaker: The hon. Member need not read or try to read signs.

Dr. S. P. Mookerjee: Only the shaking of the head.

Dr. Katju: I was shaking my head because there was a fly.

Dr. S. P. Mookerjee: A fly in the bonnet.

In that Act, the provisions are these: that if the President certifies that there is an emergency, not necessarily of an international character, that there is an emergency with regard to the security of the U. S. A., that this Act should be brought into operation, then immediately it will be brought into force. They have placed the Act on the Statute Book, but the responsibility for enforcing it remains with the President—if he is satisfied that the situation in the country so requires; and it is openly declared that it is directed against the Communist Party and Communist activities in the U. S. A. Now, what are the conditions there? They have got an Advisory Council and within 48 hours the detenu must be presented before a Member of the Advisory Council. He alone hears him, and if he feels that it is a case which should go before the Board the matter is placed before the entire Advisory Board and within a couple of months, the Advisory Board has to come to its decision. Evidence will be taken,—cross-examination may or may not be allowed, but evidence will be allowed to be given, full facilities will be given to the detenu to present his point of view through a lawyer before the Advisory Committee. If the Advisory Committee feels that he had been wrongly detained, then there is a provision for payment of compensation on the recommendation of the Advisory Committee which the Government of the United States of America will have to pay. And then the order is passed.

Dr. F. S. Deshmukh: It is a very rich Government.

Dr. S. P. Mookerjee: Which is helping India enormously now. Let us not forget it.

So far as the powers of the Court are concerned—this also is a very interesting provision in the American law.—the matter may go before a Court of Law, the Federal Court. It will go to the Federal Court on all points of law, but it will not be open to the Federal Court to revise the decision of the Advisory Committee on questions of fact unless the Court feels that the evidence was not reasonable, or was not satisfactory.

And then, the last clause in the Act is that this does not take away the right of *habeas corpus* which every citizen of the United States of America enjoys. Now, I ask the House seriously, —the Parliament of free India, are we in greater danger today, are we more afraid of the conditions existing in India today, than what the United States may be afraid of with regard to Communist activities? You know they are carrying on a cold war. We are not interested in the cold war. We are outside the sphere altogether. And they have pronounced views against the Communists and the Communist Party. Even there, they have made these exemplary provisions for the purpose of securing what?—the liberty of the citizen. As one Member of the Congress said, that we want to be sure that no innocent man is punished under these extraordinary provisions. So I would ask the Government to consider even at this late stage as to what sort of amendments we should have. The Bill will be coming up for discussion clause by clause from Monday afternoon. If we really want to proceed in the spirit in which the hon. Prime Minister spoke regarding the possibility of making revisions in the provisions of the Bill without taking away from its main purpose, namely that the Government has the power to detain people without trial, then these are some of the matters which can easily be examined dispassionately, with reference to the laws in existence in democratic countries and in relation to what is happening in our country today. I have not the least doubt that you can carry this Bill, because you have the majority. My hon. friend Mr. Shiva Rao yesterday read out extracts from the grounds supplied to Mr. Gopalan, in one of which my humble self has been mentioned as a reactionary. Mr. Gopalan called so and so a reactionary' said the Madras Police. But even if somebody calls me a reactionary, is it suggested that he should be detained under the Preventive Detention Act? If that is the provision then every one of the Members sitting here will have to be arrested under the Preventive Detention Act, because one side is calling the other a

reactionary. But we have never claimed that either you or we should be arrested on that consideration. That discloses the flippant way in which the Preventive Detention Act has been applied.

Shri B. Shiva Rao (South Kanara—South): Can the hon. Member ignore the other passages where he advocated violence and killing?

Dr. S. P. Mookerjee: I am not ignoring those other passages. Those passages are there, and the hon. Member about whom he has spoken will reply to them, but he will not reply for Syama Prasad Mookerjee, and that is why I have spoken for myself.

As regards the other points which Mr. Shiva Rao made the other day regarding mandate and so on and so forth, the hon. Prime Minister when he spoke the other day, had said that every issue was before the electorate. I would respectfully differ from him. Undoubtedly everything under the sun was there, and everything not only in India, but in the whole world was being discussed.

Shri Gadgil: The specific question of civil liberty was in the programme of the various parties.

Dr. S. P. Mookerjee: The latest defender of the realm, Mr. Gadgil has expressed this—he is always in the habit of speaking like this, sometimes he speaks logically and sometimes not logically.

So far as this point is concerned, am I seriously to understand from the hon. Prime Minister that in the election manifesto—I have not got it with me just now—it was mentioned that the Government, if it comes to power will continue the preventive detention laws? I think rather the provision was that the Congress stands for civil liberty.

Shri Jawaharlal Nehru: The hon. Member must remember that in the last Parliament it was stated that this will be placed before the new Parliament, and it has been publicly stated that we will place it before the new Parliament. (Interruptions).

Dr. S. P. Mookerjee: The hon. Prime Minister knows very well and it is presumptuous on my part to emphasize this point that a particular issue is before the electorate only when it is raised. So many things we said in the last provisional Parliament.....

Mr. Deputy-Speaker: Is it suggested that when the hon. Member is issuing a manifesto for his party, he should say

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that 'We are going to introduce such and such stringent measures for the security of India'?

Dr. S. P. Mookerjee: That is exactly what I wanted to say, and you have put the point very nicely, if I may say so.

My point is that the issue was not before the electorate directly at all. You have supported me very well by an argument which did not strike me earlier. It is clear that that issue was not directly before the electorate. We have asked for a verdict from the people—this suggestion has been made, as a sporting offer. Let any seat be contested upon this issue. Let the hon. Prime Minister decide that from a particular seat, say in Delhi, a Member from the Congress will resign and on this issue we shall have an election, a bye-election. Let us have it. We say so in a spirit of bravado, and if as Mr. Shiva Rao has said, the whole country is with the Congress, we will be floored and defeated and we are prepared to face defeat. At least then we would not have any speeches made against the Preventive Detention Act. Then the hon. Prime Minister will be able to get up and say—and Mr. Gadgil also whenever his services are required—that the Preventive Detention Act has received the support from the electorate. I am making this suggestion with the utmost seriousness. We feel strongly about this provision. We feel that this provision ought not to be there for this reason. You look at your Criminal Procedure Code, you look at your Indian Penal Code. How many provisions are there in the Criminal Procedure Code which authorize the executive to act, whenever there is an occasion to curb the activities of persons for preventive purposes. I have got with me here all the sections noted—I do not wish to go into the details.

Section 107—providing for preventive measures for the preservation of peace and tranquillity;

Section 108—providing for arrest in case of dissemination of seditious matters;

Section 109—providing for preventing mischief at the hands of vagabonds and suspicious persons;

Section 110—preventing mischief at the hands of habitual offenders;

Sections 133 to 143—for preventing public nuisance including that by lawyers, the recent addition;

Section 144—another preventive Section which is well-known;

Section 149—to prevent the commission of cognizable offences; and

Section 151—power to arrest and detain likely offenders.

Then you have the provisions of the Indian Penal Code by which attempts to commit offences also are punishable. Study these two Acts; if you feel that these are not sufficient, and that you should make some amendments and do something more, by all means do it; the majority is there, and it will be passed immediately. There are no difficulties there. But do not tar the law of the land by such a provision as this, that you can arrest a person and without trial detain him. That is the fundamental principle against which we are fighting. You can do so in a time of emergency, you can do so during war-time, and you can even do so, if you like, in limited areas. That is another suggestion which I would make to the hon. Prime Minister. Why not make a provision that the Government of India can apply the provisions of this Bill to all or any part of India? What harm is there? The hon. Home Minister gave his catalogue the other day, and said that in most parts of India the Act is not being operated today. Even in West Bengal, only two days ago, about 35 or 40 Communist detenus were released, and I do not know how many there are still in West Bengal to be released. Why not create a new psychology by saying that we are keeping this law in our hand, not to be applied in an irresponsible manner, that we will proceed under the provisions of the law and when we find that we cannot so proceed then and then alone we will apply the provisions of this law,—these barbarous provisions, according to Pandit Motilal Nehru—only to such areas as are determined by the Government of India. Let the Central Government take the responsibility. Let the Government come before the public and say that they have decided to apply the provisions of the Preventive Detention Act, to Saurashtra, to this State or to the other State. What I am most anxious about is that we should create a new psychology. I like one sentence in the hon. Prime Minister's speech. 'Let us wipe off the past, let us look at the present.' Yes, let us look at the present and also at the future. We have fought with each other, we have

differed from each other, but we are here today, all of us, to work for the good of the country. If you feel that there are persons who are foreign spies, do not show any mercy to them. Find them out and deal with them as severely as you can. We may differ from the Government or the Congress, but I have no sympathy at all for any person who is in association with foreign countries and acts according to the dictates of a foreign country, whatever that country may be. We want this country to develop according to our own dictates and according to our own decisions. We may fight like brothers, we may go on differing from each other, but why treat us as suspect? Why should you resort to these barbarous provisions? Govern the country by the normal laws which are functioning in any democratic country in the world. Are we asking for any big mercy from the hon. Prime Minister of India? Are we asking the Congress to do something which is unheard of? You say that you are a democratic country; therefore proceed like a democratic country. That is all that we are saying.

The hon. Member, Mr. Shiva Rao said the other day that there was a mandate from the Congress. He counted the figures. Sometimes it is difficult to count figures. He told me I represented a party of 2,30,000. I shall count the figures given by the Election Commissioner. May be that represents the number of voters who voted for us. I mean the successful candidates. But even if you take our party, the Jan Sangh, we came into existence only in October, 1951. (An Hon. Member: R.S.S. formerly). Whatever it is, we are not sorry for that. We came into existence in October, 1951 and we received. (Another Hon. Member: 'We' means 'I'). I am not so proud as that. You want to say 'I', but I would rather like to say 'democratic we' because we are democratic and you are full of first person singular. So far as this party is concerned, Sir, we received onslaught after onslaught; we were proud to receive them from the hands of the Prime Minister himself. We are a poor party, with no propaganda machinery, nothing of the sort, and as I said in public meetings after public meetings, our biggest propagandist is the Prime Minister of India, because the attacks of the Prime Minister were reported throughout India, and even abroad. I used to receive letters and enquiries from foreign countries: "what about this party which has developed so fast and which the Prime Minister of India is helabouring to such an extent?" We went on like that, and the figures given by the Election Commissioner, the total

number of votes polled in the Centre and also in the provinces, taken together, will be a little more than 60 lakhs. I am not saying that that is a proud record. I know, Sir, Mr. Shiva Rao knows the art of swimming with the tide. He knows it. He can swim like that, come from south to north, from north to the United Nations and elsewhere. He can swim well and I hope he will swim, to the full Cabinet rank very soon. I shall be the first to welcome him. But will he make such an endeavour, start a new party and face the election on adult franchise within three months? 60 lakhs of voters are responded to our call; We are not sorry for it. We may have been defeated, but defeat today may be followed by victory tomorrow. It will come. We will go on working. But in any case, it is not a case of mandate *versus* mandate. It is a question of winning the confidence of the people. That is the main question. A Government which exists on force alone is always short lived. The Prime Minister was angry when we said 'police State'— But I may tell him that if he depends too much on the provisions of the Preventive Detention Act, the State will be nothing but a police State, because the people will be liable to be arrested on the information given by police informers, spies and paid agents, whose testimony will not be corrected and tested by any impartial tribunal. I know, Sir, that may not happen. The Home Minister said that this Act might remain a dead letter like the Rowlatt Bill. That was to the discredit of the old Government. If the Preventive Detention Act also remains a dead letter, we will all be happy. The Home Minister said he would be happy. But I was sorry at the way he spoke yesterday. He spoke about Murshidabad. 'What did I see? Rasagoollas, so many books, so much food and what not', said he. I was amazed, Sir. Even the British Home Ministers dared not refer to detenus in that way. There was no tinge of apology or regret. I thought he was joking, but it was a coarse, a vulgar joke, not a joke befitting the Home Minister of free India. Does he seriously suggest that there is any Indian worth his salt in this country who would like to sell his freedom for a mess of pottage, who would like to go to Jail and be a detenu not tried by a court of law and get Rs. three a day from a beneficent Government? That is not the way in which the matter should have been looked at by Dr. Katju, the Home Minister, for whom I have nothing but the deepest affection. I know, Sir, it must have been a slip of the tongue, but that is not the correct way. You are doing something which is improper. You may say there are special reasons not

[Dr. S. P. Mookerjee]

disclosed, but still reasons are there. Let us proceed in a way so that people may have the impression that the country will be governed according to the rule of law. I liked immensely the Prime Minister's declaration—in fact I was going to dwell on that particular sentiment in my speech, but that is not necessary, because he has dealt with it—that there are two types of ideologies in the world today. One is that the State is above everything, man is enslaved and the State is the machine which puts the citizens completely under a process of regimentation. He declared—and I was very glad to hear that declaration—that India is not such a State. India is a State where personal freedom and liberty will be encouraged, will be protected, but he said that occasions may arise when that liberty and freedom may have to be curtailed temporarily, for special reasons. So just realise, Sir, how much near we have come to each other. That is what we are saying also? If you say that personal freedom must be protected, that is all that we are saying. If you say that special reasons have to be provided for, we agree. But the way in which you have drawn up the Bill, in our humble opinion, does not guarantee that personal freedom, which the Prime Minister said was his cherished ambition to protect. India is a great country. We have attained real freedom after 800 years. We do not want to lose this freedom. We want that this country should grow from strength to strength and progress to progress, not be regimented. There are so many castes and communities and classes and so many types of faiths and ideologies. They must be all blended together into that great unity which is India's strength, namely, unity in diversity. Let us build up that India. The road to build up that India is not the Preventive Detention Act. It is some other approach. And however much I may differ from the Prime Minister on many of his public policies or utterances I do concede that if he awakens even at this late hour, he alone can do it. Let him take this risk—and say "I shall tear this Act to pieces. I trust my people and if there are persons who misbehave, then the Government will come down upon them, but I shall not be the Judge. I shall not be the executioner. I shall not be the prosecutor, all rolled into one. The third party namely the court, must come and judge whether A, B or C or X, Y or Z is wrong or not! That is what we are pleading for, Sir. We are pleading for a reorientation of the policy of the Government. We are pleading for reverting back to the rule of law which

governed India's destinies for many years even under British imperialism. During the last twelve years this heritage of repressive laws, the detention laws have gone on. We have to break away from that path somehow or other. And when to break away? This is the time, the most propitious time, as I said the other day, because all the parties against whom the Congress or the Government may have some grouse are here. Nobody can do anything against the country's interest without having to face a direct charge from the Government that he or it is betraying the sacred interests of the country. We will answer to those charges if they are properly, legitimately brought forward. Let us accept the rule of law. Let us take away the Bill even at this late stage. He can do it, if he likes. But if he is not willing to do so, he can amend it suitably on the lines I and others have mentioned and which can easily be incorporated. Then at least there will be less danger of innocent people being persecuted and prosecuted under this law and the foundation of democracy will not be sapped. Sir, I have finished. //

Shri Khardekar (Kolhapur *cum Satara*): Sir, I thought and I hoped that after listening to the speeches of Mr. Chatterjee and particularly, Dr. Mookerjee, the hon. the Home Minister would withdraw the Bill, at any rate he would soften it to the extent of effecting changes in the Joint Committee. But unfortunately when I listened to him yesterday, I come to the conclusion that the Home Minister is a very hard nut and somebody told me that 'kaju' is a very difficult and sticky nut. Yesterday morning's performance of the Home Minister was really very unique. There is a certain psychological aspect to that. I thought, as Dr. Mookerjee said, that the Home Minister would begin with some apology, with regret, but nothing of the sort. He almost spoke with jest, with gusto. He said it was model legislation and he wanted blessings from the Opposition side. Well, model legislation is really an injury to this side and asking for blessings on top of it is really adding insult to injury. And what I felt most was the Home Minister was enjoying himself immensely. I do not know if he has developed sadistic tendencies. Forty years' association with criminals and with criminal law and law courts has hardened the Home Minister considerably and I am sorry to say all the finer sensibilities seem to have atrophied. When he referred to the detenus and their happy lot in certain jails—and Dr. Mookerjee too referred to that—I was reminded of a certain

example given by Swami Vivekananda: He compared a vast railway engine going on the lines with a small insect on those railway lines, and he said how incomparably great the insect is because the insect is entirely free! But this gigantic State does not bother to consider the importance of individual liberty.

I am going to be concerned mainly with the provisions of the Bill. The Home Minister referred to several blessings and he talked about safeguards good enough to give protection to the detenu. And here I am glad to say that one of the important safeguards which I wanted to add was added by Dr. Mookerjee, and that is of indemnifying the detenu. If it is proved that he had been detained on insufficient grounds it is very necessary that he should be compensated for in proportion to the amount of suffering that he has gone through—the mental suffering—and in proportion to what he has lost by way of his reputation. For a respectable person to be detained even for a single minute is a mental shock.

सम्भावितस्वचीकीर्ति मरणतादरिच्यते

I suggest one more safeguard, and that is the officers who detain a certain person should be detained, if the detention is proved to be without sufficient grounds, for the same number of days. Some people might say this is barbarous, this is almost tribal justice, but in dealing with barbarous measures and savage laws you have to have barbarous safeguards. Revenge is a kind of wild justice and the rule has to be eye for an eye and tooth for a tooth. These amendments I would have brought if I were here but I do not think by bringing amendments one could get them through because of the brute majority on the other side. By expressing myself in this term I am not saying that it is a majority of brutes because thereby I would be insulting the brutes—a brute might be wild, savage, but it is self-willed, it is not like the Members of the majority party who are dumb, driven. I am not suggesting the word cattle but who are whipped very hard and submit to the directions of the whip.

Coming to the question of legal aid, the Home Minister showed considerable imagination and he said this was a protection, trying to prevent a detenu from having the help of the lawyer was a protection. Well, the Home Minister has considerable imagination. I do not want to quote Shakespeare—many people do not like my quoting—but any way the Home Minister knows that there are certain categories Shakespeare suggests of people who have imagination. I do not know to

which particular category the Home Minister belongs. My friend, Mr. C. C. Shah from Saurashtra argued very cleverly and as a clever lawyer. He said if lawyers were allowed in Saurashtra and if witnesses were to be brought up then those witnesses' lives would be very unsafe. Now, for the sake of those half a dozen Princes about whom you could do anything—probably take some political action and so on—are you going to make the laws for the whole country, for the teeming millions? Are you going to do that because certain exceptional cases of a few Princes might have come in the way of a general law? General laws cannot be based on exceptions. And in trying to give justice what is important is which method you follow. Government might be trying to do justice, I know, but it is an important question as to whether you distribute justice according to totalitarian methods or according to the democratic methods. Now in trying to distribute justice my point is that our Government is following Plato. Plato divided the citizens into four categories: Men of gold, men of silver, men of brass, and men of iron. Our Government has divided the citizens of India into two categories: Congressmen and non-Congressmen. And this Act is meant to be used for those who are not Congressmen. The real categories, as a friend of mine suggested to me the other day, in this country are two: Congressmen and gentlemen.

Coming to the extent of the Act it has been said on this side also that where there is an emergency you do have the use of the provisions of the Act, but do not extend it to the whole of the country. Our country is a very vast and great country. It really consists of several States equal to nations and if there is to be unity, let it be unity, that is cultural unity, unity of affection and of love. Let it not be the unity which is worked out by this Preventive Detention Act. My humble submission to the Home Minister is that he should not try to bring about this unity through this very mischievous Act.

One of the Members on the opposite side said, or actually the Home Minister said or admitted that in a number of States this Preventive Detention Act is not used at all. If that is so, why have this particular law in those States. One of the Members on the other side said, "Well, what harm if the law is there as long as it is not used?" The question is that to have this law where it is not required is a matter of shame. Law is a very important institution, it is perhaps the best means to measure a nation's progress, its political consciousness and its civilisation.

[Shri Khardekar]

Coming to certain matters in the Joint Committee report, a person like Dr. Kunzru, and even a supporter of the Congress, Dewan Chaman Lal, have said that this Act should not extend for more than one year. But here the Home Minister wants the Act to go on for another twenty-seven months because it is a model Act. But then there is an inconsistency or contradiction: Why two years or twenty-seven months? Why not for all time? That will be the question that one might ask. Then again, Dr. Kunzru had suggested that the Chairmen of the different Boards, some of them at least, should be called and consulted; they should talk about their experiences of the working of this particular Act. Several Members here have talked about the bitter experiences that they had and about the unjust working of this particular Act. In 1948-49 a certain administrator was sent to Kolhapur. To describe his term or regime in Parliamentary language, I should say it was the very opposite of heaven. That is what I have said in the Constituent Assembly also. This man because of his "successful career" at Kolhapur was sent to Telengana and we heard the other day Dr. Jaisoorya giving a beautiful description of the atrocities committed under the guidance of that particular officer. This really is the result of what I may call conceit of power. Power has gone to the head of certain officers and the Government seems to be supporting whatever these officers do. To quote myself again from one of my speeches in the Constituent Assembly against prohibition I said it is not liquor alone that goes to the head; there are many other things that go to the head and power is one; from which the majority party seems to be suffering from. Power corrupts and absolute power corrupts absolutely is a warning given by Lord Acton.

Then, Sir, in this measure we find a number of things which are against the principles of democracy. Now there are certain provisions which go against the very grain of one's self-respect. There have been references made to the rule of law and particularly the Home Minister spoke about the rule of law as being the foundation of democracy. There cannot be any disagreement on that point. But rule of law does not mean stifling rule of laws, ordinances and orders. Laws if they are to command respect must be fair, few and fit. The majority, particularly the Members of the Joint Committee have, to speak of legal philosophy, inherited the dangerous principle of the English law coming

from Austin, whose theory of law was based on the Machiavellian theory and probably the philosophy of Hobbes where man is held in contempt. Hobbes considered men to be worse than a pack of wolves and he said: what must rule them? It is the sword that must rule them. That seems to be the philosophy working in the mind of our Government. Then there is a provision by which we cannot discuss the foreign policy freely and frankly. What sort of curtain is this. I do not know. In the name of democracy many wrongs are being committed. The other day I liked a suggestion thrown by my friend Mr. Anthony that if we are to have this sort of fictitious and farcical democracy, it is much better that we resort to benevolent despotism. He said he would prefer Pandit Nehru or the Prime Minister being crowned the King of India rather than have this democracy which is only in name. So rather than a vascillating, weak, farcical and fictitious democracy, well, let us have a real and strong Government under a king who is also a philosopher, a combination you find in our present Prime Minister.

Now you know, Sir, it is very necessary for any Government to look to one important thing. It is not the extent of territory, nor the number of individuals that make for the greatness of a nation. It is the individuals themselves. Those individuals must have a fully developed personality and you know, Sir, that personal freedom is one important thing that helps a man to develop his personality. I am sure Dr. Katju must have read Mills' essay on 'Liberty' which he seems to have completely forgotten.

12 Noon.

Then, I refer to an unfortunate expression which was used by my hon. friend Mr. Chatterjee and which was greatly attacked by Dr. Katju and Pandit Bhargava "lawless law". Now, Sir, by lawless law is not meant that a measure passed by Parliament is a lawless law. That even a first year law student can understand. By lawless law is meant oppressive and unjust laws. Here I may briefly quote Stephen. He said that Parliament has a right to enact a law such as all blue eyed babies must be murdered. Before Parliament can pass such an Act Parliament must go mad and before the subjects can submit to such a law, the subjects must be idiots. I do not know whether legislators are going mad, but I hope the subjects will not prove idiots.

Then there is a very important psychological approach to the whole

problem. I will not go into any irrelevant matter. I will only touch certain very important points. The Home Minister confessed the other day that he finds it difficult to understand the mind of the Opposition. I am tempted to quote a Biblical saying: "the devil himself doth not know the mind of man". On our side we can understand the mind of the majority, because it is a simple mind, it is a pure mind and, therefore, I will try in my humble way to analyse it. Of course, all minds are subject to complexes and there are three or four complexes which I will briefly state.

The first complex is a crime complex. One very honest Member from the other said—I forget his name, a very jovial person—confessed about his sins or his being a sort of a criminal in his young days. He wants now the grown-ups on this side also to suffer from that, a very interesting distinction, Sir, or rather a very interesting relation there has been between the Congressmen and the criminals. Criminals are those who go to jails after committing crimes; a Congressman is one who has gone to jail first and has ever since been committing crimes. Then there is this fear complex.

Mr. Deputy-Speaker: I have been noticing the hon. Member going on in this strain for the past fifteen minutes. Of course, I am prepared to allow some latitude. But what bearing has all this on the issue before us.

Shri Kharčekar: Sir, I will come to the point. I come to fear complex. The provisions of this Act arise entirely out of certain fears. The bogey of the red rag is the chief cause of fear.

Now, Sir, you know that a weak government is a curse to any country and if a certain party is a danger, well declare that party as an illegal association. We are quite prepared for it. The Home Minister said: how can people be brought for trial before a regular court of law because they are capable of disappearing immediately underground.

Now this underground affair started in 1942 and you know as everybody knows here that underground does not mean going under the ground or living subterranean existence. It is probably leaving your own house and going and staying with a friend, being known to everybody in the locality and also the police know that. It was a national movement meant to drive the foreigner out and therefore it was encouraged. But now a national Government is afraid of those who go underground. Going underground means people must

be helping them. It is rather an unfortunate thing. I go to the extent of suggesting to Government to make very strict and stringent laws for controlling these undergrounds. Suppose a man is wanted by the Government. Government may declare that if he does not appear within say, 15 days or one month, such a man may be shot. Even such an extreme measure if the Government were to bring forward, I am quite prepared to say that most of us even on the Opposition side would support. But because of that to say that we should have this Preventive Detention Act which goes against the grain of our self-respect, is not proper. Now, an honest person like Mr. Mishra said the other day that he could walk freely in the streets of Delhi; he could do that because of the goodness of the Magistrate in New Delhi. So that sort of feeling should not be there.

Then the last complex is the superiority complex, Sir, if I am allowed five or six minutes I can deal with it—superiority complex as can be seen from the speech made by Mr. Shiva Rao that the whole country is behind the Congress. Now, it is an admitted fact that the majority of the people in this country have supported the Congress. This superiority complex has arisen out of certain good things that the Congress has done. That, even those who are against the Congress must admit. And one great blessing that the Congress has given to this country is that it has given it freedom. It is no use denying that fact. Some of our friends deny that particular claim. But I am not one of those who deny this particular claim. And the importance of freedom I will give out by telling you a very heart-breaking experience I had in 1935 in Spain when I was there for three or four months just before the outbreak of the Civil War. I was going to be there for four or five months. So I wanted to learn the language of the country. And not having enough money I established a contractual relationship as far as tuition was concerned. The proprietor of a small hotel where I was staying had a beautiful little girl. She was not sweet seventeen but innocent ten, a school-going girl. She knew a little bit of English at school and I agreed to teach her English and in return she agreed to teach me Spanish. We went on for a couple of months. We were in a position to exchange our ideas. One morning when she was going to the school with a map of the world, as children are, she was curious to know, and she spread that map on the table and asked me "Which is your country?" and I pointed out India to her. You know, Sir, in extent, length and breadth what a proud position we occupy—I

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am talking of 1935. Then she looked at me with reverence and said "You are a big man, from a very big country; you must be having a number of possessions, dominions and so on under your control" because a small country like Spain has them. I shook my head. Then I went up still further in her estimation and she said "You are a very just, generous people; although you are so huge, so great, you are not having others as your slaves or under your control." I said "No, not that either". Then she was rather perplexed and asked "What is it?" I said "The fact is we are under the control of some other country". She was rather surprised, but still she thought—the law of nature is that even a big fish is eaten by a still bigger fish and it was quite possible, and she asked "Which is that fortunate country which must be a very mighty nation to swallow you up?" I said "No, it is not a very great nation, it is a very small country". She asked me to point out in the map. I had to point with a pencil that little island, beautiful island, England. When I did that she looked at me with contempt and then she asked me a few questions which I would like most of those who say what is the good of having freedom and so on, to answer. Then she asked "Are you all men?" I did not say anything. Then she herself said "No, how can you be men? You must be women." I could not say anything. Then she said "No, it cannot be, so many millions of women; they would not have allowed any foreign country to rule them." It is a fact, Sir. Then her last question really pierced my heart: "You are not men, you are not women, what are you?" That is the question. We belonged to a middle sex regiment before we got freedom. Talking rationally, we are grateful, we must be, it is very wrong not to admit it; the Congress is the only organisation that gave us freedom. But what do I mean by the Congress? That is the next question I pose. Is it just this Congress with their friends and relatives now, or was the Congress that won freedom something different? I shall just narrate one incident in two minutes and finish. In one of the great *satyagraha* movements started by Gandhiji in a certain city a certain incident took place. You know men and women were beaten by *lathis* by the police. And out of a small house a child started going out. The mother of the child with tears in her eyes called the child, which was a girl of about seven or eight, and asked the child "What are you going to do, where are you going?" She said "I am going to join the *satyagraha*".

Almost in tears the mother said "Don't go, you are my only hope, why do you go?" She said "It is my duty". Then the mother said "Well, if a leader, if Pandit Nehru or Patel or any other leader gets a scratch from the *lathi* of the police he will become immortal, his photographs will appear throughout the papers of the world; but if you are killed in a *lathi* charge, even your mother would not know". The reply given by the child is very significant and very relevant. She said "The temple of freedom is built, in what way?" It has of course the dome, men like Gandhi or Nehru. They are not only the best decoration but they are the guiding spirits, the beacon lights. But the temple of freedom also must have walls and pillars. Men right from Dadabhai Naoroji, Tilak to Subhas Bose, all these pillars some of our friends have forgotten. And last and most important is that such a temple must have a very firm and sound foundation, and that is innumerable volunteers like myself, small persons. They fill up that foundation and on the blood and sacrifice of these unknown soldiers and warriors the temple of freedom is built. Sir, that foundation is unfortunately being forgotten by some of my friends—I do not say all—and that is the height of ingratitude. In every country the unknown soldier is the soldier most respected. Here the unknown soldier is probably subjected to this Preventive Detention Act!

Shri Gadgil: Sir, I listened with great attention to the speech delivered by my old friend Dr. Syama Prasad Mookerjee. His speech included every argument from the sublime to the ridiculous. He was somewhat hot in the beginning, gradually he cooled down and in the end, he was very much responsible and co-operative. I shall not therefore refer to what he said in the beginning of his speech. I welcome gladly what he said about the friendly approach and all sides of the House are agreed that this problem has got to be tackled. I agree with him that now the principle of this Bill having been accepted by this House, the principal question that has to be decided by this House is whether any necessity has been established and such other questions which are cognate to this main issue. I therefore propose to deal with this question first. A wider constitutional issue is involved in this. It is no doubt true that the principle of this Bill is not consistent with the canons of jurisprudence as we understand them. We are agreed that if there is something abnormal then the remedies that have got to be evolved have to be necessarily abnormal. The questions as posed by the Prime

Minister is the State *versus* the individual and authority *versus* liberty. This conflict has been there in the course of history and every nation has resolved it according to its temperament and according to the dictates of necessity. Some of our friends say: The State is everything. Nothing exists above or apart from the State. There are certain parties in this House and individuals also to whom the State is a mere mechanism for the purposes of the progress of the individual and the expansion of the personality of each citizen constituting the State. As far as I understand the Constitution of this country, there is a fair attempt to reconcile these two things. On the one hand the needs of the security of the State have been taken into consideration and on the other hand enough scope has been left for individual liberty. On the one hand we must see that the very foundations of the State are not tampered with and on the other hand, we must see that in the name of that, individual liberties are not crushed. It is therefore obvious that when there is such a tussle between the two, higher statesmanship lies in finding a solution quietly and in a moderate manner and whatever is unpleasant should be reduced to the minimum. When we adopt a law of this kind, it is our moral duty that we owe to ourselves and we owe to the Constitution which we have adopted to see that the chances of abuses are reduced to the minimum. As I said the main point is that the necessity exists today and if this is agreed to, then those provisions which are incorporated in the Bill are perfectly valid; it may be that one part here or there might be modified to meet at least half way the wishes of the Opposition. Last time when the discussion was going on on the motion to refer this Bill to the Joint Committee, facts and figures were given by the hon. Home Minister and apart from what the Home Minister told this House, everyone is conversant with what is happening in the country. After the elections, it is my view—perhaps it may be the view of many of us here—that the respect for law and the general desire to comply with such orders of the authority has gone down considerably and the situation has deteriorated. What happened in Calcutta was referred to by the Prime Minister. It was also referred to by me last time. They were not really hunger marchers as it was obvious. They wanted to meet the situation which was going to arise six months hence. If we permit such demonstrations, I have not the slightest doubt that the very foundations on which the State is founded will collapse. What actually happened? The whole day the police forces and the

demonstrators were engaged in fight and as darkness grew they retired with the result that the knights of night and the barons of bye-lanes took charge of certain areas of Calcutta with the result that looting took place on a large scale. I may mention here that the *rasagoolla* and tea shops were not affected but the other shops which have nothing to do with food. Is that a desirable state of affairs. If it had continued further, I have not the slightest doubt that worse consequences would have followed.

Take the case of Hyderabad, although it seems to be agreed that Hyderabad really requires a special treatment. From July, 1951 up to the end of May, 1952, 258 serious incidents have taken place. 48 murders from July, 1951 to the end of May, 1952. Then cases of assault on police and military 106. Attacks on village officers 85, quite apart from several cases of looting. Even in other provinces, say for example Bombay out of the number of detenues who number 206 except 23 or 24 who are connected with political activities, the rest are detained as being *goondas*. In the State of Bombay all the parties seem to be united to do something because they feel frustrated after the general elections. We are told this question of preventive detention and other things were not an election issue. I will ask through you this House to scan the programmes of each party and particularly the programme of Jan Sangh, civil liberties figure very prominently. When the Press Act was passed by this House, the press people raised a hue and cry and some of the newspapers even stated that they shall not stop agitation unless the Press Act was removed from the Statute Book. See how Congress party was attacked during elections. "What has the Congress done so far for civil liberties. It has introduced the Hindu Code Bill and proposes to proceed with it. It is pro-black-marketers; it stands for free economy." All the issues were made use of as a target of attack by the several parties and it does not lie in the mouth of any person here to say that this particular thing was not a specific issue. I want to know one single instance where an issue of this kind was the sole issue in a general election in any country. But, it suits some friends now to say that it was not a specific issue. I honestly feel that all these matters were taken into consideration by the electorate and knowing full well what the Congress did, and what the Congress wanted to do, they have returned the Congress in the majority.

An Hon. Member: Unwillingly.

Shri Gadgil: You can take your chance five years hence. But, to misrepresent facts, to misrepresent tendencies, or not to accept what appears most prominently in your own programme is hardly the conduct expected of responsible parliamentarians. I have already stated what the position in the country is. In the Bombay State, parties are combining every fortnight just as a child does some mosaic work and takes a block from here and a block from there: leftist united, Central leftist united, PDF and HMP, all alphabets used. For what purpose? For bringing down the Congress Government in that State. I am surprised that those who were dead against the mercantile community suddenly develop a love for them and ask the Bombay Government to drop the multi-point sales-tax. I am reminded of what was said about the great Panini:

विचारवान् पाणिनि एकसूत्रे
इवान् युवान् मघवानमाह ।

A greater miracle has been achieved by this Government by the introduction of this Bill. Every party except the Congress and all the Independents who are independent of each other have combined to oppose this, but not fully realising that if this Bill is not passed, what they stand for and the programme they want to implement will be impossible. I ask them in all earnestness not to be cussed, not to be at cross purposes. Do you want order in this country or not?

Some Hon. Members: We want.

Shri Gadgil: Without order, no progress is possible. Unless the great canvas of order and peace is there, not perforated, not driven holes into, wide and thick, no Five-year plan or any plan can be drawn on it. It is no good saying now that because the number of detenus has decreased, there is no necessity for this piece of legislation. Because there was trouble in the street, and certain anti-social activities were going on, a special police squad was kept there. Now, everything is regular and peaceful. Because everything is peaceful and regular, will we be justified in removing that squad? Because there is no emergency according to some of us, can you say there is no necessity for this particular Act? The necessity and justification for this Act is to see that such an emergency may not develop by the weakness on the part of the Government.

I have said again and again "If you want to govern, govern; or get out".

The responsibility is not merely to this House to keep order and tranquillity and to keep the mischievous elements under control: not to this House alone, not to the entire country alone, not to the present generation alone. It will be an abuse of the trust on the part of the Government if they allow any situation to develop in which not only the fortunes of the present generation, but the fortunes of the generations to come are completely spoiled. That responsibility must be shared by this House so that Government may discharge it fairly and squarely.

Everybody says that Government is using force, this that and the other. The very idea of Government is inconceivable without some apparatus of force. When in a democratic country the Government uses force, the justification is that it uses it for the benefit of the majority and to stop the mischief of the minority. Government cannot be goody-goody because at some time some of those constituting the Government or their party preached something or shouted some slogans. They were good things then. Today you are in a place of authority; you have been charged with certain duties. It will be wrong on your part, having assumed office, not to discharge your duty. It is no good being soft. As they say:

न कसीदे से चलती हं न दोहे से चलती
है कारे सलतनत लोहे से चलती है ।

If you want to follow the profession of a butcher, you are unfit if you weep when you start cutting. Do not follow that profession, then. It is against the profession and against your sense of duty. You walk out. If you want to be governors, you have got to govern not for your own sake, but for the sake of the community. We are all agreed that we want progress. How is that progress possible unless there is some order in the country?

Mr. Gopalan and Mr. Sundarayya have said in their Minutes of Dissent; that because the Government have not agreed to certain of their recommendations they come to the following 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 Preventive Detention.

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

What is the number of people actually in detention in order to justify these grounds? On 31st May, 1950, in a population of 35 crores. By putting these 990 people in jail, is this agitation going to be stopped at all? Open any newspaper. We find everywhere demand for higher wages. Nothing has stopped. There is demand by students for reduction in fees. Not only that: they want professors of their choice. Women ask for equality. Every where human relations are disturbed; the old traditional relationship is breaking. The precise function of this Government which is functioning in a transitional period is to see that these traditional relationships are replaced by relations which are appropriate in modern circumstances, by stages. Gradualness is inevitable. You cannot escape it. If somebody accuses me or some of my friends of being evolutionist and not revolutionist, I am not ashamed of it. Because, if a thing has to be of enduring value, if it is done quickly, it will not give the results which you desire. Therefore, the responsibility of this Government in the context of the times through which our country and other countries in the world are passing, is very much greater.

I have seen the Minutes of Dissent. It is suggested by the Minute of Dissent written by the socialist group that the ordinary law may be amended and replaced by more drastic provisions, if you like. And some one said: "You put this on the permanent Statute Book and bring it into application when, according to you, an emergency is there." When I heard this—I have not the slightest doubt that if the Government brings another Bill for strengthening the ordinary law, these very people will turn round and say: "Why can't you bring a particular Bill with a limited duration?" In other words, if they are so anxious that the permanent law should be modified to meet the situation, it is just like the poet saying:

दिवा काकरवात् भीला। तमी तरति नमंदाम् ॥ ✓

That is, by day he is afraid of the crowing of the crow, but during the darkness of night, he is willing to swim across the Narmada. They are so much afraid of this little, if not entirely innocent but fairly innocent, Bill, but they are quite willing to have numerable changes in the permanent statute and amend the criminal law and procedure.

Having established the necessity from the figures I have quoted and the examples of what is happening in Saurashtra which has been given in a very fine speech by my friend Mr. Saha—we have seen what is happening in Calcutta. In the economic sphere, great responsibility has been taken by this Government by decontrolling food. We do not know what will happen, and if you weaken here, I think what the Government and the community have been building gradually during the course of the last five years will go to pieces, and it is the object of a certain party in this country that this State, being a bourgeois State, must be destroyed. Therefore, they do not want any provision such as the security of the State, this, that and the other, to be made a ground. They do not also want the supply of essential articles to be made a ground of detention. One party attacks one, the other party attacks another, the third party attacks the third. If we agree to all, what is left is only the word "grounds", and nothing else. The whole thing is an integrated whole meant for the even tenor of the community's life, the security of the State and the defence of the country. You cannot take away one piece. If a hall rests on four pillars, you cannot take away one and say this is not necessary. All the things are necessary if you want a society and something which will create an atmosphere of progress.

I understand civil liberty, but there must be civil community well organised, well ordered before we can think of civil liberties at all. Let me have my "Shir" (head) O.K., I will have ten "pagdis" whenever I require them.

The main point which my friend Dr. Syama Prasad raised was perfectly correct: "if there is necessity"—I have shown from figures, the latest figures from Hyderabad and other provinces: he was not here—now who is to judge this? I cannot judge individually because I have not got the source of information completely

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available to me. Somebody's judgment must be accepted; otherwise, no life in the community is possible. If there are two contestants, the matter is referred to the Judge. Whether there is emergency or not is not a matter to be referred to judicial authority, but one on which the Executive must have whole control, and their view must be accepted. If they go wrong, the way to punish them is in the General Election, throw them out on the scrap. Meanwhile to slacken this firm attitude or to say that they should not be invested with this power is to put them in a position in which you give them 100 per cent. responsibility and 98 per cent. of power. That should not be so. If you want to kill a tiger which is at a distance of 200 yards, you must give the Shikari a rifle with a range of 250 yards. It is no good giving him two, one of 100 and another of 90 yards range—some criminal law here and some criminal law there—both these guns will be useless. You must equip them with a gun with a range which will go a little beyond, at least five per cent. That is ordinary experience. Prudence dictates it.

As I said, who is to judge this? Either we must leave the Government to judge it—we cannot ask this Parliament which is essentially of a legislative character to undertake the responsibility and to decide whether particular facts constitute an emergency or not. That is essentially the function of the Executive arm of the Constitution, and it would be wrong, imprudent, unwise on our part to do anything there. Therefore, the case for the necessity of this Bill is fully established, and I should say that all of us, Members of this House, knowing full well the responsibility we owe not only to ourselves, not only to this generation, but to the generation that is to come, without being affected by emotion, without being affected by the great eloquence of my friend Dr. Syama Prasad, in a cool, calculated manner, let us consider. As I said, I only referred to the last part of his speech in which he said: "It is everybody's problem, let us sit down and tackle." Let us not talk about poison. Well, like Shankara who swallowed poison and therefore became Neelakantan, if poison has to be swallowed for country's safety and there is no escape, let us swallow it. If we know, if we are convinced that there is necessity, then let us not be bound down by prior commitments in the political field because as Lord Morley has said: "Nothing is stable or unchanging in the higher regions of politics. Every-

thing is alterable, everything is changing, and like a wise man you must not cast your horoscope for the moment, but you must cast your horoscope for the age." That way lies wisdom. I therefore appeal to every section of this House: do not look at this from merely the party point of view,—at least those who have still an open mind,—let us sit down as Dr. Syama Prasad has said, and look at this problem. If the House has accepted the principle, the necessity, then my second proposition is: see that the abuses are reduced to a minimum, the chances of the Executive at a lower level going wrong are reduced as far as possible.

What are the several suggestions made? One of the suggestions was: "All right, it is agreed that there is a necessity"—even in one of the Minutes of Dissent it is accepted; there are stray cases here and there. In a way this is common ground except for the Communists, that there is necessity—"Then, why not do this: Have this in your legal armoury; whenever necessary use it." I tell you because it is in your armoury just now and applicable to the whole of the country, a situation today has developed in which there is fair tranquillity and peace and the number of detenus has reduced from 7,000 to 910. But if you do away with it, then the people will say: "All right, let the emergency grow and grow and grow", and in the words of Lenin, "Revolution today will be too early, tomorrow it will be too late". Who is to judge the emergency? The man on the spot. The emergency.....

Dr. S. P. Mookherjee: If the Communist Party cannot quote Gandhiji can Mr. Gadgil quote Lenin?

Shri Gadgil: Very interesting, but not instructive. The point is that at what time will the District Magistrate or the particular persons who have charge of the area say "Well, the emergency has grown", just like the Police Officer, in the words of Dicey: "If he starts action a minute earlier, he is acting against the law; if he starts a minute late, he will be prosecuted or at least discharged as being inefficient"? The point therefore is so long as it is there and applicable to the whole country, and every measure, every precaution is taken to see that it is not abused, that it is working in a proper atmosphere, that it is properly handled, our duty is finished. The other point that was raised was that all the previous Acts were for a period of one year only, in 1950 the Act was passed for one year, and also in 1951. That only shows that this Government was not anxious to take

power permanently under this Act. Every year they came before the House, placed the facts before them, took them into confidence and asked for the extension of the original Act, and the House was good enough to record its judgment in favour of the government of the day. In this particular Bill what is sought is that instead of coming every year before the Parliament, they can have it up to the end of 1954. Somehow or other the executive of the day is able to see and has come to the conclusion that it is in the best interests that the Act should be extended till the end of 1954. If the object of the Members of the Opposition is that there should be a periodical discussion of the whole situation in Parliament, I make this suggestion. Let the Act be passed as it is, but let the hon. Home Minister be requested to bring a resolution before the House at the end of 1953, to the effect that the House do permit the Government to continue this Act as it is for another year. That is one way of doing it. The other way is—it is not very much acceptable to me—to limit the period of the life of the Act in the Act itself to 31st December, 1953, and add a proviso that 'Provided it may be extended by another year, if resolutions to that effect have been passed by the two Houses of Parliament.' This is a suggestion which I am making on my own authority. I do not know what the reactions of the Government to this will be, they may accept or reject it.

The great point that was made in the Joint Committee and here also was that there is no review whatsoever of the political situation. So far as the review of the working of the Act is concerned, I understand that even in the past, every six months, a report used to be published in the Government of India Gazette. But what was wanted was not a mere review of cases that were placed on the Table of the House, but a critical appraisal of the entire situation and the provisions of this Act, in so far as their application was concerned. If that was the intention, then my suggestion will go a long way towards meeting that.

Some criticism was also made as regards the District Magistrate being authorized under this Act. I submit that in the whole of our administrative organisation, the District Magistrate holds the key-position, and it is on him the whole administration of a district hinges. His is the one post which is just like the one on which the 'Dwarka' stood. The District Magistrate being in a key-position, we must trust him.

People talk of safeguards. In what is provided in this Bill, there are safeguards, explicit and implicit. I shall explain what I mean by these terms. The first safeguard is the District Magistrate himself. Hon. Members have said that there is an overwhelming evidence to the contrary. I do not agree that it is overwhelming evidence. But take the present context of the political situation and set-up. I ask in all fairness to my hon. friends on the other side: How will the mind of the particular District Magistrate work? So far as *goondas* and anti-social elements are concerned, I do not think that any one of us is very anxious about them except the representatives of the Ram Raja Parishad. We are anxious that the political worker who honestly believes in certain doctrines, should not be suddenly hauled up and put in jail without trial. That is their anxiety, and I share that anxiety. I ask, how will the mind of a District Magistrate in a country in which responsible government is established, work? Today responsible government is the order of the day, and in two or three provinces the majority of the ruling party is precarious, while in others although the majority is thumping, still the quality of the Opposition is something which cannot be brushed aside altogether.

Shri S. S. More (Sholapur): May I put a question to my hon. friend from Poona, Sir? He is now exhibiting great confidence in the safeguards provided in the District Magistrate. He was detained in 1942 under the orders of a District Magistrate. Does he mean to suggest that the District Magistrate had acted as a safeguard for him?

Shri Gadgil: I unnecessarily presumed that my hon. friend had more intelligence than he actually has. Those were different times, when we were fighting against an alien government, when there was no ballot box etc., but now we are here in the Parliament; therefore the District Magistrate is subject to all the political atmosphere and influences in the district itself. (Interruption.) There is nothing wrong in quietly listening, be a good listener to be a good parliamentarian. As far as I know, the District Magistrate will not risk arresting a person who works in the political field, without prior consultation with the Government of the day. This, however, is an implicit safeguard.

Then, what is the next safeguard? He then reports the matter with all the material bearing on it to the State Government which is also a responsible one. No Minister in charge of Home Affairs would ordinarily confirm

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or approve of a case in which there is some doubt, because within a fortnight or a month he will have to face the music in the House when he will have to justify it to the world outside, and not merely to his partymen. And in these days do not believe for a moment that the partymen are quiet and dumb-driven—my hon. friend Mr. Khardekar would not use the word cattle, although he would like to use it—they will also have to be satisfied. Everybody today is so politically conscious of the rights of citizens that the District Magistrate as well as the State Government would not in normal circumstances approve of a case which is on the borderline, and in which there is some doubt.

The third safeguard is the Advisory Board. Changes have been effected in its composition. I was sorry to read from the speech of my hon. friend Mr. N. C. Chatterjee where he has stated that although the Prime Minister was generous enough to agree to a complete revision in the terms of reference there was somebody behind him more powerful who said that none of these things should be there. That statement is not correct. Two important changes have been effected. Let us be fair towards each other. If we are villains, abuse us, but if we are really good men, occasionally a good word may be said which will be appreciated. (*Interruption*). The point is that each Advisory Board is to be presided over by a High Court Judge or by a person who has been a High Court Judge. Fortunately in this country there is still great faith in High Court Judges. I appreciate that. The Government therefore readily agreed that the Chairman of every Advisory Board should be a High Court Judge or should be a person who has been a High Court Judge. The two other men will be either High Court Judges or persons who are qualified to be so, and have a fair experience of judging the material before them properly and evaluating them and then coming to a balanced conclusion. I know that all the members of the Advisory Boards must have followed the proceedings of this House very carefully or they will at least hereafter follow them carefully. In the light of what has been discussed as regards the approaches by the Advisory Board, I feel that in any case in which there is the slightest element of doubt, the Board will say that the detenu in that case should be discharged forthwith. The figures were given saying that some 1800 were released and an argument was advanced on this basis to say that 1800 were arrested and unnecessarily

detained. At least that is not the only conclusion. It may be that according to the members of the Advisory Board, the material that was placed before them was in their judicial appreciation of the whole situation not sufficient to justify detention. Do not draw the conclusion that because 1800 were released, therefore, the police acted badly, without sufficient cause or this or that. That is not correct.

Then the third safeguard is the power of the State Government. I have not the slightest doubt that when people are detained, their relatives will approach Members of Parliament or members of the respective Legislative Assemblies. Questions will be put. There are ways and ways in which this matter can be raised, and as some of us become more and more acquainted with parliamentary practice and procedure, all these things are bound to be ventilated on the floor of the respective Legislatures. Therefore, the State Governments will be constantly reviewing, may be at the end of every quarter or at the end of every six months. But the point remains that this is a safeguard and over and above this, what is provided in the present Bill is that all information about detenus, wherever they may be detained, in any part of this country, in the territorial jurisdiction of India, must as soon as possible come to the Central Government. What does it mean? It is said that one who collects data has his own conclusions; though he may not express it. One who reads these, he cannot escape certain reactions. Therefore, when this material comes before the Central Government, although there is nothing in the Statute proposed as a duty cast on the Central Government to review it at a certain period, it is implicit in the very procedure that the matter has got to be given attention sometime or other. Therefore, right from the District Magistrate at the one end to the fact that the Central Government has now a definite place in the scheme of things, I think enough safeguards have been provided for.

There was some point made about the procedure. As the section stands, I feel there is nothing to prevent the Advisory Board from following any particular procedure. Therefore, the question of calling in anybody to give further information, regarding this, that and the other is within their power. This is my interpretation. But recording of evidence and cross-examination and legal aid—this paraphernalia is inconsistent with the very basic idea of detention without trial. If it is detention without trial, all

those things which are the accompaniments, the invariable concomitants, of a fair and open trial are not valid here. Therefore, short of that with whatever material placed by the Government to begin with before the Advisory Board and whatever material the Advisory Board *suo moto* ask the Government to place before them, I think it is a fair position, but if it is suggested that there should be specific authority for the Advisory Board not to call any witness but to call certain information apart from the Government, from any individual, it is certainly a matter for the consideration of the Home Minister.

Pandit Thakur Das Bhargava: Make it discretionary with the Board.

Shri Gadgil: Personally, I think it is not necessary. But if the bitterness of all that has happened is likely to be softened to a considerable extent, I would not mind it.

Sir, the main point is that the necessity having been established and ample precautions having been taken to see that the abuses are avoided or at any rate, the chances of abuse are reduced to the minimum, I think we ought to record our judgment or vote in favour of this Bill. As I said, it is not a matter which ought to be considered in an emotional atmosphere. Very coolly we must take the issues involved into consideration and unless some such thing is done, our progress is likely to be affected. We must not be carried away by the weepings of certain persons. That is good if the case is before the jury which is selected from the ordinary population, but here, although elected by the common people, we have to decide issues as the higher tribunal in the land and the issues we are called upon to decide are issues which are not confined to the specific point mentioned in the Bill or for the specific moment. The repercussions are bound to be extensive both in terms of time and in terms of matter. I, therefore, most respectfully request the members of this House to accept this Bill with such further modification as the hon. Home Minister may be pleased to accept.

Mr. Deputy-Speaker: The House will now stand adjourned till 3-30 P.M. today.

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

The House reassembled at Half Past Three of the Clock.

[Mr. SPEAKER in the Chair.]

Shri Gopala Rao (Gudivada): Sir, from a medical study of the report of

the Joint Committee and the Minutes of Dissent one would come to the conclusion that certain important aspects of the Preventive Detention Bill have not been taken into consideration during the discussions. In his Minute of Dissent Pandit Kunzru has said:

"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 Committee, therefore, discussed the Bill without any accurate information of the working of the Act."

The present Bill is for the extension of the Act for two years. Unless we review the working of the Act for the past three years, how the Act had been implemented in various parts of the country, it is not possible for us to arrive at a correct conclusion. One of the important aspects of the matter is that the House must go through the whole working of the Act for the last three years.

Sir, I come from a part of the country where hundreds of peasants and workers have been detained and so I can speak with experience as to how this Act has been implemented, at any rate in my province. I am not going to enter into details, because several of my friends have quoted from various judgements of High Courts and shown how the charge-sheets were based on fantastic grounds. Coming to my own case, if I were to quote the grounds in my charge-sheet you will easily come to the conclusion how the grounds were baseless. The main charge in my charge-sheet was simply that I had been working as President of the Provincial Kisan Sabha from 1943 to 1946. This was the simple ground on which I was detained in October, 1949 in the Cuddalore jail for two and half years. The Provincial Kisan Sabha was a legal organisation and had been working for the last 17 years and it was banned only after I was detained, that is in November, 1949. I was the President from 1943 to 1946. Being the President of the Kisan Sabha I was charged with conducting a big campaign for the abolition of landlordism. But that was at a period when even the Congress people were propagating the abolition of landlordism. The Kisan Sabha itself was a legal organisation and the charge

[Shri Gopala Rao]

against me was that I was conducting a campaign for the abolition of landlordism. This was an item of the programme of even the Congress itself. You can now easily understand how insufficient this ground was for a person to be detained for a long period. Thus if you go through the charge-sheets framed by the Madras Government, you can find how baseless the grounds were for detention in a majority of the cases.

Speaking about my own district 120 peasants and workers were detained for more than two or three years. They were peasants coming from zamindari estates. 20 peasants were detained in Chellapalli Raja's estate and 30 peasants in the Munagala Estate, simply because they were agitating for their occupancy rights against the zamindars. But that cannot be the proper reason for their detention. In the same way in Chittivalasa there was an agitation in a factory in which British capitalists had invested their money and there more than 25 workers were detained for two years. So once this Act is passed and powers are given to the local executive and police officers you can easily imagine how the Act will be implemented and what havoc will be created in various parts of the country.

My comrades here dealt with cases of people who were detained but my hon. friends did not touch on one aspect. Peasants and workers, even lawyers, teachers and students are threatened with detention orders. In my district 120 were detained and in Andhra 500 and including the Telugu-speaking areas of Nalgonda and Warrangal the number comes to 5,000. But the figure actually detained is very small. In the village side and even in towns people were threatened with detention order, unless they accepted the leadership of their local landlords, money-lenders or some other boss. This was a general feature and even a senior lawyer, by name Naga-bhushanam, who was working on our cases, was threatened with detention order by the local Circle Inspector. That was the situation with regard to the working or implementation of this Act.

I can give one or two examples as to what extent things have drifted. For example in March, 1950 when a college student namely Kanchanarao was returning from his examination to his house along with other students

he was arrested. When the students asked why the student was being arrested, the police told them that there was a detention order against him. But he was not sent to any detention camp. Even till today nobody knows what happened to the student of Vijayawada Raja's college. I can cite several similar cases. On another occasion in January, 1950 two peasants and local labour leaders were taken away from their villages at nine o'clock in the night. They were sitting among several others discussing things, when the police force came and arrested them. They said that they would be detained. Unfortunately the next morning it was found that they had been shot down in a nearby sugarcane field. Even an I.C.S. Officer, Crombie by name, strongly protested against this act to the Madras Government but he was forced to resign for this. I shall not go into other details now as they have been referred to by other friends.

The other day the Home Minister said that this Bill was not at all aimed at any political party. I ask a straight question. If that were so, would the Minister accept an amendment that political parties must be exempted from the operation of the Act. It should be accepted by the hon. Minister if he was sincere in his statement the other day. The hon. Minister in introducing the Bill has asked for an extension of the Act to two years and three months. When there was an amendment demanding that the period of extension should be reduced to one year, he said that the introduction of an extending Bill every year would be a waste of time. From this you can very well see how the basic principles of democracy or the individual's fundamental rights which are sacred are not taken into account by introducing a Bill which completely deprives the individual of his fundamental rights. During the last five years of the Congress Government this preventive detention has become a regular and normal feature of the law of the land. Under extraordinary circumstances, when there is external or internal danger there is some meaning if the Minister demands such a measure. But in normal conditions an obnoxious measure like the present Act should not be put on the Statute Book. But under the Congress Government these fundamental rights have become exceptional and extraordinary measures have become the normal feature. We can definitely say that that has been the feature of their regime during the past four years.

When Mr. Gopalan gave several baseless grounds for detention many hon. Members from the other side, while supporting the Bill, said that there might have been some mistakes by local officers. But such mistakes have been common, normal and regular. Correct actions have become exceptional. By that we can see that there must be something fundamentally wrong which we will have to take into consideration. Unless the State gives wrong directions every officer cannot act in a wrong way. The very direction of the Act is in the wrong way. That is why in the majority of cases the Act has been misused.

The Prime Minister in the morning said that there might be some cases of abuse. But that is not the reality as in most of the cases this Act was completely misused. That is why it is fundamentally wrong for this measure to be used in ordinary times, as it gives extraordinary powers to the local officers and hence there is every scope for misuse of the Act.

Explaining the objects and reasons of the Preventive Detention (Second Amendment) Bill the hon. Home Minister said the other day that the measure was meant for the preservation of public order and the maintenance of essential supplies and services. But the interpretation or definition of this naturally differs. What is public order? Suppose in an estate the tenants on a big scale agitate for their occupancy rights. The landlord would naturally try to eject them from the fields. The tenants organise themselves in a Union and stand unitedly against the landlord. Can it be called a threat to public security or order? In the same way in many factories strikes are taking place over the wage question. By that you cannot declare that essential supplies are interfered with by the strikes and hence the Preventive Detention Act should be applied. The aim of the Act should not be at all an attack on the democratic movement, whether it is the workers' or peasants' movement or any other progressive movement. The past experience has been that definitely this Act has been concentrated against the people's movement, whether it was a movement against the zamindars the princes, the jagirdars or the capitalists. But now the hon. Minister says that it was not aimed at political parties but it is difficult to accept such a proposition.

Now coming to the question of eliciting public opinion, there was an amendment for the circulation of the Bill. But in the Joint Committee this proposition was rejected and I wonder

why it was rejected. In the morning the Prime Minister said that this matter had already been decided by the people, because the elections had taken place only three months ago, that the people had accepted the Congress policy and according to the Prime Minister that acceptance included the Preventive Detention Act also. I am sorry I cannot accept that proposition, as it is contrary to reality. I would like you to make a scientific analysis of the election results. If you refer to the election results of those areas where this Act was implemented on a large scale, you will see that it has created havoc. In the Andhra hundreds of peasants, workers and patriots were detained and deprived of their freedom. In Nalgonda and Warangal thousands of patriots were detained. In Malabar hundreds were detained. Then if you take the election results in those areas you will come to a correct conclusion. Wherever the Act had been implemented the Congress party have been completely defeated. They were forced to face debacle after debacle. Every Congress leader was defeated at the polls. That would prove how the Preventive Detention Act was implemented and how the people were protesting against the Act. That is the proper measuring rod and that is the correct scientific analysis. But if you refer to other parts where this Act was not at all implemented, where the Act was news to the people, you cannot analyse the situation correctly. That is why I appeal to the Prime Minister that it would be correct to refer to the results of the South-Travancore-Cochin, Andhra, Kerala or Telengana, where this Act was misused by the local officers, who detained persons who were trying to serve the people. That is why I appeal to the hon. Prime Minister to take this scientific analysis. I thought he would review the situation in a more critical way but he could not do it. He was not critical of the results of the last election, especially the results of those areas where this Act was implemented. I say the people's judgement is already there because we can take the opinion of areas where about 80 per cent. of the electorate have voted against the Congress. Take, for instance, my District. You do not see anybody coming from my District on the other side because it is a District where 130 peasants' and workers' leaders were detained, a District where 135 young men with a revolutionary career were shot dead. If such repressive policies are pursued no Government can suppress the peoples' feelings by obnoxious measures like this. It is high time for Government to review its position and

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adopt a new perspective, namely that simple measures of this type will not do justice either to the people or to anybody else.

The hon. Home Minister said that because this Act was wisely implemented peace and tranquillity and law and order were maintained in the countryside. Sir, it is a completely false analysis. It was not because of this simple Act that law and order was maintained. There were several reasons for that. If the hon. Minister speaks on the assumption that this Act was wisely implemented in those parts of the country he is completely mistaken. It neither helps the people's movements nor even the Government. I similarly appeal to the hon. Members of this House. They must see this measure in the present day context. I am seriously trying to understand what are the conditions that warrant this extraordinary and exceptional measure. When I referred to the Home Minister's speech I did not find therein any reason nor any facts and figures by which a measure like this can be immediately passed. This morning I was expecting that the Prime Minister would enlighten the House, will give some substantial reasons for this Preventive Detention Act being extended. Even he was not able to give us the conditions existing or cogent reasons for enacting this Preventive Detention Act. In his usual manner the Prime Minister was making a review of the last five years and talking in vague terminology and abstract manner. He could not substantiate the need for this measure nor the conditions warranting it.

Coming to another aspect of the issue, it was said by the hon. Home Minister that detenus can argue their case before the Advisory Board. Sir, this is not possible because 80 per cent. of the detenus are either ordinary peasants or ordinary workers with very little educational background. That is why it is highly impossible for an ordinary worker or ordinary peasant to present his case, to argue it and to defend himself before the Advisory Board. An amendment was moved in the Joint Committee to provide facilities for legal assistance but it was rejected. On the other hand, a peculiar theory was developed that since the very presence of lawyers spoils the case of the detenu before the Advisory Boards, therefore, lawyers should not be there. This is a peculiar argument advanced by the hon. Home Minister. I do not know whether he revealed this secret while he was practising for forty years. He could as well have

said frankly that he was not accepting the suggestion.

Yesterday the Home Minister was describing as heaven one of the detenu camps. That certainly is not the case. The other day when I had been to the Supreme Court to see some of my detenu friends, I found they were actually handcuffed and tied with ropes while being brought there. Just after entering the Court the handcuffs were removed and the ropes were untied. I have good experience of the lot detenus in Cuddalore and other jails: They were lathi-charged, they were not given letters or newspapers—if they were given newspapers they would be smeared with tar. There were several other difficulties which they had to face. Because of these we were forced to take to hunger strikes on occasions. You must have known another thing which happens: Even in my very presence one of the foremost leaders A. V. S. Ramarao of our District and of the *kisan* movement was shot dead. I am not going into every detail now. One of our friends, Dr. Rama Rao, the other day narrated in details all those events that have taken place inside these jails. That is why I say the life of a detenu is not heavenly. The Home Minister was describing and depicting it as if it was a heaven which everybody ought to visit. That is not the case. No individual tolerates this detention. Every freedom fighter, every patriot, every democrat, entirely protests against this measure and against these methods.

I would request the hon. Members on the other side to realize the situation and try to understand and accept the amendments suggested by the Opposition. If Government is determined to pass this measure—of course, they have a majority and they can do it—let them remember that the fundamental rights of individuals are sacred and are not to be deprived of unless there is an extraordinary situation. According to our understanding there is no such extraordinary situation: There is no external danger nor is there any internal danger. If there is any such situation in Saurashtra, well, you can confine this Act to Saurashtra and apply it simply to Saurashtra. Separate powers can be given to Saurashtra Government. Also, there are so many other measures which are already there and which are available to you to face any normal situation. That is why I appeal to the Government to accept the amendments given by the Opposition and rise to the occasion.

4 P.M.

Shri T. Subrahmanyam (Bellary):
 Sir, this morning a senior Member

on the other side was asking us to take the provisions of this Bill seriously. He was also giving expression to a sort of mild complaint that we are not giving as much attention to this Bill as we ought to.

Sir, that is not correct. Members on this side of the House have undergone imprisonment several times and we have also had experience of detention as well. We know what detention means, what imprisonment means. It means a lot of suffering, separation from the family and tearing off from ones surroundings. It is too well known to us. Therefore it is not lightly or easily that we think of inflicting suffering or imprisonment or detention on anybody. We value freedom too much. All our lives we have spent every drop of our blood, every ounce of our energy for securing freedom for our country. At long last this country has secured freedom. Therefore, it is not in a light-hearted manner that we are lending support to this Bill.

Several Members on the other side in their Minutes of Dissent and also in their speeches during the last two days have been stating that this Bill is repugnant to the fundamental principles of democracy and to the basic postulates of justice. They have been quoting from Anglo-American jurists and judges elaborately. I wish to point out to those hon. friends that the conditions of those two countries, America and England, vary vitally from the conditions obtaining in this country. If the parliamentary democracy that we have adopted is to be worked successfully, there should be a general agreement among all the political parties regarding the basic postulates of democracy, such as sanctity of the ballot, the sovereignty of this Parliament and the inviolability of the laws passed in this Parliament and the laws passed in the duly constituted State Assemblies. There should be general agreement on all these things.

With regard to the sanctity of the ballot, we all know very well that instead of counting heads, if people begin to take the law into their hands and begin to break heads, it would lead us nowhere. It would only lead us to terrorism. That is not democracy. Therefore, we chose the universal adult suffrage as our means. In this connection I would like to read—I am glad my hon. friend is here—from a speech stated to have been made by Mr. Gopalan at Hoshiarpur. This is from a column in the *Hindustan Standard*:

“May 12th. Mr. Gopalan the Communist leader said here the Communist Party did not believe in ballot and that the Congress Government would not be changed

through the ballot box. Replying to a question he said his party would organise country-wide strikes and paralyse the administration. In that way it would change the Government.”

I do not know if he has been correctly reported.

Shri A. K. Gopalan (Cannanore): Sir, I would like to point out that it is the correspondent who has written that. If the substance of what I said were to be understood my speech as a whole should be read. If on the basis of two sentences from a speech that I delivered, I am represented as having given expression to something, it is not fair. I only wish to say that the report quoted by the hon. Member is not correct.

Shri T. Subrahmanyan: I shall be glad to be corrected. I know that several times speeches are not correctly reported and it is quite possible that there may be misquotations. But in the meanwhile, I would request Mr. Gopalan, if possible, to furnish me with a copy of the speech that is alleged to have been made.

Shri A. K. Gopalan: As long as I am inside the Parliament, it certainly means that I believe in the ballot; I am here because of that.

Shri T. Subrahmanyan: I shall then go to the next point.

I was saying, Sir, that the sovereignty of the Parliament is of the utmost importance to us. There must be general agreement on this among all the political parties that function in this country. If parliamentary democracy has to be successfully worked, sovereignty of this Parliament is the most important thing. Here again, if a single individual or a body of individuals were to challenge the sovereignty of this Parliament anywhere in any part of the country, I say it is a source of danger and should not be tolerated. Today there are in some parts of Hyderabad people who are still having arms in their possession and are not prepared to part with them. The position that they have taken up is an intolerable and impossible position. When asked to abjure violence they tell the Government: “you abjure violence first; then we will abjure violence.” What is the meaning of this? It means that the Government has to give up police and armed forces if these people are to surrender their arms. It is a most impossible proposition and therefore as long as people are holding on and not surrendering arms, it is the business of Government to force them to surrender them. They cannot dictate

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to this Government that they would not surrender their arms unless Government abjures violence. That is the position that a party has taken up in some parts. These things make for trouble, disturbance and unsettlement and insecurity in the country and it is one of the justifications for this Bill to be passed.

Then I come to the inviolability of the law. Any law passed in this Parliament, or in any duly constituted State Legislature has to be obeyed without any exception. Some hon. Members on the other side said that people could choose to disobey a law, if they thought, it was bad and even Mahatma Gandhi was quoted in support of that contention. I should like to point out that we have all along been the followers of Mahatma Gandhi. We know in what context he was preaching civil disobedience. It was not an unconditional disobedience of law. He was always emphasising and stating certain qualifications and certain conditions. He was saying: we must exhaust all alternatives; we must adopt the method of persuasion first; and if no other alternative is possible then alone, a law, if it is bad may be disobeyed. That is what Mahatma Gandhi said.

Now we have worked this democratic apparatus, the ballot, the universal franchise. People can get any law passed provided they have the support of the people. They can get any law amended, altered or cancelled, provided they have got the support of the people and they have got a majority here. Therefore, no person—I am addressing to all the Members of this House and the people of this country—no person however great or big he may be, can choose to say: "I consider that law to be wrong and to be immoral; therefore I am going to disobey it." He cannot take the law in his own hands. It is an impossible proposition. As long as this basic postulate is not accepted among all the parties, I can say, parliamentary democracy will not be successfully worked out in this country. Every individual, every party must admit the inviolability of the law passed in this House and in the duly constituted State Legislatures.

Some hon. Members were quoting, as I have said, elaborately from the judgments of distinguished jurists and judges of America and England. During this debate one thing was very significant. We have not listened so much to either China or Russia. America and England have come in for a good deal of mention. Suddenly

we found in some quarters a respect for and confidence in the jurists of America and England. I feel it is a healthy sign; I only hope it will be abiding.

Some Members in their Minutes of Dissent and also in their speeches said that this Bill is repugnant to the fundamental principles of democracy. It is for this reason that we have fought and established this democratic apparatus. We value this very much. They remind me of some ultra-democrats who resided in pre-Hitler Germany under the Weimar Republic. There was the utmost freedom of speech under the Weimar Republic. The most wonderful part of the situation was that the followers of Hitler were very vehement and enthusiastic in demanding civil liberties and freedom of speech. But there were also other people who thought that the Weimar Republic was an ideal thing and that the followers of Hitler were quite right in demanding that they should be able to exercise the freedom of speech. And the tolerance that was established in the Weimar Republic was sought to be extended to cover the Nazi programme and their activities for destroying the Republic. What happened afterwards is history too well known to us. There was a chaotic diversity of political parties and groups in Germany at that time. All of them were vociferously and vehemently stating that civil liberties should be exercised by all, including the followers of Hitler. But ultimately all these groups were eliminated and Hitler's totalitarian party was established there. Nazism was established. And there was no other party to place before the people an alternative programme or form an alternative government. That was the position in Germany.

It is the same case today in Russia also. In Russia—I am reading from article 126 of the Soviet Constitution—"the citizens of the U.S.S.R. are ensured the right to unite in public organisation—trade unions, co-operative associations, sport and defence organisations, cultural, technical and scientific societies;" (and here follows the most important thing) "and the most active and politically most conscious citizens in the ranks of the working people unite in the Communist Party of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the social system and is the leading core of all organisations of the working people, both public and State." Commenting on this, Sydney and Beatrice Webb in

their book say: "This means in fact, though it is not explicitly stated, that no other purely political organisation is permitted to function in the U.S.S.R."

Then, two other friends were saying that this Bill is going to be enacted to crush political opposition and political parties. A Socialist friend said that and other friends also gave expression to the same sentiment. Let me say this, that if this party wanted to perpetuate their hold of the country they would not have taken all the trouble to enact the Constitution and to have the elections held in such great hurry. I maintain and contend that the elections were held in a free atmosphere and the people were free, the detenus were allowed to stand for election, and then in such an atmosphere of the utmost freedom the elections were held. The result is that we have all the heterogeneous groups on the Opposition side. It would not have been possible if the elections were not free. We were in a hurry to have a democratic form of government and to have as much Opposition as possible, to give the utmost scope to all people to constitute themselves into groups or into parties to oppose this Government. We have done it in all sincerity. If all the actions and programmes that we undertook in the past have not convinced the people of this country and the people of other countries of our sincerity and the soundness of our democratic apparatus, even God cannot convince such people.

Then, in some other countries like Brazil, Chile, Switzerland etc., because they felt that the Communist Party does not tolerate the existence of a multi-party political system, they have practically outlawed it. In Switzerland people of the Communist Party are denied the rights of citizenship; they cannot even reside in Switzerland. In Brazil it has been put in the Constitution itself.

Dr. P. S. Deshmukh: That is why U.K. and U.S.A. alone are quoted.

Shri T. Subrahmanyam: Article 141 sub-clause (13) of the Brazilian Constitution says: "The organisation, registration, or functioning of any political party or association whose programme or action may be contrary to the democratic regime based upon plurality of parties and guarantee of the fundamental rights of man, is prohibited."

Practically the same provisions are being enforced in Chile also. I shall not go into greater details. But I am only giving the context in which we 155 P.S.D.

have tried to introduce a perfect democratic system and regime in this country. We value freedom and civil liberty very much at least as much as friends on the other side do. My only regret is that our sincerity and earnestness to establish this freedom and this democracy on sound and permanent foundations are not shared by Members on the opposite side. That is my complaint against them.

Then let me say that this Bill is not aimed against Members of the Opposition or the Communist Party as such. Yesterday Dr. Krishnaswami was telling us that it could be applied against anybody. And then he was trying to pose a question as to what would happen to the people who might agitate, in Madras or any other State, for the abolition of prohibition. It does not apply to such people. It is obvious that people who agitate in a legitimate manner for the abolition of prohibition or for the alteration of any other programme in a constitutional manner will not be affected by this. It does not apply to them at all. It is obvious. But let me say in this context to what sort of people this will apply. We were going on tour in a certain district. Then we entered a certain village in the morning. We saw a hayrick with grain not removed was almost burnt. When we entered that place and made enquiries we were informed that it was set fire to the previous night by a *goonda*, a rowdy of that village who was given to illicit manufacture of arrack and who was making a lot of profit and terrorizing the people. Nobody could report against him. It was impossible. People could not even whisper in the public and the Prohibition Department could not get any evidence against that man. But when once you enter the home of any villager they tell you that such and such man has done it, he is a *goonda*, a rowdy who practically rules the village by his terrorism. We asked them: what is to be done if evidence cannot be had against such people, what would you propose? And instinctively they say: such people must be placed under detention. I referred to this because Dr. Krishnaswami raised yesterday this question of prohibition. It is not aimed against any members of any particular party. It is aimed against anti-democratic, unsocial elements who want to undermine and destroy the democracy, the security and the defence of the country. It is only against such people that it is aimed. I am surprised when hon. Members on the opposite side say that this is repugnant. Because, what they are pleading for is not civil liberty. It is criminal licence to

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destroy whatever is healthy, valuable and a precious heritage in our democratic form of government. I plead with them that they should support his Bill, because it has undergone many improvements in the Joint Committee, and even before. The orders of the District Magistrate are liable to be approved within twelve days. Otherwise they become *ipso facto* void. And then they have to be sent to the Advisory Body within thirty days. If the Advisory Body gives its opinion, it is mandatory and not merely recommendatory. And there are several other improvements made. In view of these things I request hon. Members on the opposite side to lend their whole-hearted support to this Bill.

Shri S. S. More: I rise to voice my disapprobation of the sinister Bill which has come before this House. I was a member of the Joint Committee and I did my best to make constructive suggestions for improving the tone and tenor of the Bill, but to my great regret I may say that the hon. Home Minister backed as he was by a formidable majority, was not in a mood to listen to the voice of the Opposition. The present Bill has been named as the Preventive Detention (Second Amendment) Bill. My feelings are—and they are shared by many of the Members of the Opposition—that this Bill is designed to smash the Opposition. This Bill is designed to crush the opposite parties. I may very well say that the only object of pushing up this sort of Bill is to keep power with the Congress permanently. We may call this Bill either as 'Preventive Detention of the Opposition Parties Bill' or we may call this Bill 'Permanent Retention of Power with the Congress Bill'.

Members belonging to the other side have been eloquently pleading for democracy and have been voicing the famous canon that eternal vigilance is the price of liberty, but when put to practice, if we take their actions, because the test of the pudding is in its eating, if we look at their actions, their declarations and their practices, from our own experience we can say that they are converting this maxim of "eternal vigilance is the price of liberty" as "eternal repression is the price of security". They are out eternally to repress the opposing groups. What is the sin that we have been committing? We have been urging on the Congress that economic freedom ought to be brought about as early as possible. I quote the very preamble of the Karachi

Resolution which says: "In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions." Political freedom has been achieved, but the economic freedom which has been one of our main planks and for which sort of society our Pandit Nehruji has all along prescribed that we must go to socialism that economic freedom is as distant as the moon is from this little earth. The masses have been agitating. They cry: Give us food, give us bread; give us shelter to reside in; give us clothes. In order to stifle the voice of these people, who are agitating for economic freedom, this repressive political measure has been undertaken by the Congress Party in power. They say that we have to secure the new liberty. We do it for the security of India. What do they mean by the word 'India'? Article 1 of the Constitution defines India as India, that is Bharat, the Union of States. But this is not the whole truth—the whole definition. Many things have been left unsaid and if we look to their practice, the definition may turn out as I may give it to the House: India, that is Bharat, that is the Congress, that is the Union of capitalists, princes, black marketeers and other persons who are job hunters, who are permit seekers. That is the present operative definition of India and by the 'security of India', they mean to secure the power that the Congress has got in its own hands in order to perpetuate the power with themselves, that they are striving to put this sort of obnoxious Bill—sinister Bill—on the Statute Book. Sardar Patel when he introduced the first measure in 1950 said that it is an emergent measure. Then Shri Rajagopalachari who introduced a similar measure in 1951 also said "the emergency was there and in order to meet that emergency we should have this sort of measure." We have been asking "if this is an emergency measure, show us the emergency." Where is the emergency, what particular things are there and what ugly heads are being raised, to jeopardize our security, to weaken the defence of India, to imperil or to hamper the supply of essential goods? The hon. Members who belong to the other side are not prepared to show the emergency, they are not prepared to place before us or before the country concrete facts, the concrete events which may be considered as an emergency necessitating this very unpalatable, detestable measure. They say: "You have not eyes. You are out for some mischief. Therefore you are not in a position to be convinced

about the existence of emergency. As we are in a position to govern, we see the emergency and we are out to govern." This was the burden of the song of Mr. Gadgil. For his benefit I may be allowed to read from Pandit Nehru's speech which he delivered in 1936 when he presided over the Lucknow Congress. My hon. friend, Dr. Mookerjee has quoted the worthy father. Now I will quote the worthy son who was fighting for the liberation of our country. This is what he says about the Britisher, who used to detain persons, rob us of our liberty without giving us any chance of having a fair trial:

"So wanting in mental equilibrium are they, so obsessed by fear of the Congress and the national movement it represents, that their wishes become thoughts, their thoughts inferences and inferences facts, solemnly stated in official publications, and on which the Majesty of the British Government rests in India, and people are kept in prison and detention camp without charge or trial."

I can present this extract by making one alteration in it "So wanting in mental equilibrium are they, so obsessed by fear of the masses and their economic liberation movement" What Pandit Nehru said then is happening in this country. They fear the national upsurge, they fear the economic upsurge, they fear the toiling masses are not going to be lulled into sleep by the sweet promises which they indulge in and in order to stamp out this economic upsurge, this Bill is being passed into law. Some of my friends on this side were comparing the provisions of this Bill with those enactments which were passed in England and America and some of the opposite Members twitted them by saying: Why don't you compare our provisions with the legislation of some other countries? I am inclined to compare this present legislation with the legislation which the Britisher was pleased to place on the Statute Book of this country. I am prepared to compare this legislation to find out the points of similarity and the points of dissimilarity whether this measure is something better than Regulation III of 1818. With your permission, I propose to take some time of the House, because the language and the provisions are so identical. In section 3 of the Preventive Detention Act, 1950, certain items have been mentioned. It says: "(1)

The Central Government or the State Government may—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to—

* * * * *

make an order directing that such person be detained.

(2) Any district magistrate or sub-divisional magistrate, or, in a presidency-town, the commissioner of police, may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1), exercise the power conferred by the said sub-section." I may refer to the Bengal Regulation III of 1818 and with your permission read the preamble which is very instructive, and will supply us with all the points of similarity or dissimilarity, whatever we may call it.

"Whereas reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign powers,

In our legislation, "the relations of India with foreign powers" is the wording of the ground.

".....the preservation of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British Dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding,....."

This is the main reason why this particular sort of enactment has been sought to be passed.

".....or when such proceeding may not be adapted to the nature of the case, or may for other reasons be inadvisable or improper;"

These are the main reasons for which the British Government could pass a detention order. These are the reasons which we find in section 3 sub-section (1) of our enactment.

Sub-section (2) of section 3 gives the power to pass a detention order both to the Central Government and the provincial Government, as well as to district magistrates. My hon. friend Kaka Gadgil—that is the popular name by which he is called in our place—was very enthusiastic about the impartiality of the district magistrates. But, under this Regulation, the Britishers who were mainly responsible for framing and fashioning

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these district magistrates, had not the necessary trust in the district magistrates, to pass those orders. The provision here says:

"and whereas it is fit that, in every case of the nature herein referred to the determination to be taken should proceed immediately from the authority of the Governor-General in Council....."

Thus the Governor-General was the person who was to authorise detention.

"and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding,

We are now providing for the detention otherwise than in pursuance of a judicial proceeding. Our section 7 says that the grounds shall be furnished to the detenu and his representation, if any, will be received by the Governments. The same words are here.

".....the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the Governor-General in Council all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed."

There is one more factor, which was a redeeming feature of this Regulation, which redeeming factor we do not find in the present enactment. I was responsible for tabling an amendment that family allowances should be given to a detenu, to keep his dependents in a proper state of maintenance. But, that amendment was turned down in the Joint Committee. This is what Regulation III of 1818 says:

"and whereas the ends of justice also require that due attention be paid to the health of every State prisoner confined under this Regulation, and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family;"

Along with this, I would read section 6 of this Regulation which also runs like this:

"Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the Gov-

ernor-General in Council whether the degree of confinement to which he may be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family, according to their rank in life."

I need not dilate on this. But, I feel that section 3 is patterned exactly after the preamble of this Regulation. Allowance is not provided for and in that way that Regulation stands on a superior ground and hence I may say that more humane considerations prevailed with the British bureaucrat, the British despot, than with the present Congress rulers of our country.

Panditji said that in England and America certain democratic traditions have been developed and people are accustomed to and disciplined by those traditions. Similar arguments were advanced by another friend. I may point out that the British bureaucrat, when he was dealing with the framing of the Penal Code, when he was dealing with the framing of the Criminal Procedure Code and tightening the screws and bolts for the purpose of repressing the people, used to advance similar grounds. When the question of the separation of the judiciary from the executive was discussed in 1862, Sir Stephen who was a very eminent lawyer and was imported into this country, like so many foreign experts at present, to become the Law Member of this country, argued: "the Indian people are not accustomed to a democratic form of Government; the Indian people are accustomed to despotic rule and therefore, whatever traditions we may have in England, in India, we must rule like despots." Pandit Nehru himself has stated that the British were democratic in England, but had a fascistic mentality in this country. I may say the same thing: that the Congress people, when they were fighting the liberation battle, when they were fighting in Opposition, were democratic to the core; but when power came to them, their love of democracy disappeared like the morning dew and now they have stepped into the shoes of the Britisher and taken over from him the repressive apparatus of imperialism and are acting like despots and that is one of the reasons why this Bill is sought to be placed on the Statute Book.

From 1905 for a period of twelve years, there was a continuous and growing wave of crime in this country.

In 1907, the Britishers arrested Lala Lajpat Rai and detained him under this Regulation of 1818. That matter was taken cognisance of by the Congress in 1907 and the hon. Dr. Rash Behari Ghose said in his Presidential address:

"It has been said in defence of the resurrection of Regulation III of 1818, that it is a standing law. It is not a standing law but a standing negation of all law not a standing law but a standing menace to our liberty, a standing reproach in our Statute-Book. A prosecution, we have been gravely told, attracts public attention and a trial for sedition is, therefore, not always desirable."

I can say that this is the very reason why the Congress people, why the Congress rulers, why the Congress despots, framing laws on the British model, are not prepared to place before the judiciary any person who may have committed prejudicial acts, harmful to the security of the country or the defence of the country or other items which appear in section 3.

Even after Lala Lajpat Rai, some nine other persons were proceeded against and deported under this measure. In 1909, Pandit Madan Mohan Malaviya, presiding over the Congress said in these very words

"If the Government....."

I am quoting this because I want to adopt the very arguments which were used by the Congress President against the despotic action of the British Government. I do want to repeat those arguments now.

"If the Government will only have recourse to the ordinary law of the land....."

That is what Dr. Mookerjee has been pleading this morning.

"...to bring to justice any person or persons who might be guilty of encouraging violence or lawlessness or of promoting ill-will or hostility to Government, there will be no room left for complaint. The Indian people are an eminently reasonable people....."

We can still lay claim to that virtue.

"Let them know that a brother has been guilty of a crime; let the Government only satisfy the public that there is reasonable ground for depriving any man of his liberty, and they will cease to sympathise with the offender. Where sympathy will not entirely die out, its nature will be greatly changed. There will

be no feeling left against the Government. But to send away men who have been living peaceful and honourable lives to distant lands, and to confine them under the deportation Regulation without giving them any opportunity to hear and answer charges which have been formulated behind their back is a course unworthy of the British Government and it ought to be put an end to as early as possible."

If, Sir, that course was unworthy of the Britisher who was our conqueror, who came here to exploit the country and place us under his iron heel; if it was unworthy of the British Government, I would ask the Members sitting on the other side how much more unworthy it would be for the people who have been returned...

An Hon. Member: No, no.

Shri S. S. More: My friend is saying "No, no", but if he consults his conscience if he has any left, he will say "yes, yes".

My submission is if it was unworthy for the Britisher, it is much more, many times more unworthy of the present rulers. But they have inherited the fascist mentality of the Government, the bureaucratic mentality of the Government, and therefore they see not light where they ought to see.

Many Members belonging to the opposite side have stated "we have all the love for democracy, but unfortunately in this country people are not behaving properly, and therefore we require to put these serious restrictions on the freedom and liberty of the people" this is a pliable argument which is frequently used by despots. When Mussolini came to power in 1919 he stood for Socialism. He was using the slogans of Socialism, but the moment he came to power, he raised his Fascist Party to the status of the country, his Fascist Party was equal to the State, and whatever was directed against that particular party was supposed to be directed against the State itself, and therefore various sorts of legislation were enacted to crush the people's resistance. I am quoting from a book "Fascism at Work" by Elwin. At Page 98 we find—many friends belonging to that side have made an attempt to compare and contrast the provisions of this enactment with similar provisions or similar legislation in England and America, but I believe, Sir, that this our present Bill can be very well compared, and with some advantage with the Public Safety Act

[Shri S. S. More]

which was passed by the Italian Government, the Fascist Government, on November 25th, 1926—this particular enactment contained 232 clauses. I need not go into detailed examination of these clauses. I find that according to this Act, the safety, the personal liberty of the opponents of the Fascist regime came into danger and many persons belonging to the Opposition were spirited away, detained and even murdered. But there are two features which we do not find in the present Bill. I may say that our present Home Minister Dr. Katju is out-heroding Fascism itself. Even under this particular enactment, a man who was detained and proceeded against, was given the opportunity of appearing before a Court, and of engaging a lawyer of his choice, but unfortunately, in Italy, only lawyers who belonged to the ruling party were allowed to practise and those who did not share the views of the Fascist Party were not allowed to practise. The result was that a person belonging to the Opposition party was allowed to engage a lawyer, but that lawyer happened to be a Member of the Fascist Party. But even here, we are prepared, we may say, that Government should introduce an amendment that a *detenu* shall be allowed to engage a lawyer provided he is a Congressman. We are prepared to accept even that sort of concession.

But Dr. Katju is very hard on the legal profession. I believe—I do not know the details of the life of Dr. Katju but I know this much that he rose to his present eminence by the ladder of the legal profession, and he is now kicking that very ladder. Lawyers are supposed to be officers of the judiciary, important pillars of the judiciary, in a way a class of officers of the State who are out to help the judiciary in dispensing law and trying even the worst criminal in a fair and square manner according to the elementary canons of justice, but we are looked down upon as a suspicious tribe. I believe Hitler treated the Jews as worse than human beings. Dr. Katju is repeating that performance by treating the lawyers as worse than Jews. And I may say that I shall not be surprised if some day he introduces a Bill for the extermination of lawyers. The Jews were a hated tribe for Hitler and therefore when the Nazis came to power in 1935, they passed a legislation which is known as the Nuremburg Law, and according to that law, all Jews were deprived of their civil rights and citizenship rights; they were purged out of

their professions. Not only that, they were treated as the most obnoxious people who had to be exterminated with all the ruthlessness that a human being is capable of. Possibly, we pleaders and lawyers shall be placed under Congress rule in the same unenviable position as the Jews in Germany and some day we shall see an enactment for exterminating the whole tribe of lawyers who live by the Panel Code, the Civil Procedure Code and the Criminal Procedure Code.

[MR. DEPUTY-SPEAKER in the Chair.]

Shri Dhulekar (Jhansi Dist.—South): It will be a happy day.

Shri S. S. More: My Friend who stands for *Ayurveda* says it will be a happy day. Possible he believes that the days of the Congressmen going to jail, undergoing trials and suffering have gone and they do not want any more lawyers, but we do not know what will happen in the future. Some of these lawyers may be black sheep, but even here, the Congress people should scan their own ranks; and though these sheep here are moving in white caps, that does not mean that the black sheep are not there. Pandit Nehru himself...

An Hon. Member: Black cap!

Shri S. S. More: A black cap is better than a black sheep.

Pandit Nehru himself and the Congress Party are trying to play the Fascist role, trying to extend the Party itself to the position of the State. They think that India is Bharat, Bharat is Congress, and Congress is the party in power; therefore, the Congress interests have to be safeguarded. I have every respect for the old Congress. I have been with the Congress. I have struggled and fought along with the Congress according to my meagre ability for the national cause...

Pandit Thakur Das Bhargava: Now you are kicking the Congress ladder.

Shri S. S. More: But now the Congress can be split into two categories.

* * * * *
If the privilege of quoting Lenin can be given to the hon. Member Mr. Gadgil, I submit that I can also have the privilege of quoting Mahatma Gandhi. Mahatma Gandhi had said that hypocrisy was raising its head in the Congress ranks, and Congress people were becoming less and less honest, and Congress people were becoming more and more insincere in their profession, and therefore in the last will and testament he had recommended that

*Expunged as ordered by the Deputy-Speaker.

the Congress should be wound up. But the Congressmen have been in power and have tasted power, and they know perfectly well that if the Congress label is taken off, they would not be sold even for a song.

Dr. Suresh Chandra (Aurangabad): Are we listening to a thesis on the Congress here from the hon. Member?

Shri S. S. More: If we could have so many allegations branded against us, I have got the right by way of retaliation to return something by way of compensation.

I have been dealing with this particular mentality that they are not prepared to listen to criticisms, as if they have become allergic to criticism. That mentality is the peculiar phase of the Fascist mind, and they are fast developing towards Fascism. Therefore my submission is that this particular measure has been framed in a Fascist mood, and so it is a great danger and menace to the people who are struggling, according to the Karachi Resolution adopted by the Congress, for the economic liberation of the country and for economic freedom. The hon. Home Minister has said: "You abjure all violence, you shed your violent activities, and then I am prepared to withdraw this Bill or I shall make it a dead letter." But that is the usual type of assurance given by a Fascist party to their unfortunate opponents. Even the Britishers were saying the same thing to the Congress, after hurling the same charges of violence against the Congress. In this connection I may refer to the correspondence which Mahatma Gandhi had with Lord Linlithgow. My hon. friends on the other side do not want any events from past history. But this is what Lord Linlithgow wrote in his letter to Mahatma Gandhi on 18th January, 1943:

"I was glad to have your letter, for to be as open with you as our previous relations justify; I have been profoundly depressed during the recent months first by the policy that was adopted by the Congress in August, 1942, and secondly because while that policy gave rise, as it was obvious it must, throughout the country to violence and crime (I say nothing of the risks to India from outside aggression) no word of condemnation for that violence and crime should have come from you or from the working Committee....."

I need not take the time of the House by reading more of it, because the hon. Members belonging to the other side are impatient with such quotations.

But the point is this. In 1942 the Congress was held to be responsible for subversive activities, and it was said by Lord Linlithgow that their preaching about non-violence was a deceptive facade and only a shelter to give protection to acts of violence and sabotage. But Mahatma Gandhi replied saying that he (Lord Linlithgow) was relying on the reports of his officers. He said 'I am not prepared to accept their reports as correct, because they are not reliable and if you think you have that courage you can appoint an impartial court of inquiry and place me before that court or tribunal and decide whether the Congress was responsible for violence or not.' Now what is it that the other side—the Congress—is saying to us on this side? They are saying that we are guilty of violence, that certain persons have committed acts of violence. But what is violence?

Mr. Deputy-Speaker: The hon. Member has already taken 35 minutes.

Shri S. S. More: One minute more, and I shall conclude. What is violence, Sir? I would call upon the hon. Members on the other side to define what they mean by violence. I shall give you an instance of a money-lender who by manipulation of accounts and resort to such other practices, completely robs his peasant-debtor of his lands, and drives him away from the land which he inherited from his forefathers. Supposing the affected debtor loses his temper and yielding to the provocation given slaps that money-lender; now that slapping can be considered as violence. But the violence of the money-lender is cleverly concealed under non-violence, and it has been affected only by manipulating accounts and forging of promissory notes etc. But that violence is of a serious character. And yet under this Act, the money-lender will escape. He will have some police officers on whom he will have influence, and will tell them that his debtor has committed an act of violence and the poor man will go to jail and there will be nobody to advocate his cause or to secure his release, because many of the officers of the police are hand in glove with these exploiters. That we know to our own experience.

Mr. Deputy-Speaker: Does the hon. Member want the person who has borrowed to take the law into his own hands?

Shri S. S. More: Sir, this is nothing but human nature. I can quote from Congress Resolutions and writing that the Congressmen also were guilty of acts of crime and violence, and that they were led to these acts by the

[Shri S. S. More]

provocative atrocities committed by the British bureaucracy. It is such a human thing to be provoked to acts of violence. We are not all saints or sages to be free from all provocation. My submission here is that in the instance which I have given, the poor debtor will have injustice done to him. You are also a lawyer, Sir, and you know that in the Indian Penal Code, there is a specific provision that if any act of violence is committed under provocation or other extenuating circumstances, that will be taken into account, and that it shall not be treated as an act of violence or crime.

Pandit Thakur Das Bhargava: It is a crime, but the question of extenuating circumstances will be taken into consideration and it may turn it into a smaller offence.

Shri S. S. More: At least under the Indian Penal Code, these extenuating circumstances are taken into consideration by the trying courts. But here there is no court trial and the executive authority will not do any such thing, and the result will be that the poor man will suffer.

After all, what is violence? Even under certain provisions of the Penal Code, if my person is threatened or my property is threatened, resort to some violence by me cannot be ruled out. Violence can be perpetrated of all kinds, and there are occasions when all kinds of violence are possible. But you will have to sit in judgment and decide whether that particular act of violence, regarding which a charge has been levelled against any person, is excusable form of violence—whether it is allowed by the elementary canons of justice—or not. But under the Preventive Detention Act there is no judicial tribunal to go into this question. Even the British Government under the Defence of India Act of 1939, had provided for a special tribunal to try preventive detention cases; even the Fascists had some recourse to the courts but under the present Bill, they are not prepared to trust the independent judiciary. Fortunately our judiciary is prepared to stand by us. Possibly the government feel that if these cases of detention were entrusted to the judiciary, which is firm and strong in its independence and is prepared to fight for the elementary rights of the people and the so-called fundamental rights, the judiciary may not give a decision in their favour. I would conclude, by saying that I do oppose this Bill.

5 P.M.

Mr. Deputy-Speaker: Mr. Kasliwal.

Kumari Annie Mascarene (Trivandrum): On a point of order, Sir. May I ask you whether deliberations on this subject should be confined only to men?

Sardar Hukam Singh (Kapurthala-Bhatinda): The question naturally arises whether women have contributed to preventive detention.

The Minister of State for Finance (Shri Tyagi): It is not physically possible for men to do so.

Mr. Deputy-Speaker: I shall call the hon. Member next.

Shri Kasliwal (Kotah-Jhalawar): Sir, the hon. Member who has just sat down, I may be permitted to say, relegated the debate to a rather low level by indulging in some words of abuse. It is not my intention to use such words of abuse. I will leave him where he was. Yesterday an hon. Member on that side, Mr. Sarangadhar Das, while he was speaking on this Bill was of the opinion—and he very clearly said it—that the provisions of this Bill could be made applicable to a province like Saurashtra or to a province like Hyderabad. When I interrupted him and asked him: 'Why don't you apply the provisions of this Bill to Rajasthan?'—he went off at a tangent. He did not reply at all to the question in a straight manner. On the contrary, he began to talk of his idea of giving franchise to the Princes. I am sure if my hon. friend was reading his daily papers regularly and carefully, he would have found out on the very day what the conditions in Rajasthan were. I want to quote a small news item which appeared in the papers yesterday and which also appeared in the papers on the 31st on how the conditions in Rajasthan were. This is a news item from Jodhpur, dated July 30th:

"Mr. Chetandas, a Congress worker and sarpanch of Bakhasar village, his father and two brothers were shot dead on Monday by a gang of dacoits, headed by the notorious outlaw Balwant Singh, according to information reaching here

"The motive for the murders is reported to be Balwant Singh's long-standing enmity with Mr. Chetandas, who, it is said, had been demanding persistently the arrest of Balwant Singh. The deceased is also reported to be responsible for

providing the clue to the Government of India that Bhupat had crossed into Pakistan with the help of Balwant Singh.

"So far no arrests have been made."

I am sure if this news item had come to the notice of my hon. friend, Mr. Sarangadhar Das, he would probably have elected to include Rajasthan in the purview of the Preventive Detention Act.

There was another hon. Member, who is not present here today, but who said yesterday something about conditions in Rajasthan. He says he is representing a party which is known as the Ram Rajya Party. In his district, in the constituency which he represents, Sir, namely Sikar any number of murders are taking place. Dacoits are marauding the countryside like anything. I may tell you another instance, Sir. When this House was in session, about the 20th May news came of the murder of an advocate and the murder of the Secretary of the District Congress Committee of Sikar. These two gentlemen I knew very well. The advocate was a very gentle person, he was a learned man, a man of peace. These two persons were called by certain jagirdars to parley with the peasants. They were called by certain jagirdars to settle disputes regarding land. After lunch time while they were actually resting, they were murdered by these jagirdars in cold blood and even today no trace of these murderers has been found. It is impossible to find a trace of these murderers, because if there are any witnesses to come forward, the witnesses will also be murdered. It is a fact that it is impossible to collect any evidence of this nature. Bhupat had been talked over in this House in great detail. It is not my intention to multiply instances in this House, but I know it as a fact that Bhupat's friends and helpers were not only in Saurashtra but also in Rajasthan. In their little villages they have been collecting arms like anything. These jagirdars have had arms for generations with them and they continue to have those arms; they have not surrendered them. It is these jagirdars in Saurashtra and Rajasthan who, when they found that the Government was determined to carry out certain land reforms, said: "We are going to subvert the State. This is the only way to destroy democracy, to destroy and kill everybody who came across our way". The poor people there have never had any arms with them.

It is not necessary for me, as I said, to multiply instances. The hon. Prime Minister today mentioned that certain things had taken place during the elections in Rajasthan, especially Jodhpur. When Mr. Jai Narain Vyas, who was the Chief Minister, Rajasthan, was going about during his election campaign, he had a companion. That companion was threatened and told that he should not carry on Congress propaganda. He refused to listen to them. Then that companion of Shri Vyas was grievously hurt in the body and he had to lie in bed for about a week or so. Then he was told: "Now, look here, if you are going to continue this Congress propaganda, you will be killed". But that companion of Shri Vyas was a staunch Congressman; he refused to listen to them. He refused to budge an inch from his determination to help Congressmen, and what was the result? After warnings he was killed and even today no trace of the murderer has been found.

I would quote only one other instance of loot, loot in broad daylight. I believe there are certain Members in this House, who are well aware of the name of Shri Subhdeo Prasad, ex-Chief Minister of Jodhpur. In his village at about eleven o'clock about two months ago, three or four men went first of all to his house. He had also two or three guns with him and they were afraid that these would be used against them. So, naturally they would not be able to loot the village. Now, what they did was, they first of all went to the house of Shri Subhdeo Prasad. The choukidar was asked to give his guns and then followed an orgy of murder, loot and rape, for full six hours and then after five o'clock when they found that the news was likely to leak out they left. To date no trace of these men has ever been found.

I do not propose to multiply any more instances of this kind. The hon. Mr. Chatterjee while he was speaking on this Bill said, and today, Dr. Syama Prasad Mookerjee also said, regarding Rajasthan or some other province, that if conditions of this kind were there, the Government should have applied the Preventive Detention Act before. Now, it is an extraordinary proposition. Here on the one side, they say that this Bill is a Bill which destroys democracy, elementary rights and freedom of action; at the same time, in the same breath, they say if there were certain conditions like this to be found, it was the duty of the Government to have used the Preventive Detention Act. I may tell you, Sir, in Rajasthan the Government, as the Prime Minister

[Shri Kasliwal]

himself has said, was reluctant to use the Preventive Detention Act and there are various reasons for it. One of the reasons was that the elections were near at hand and there was a feeling amongst the Government members that probably if the Preventive Detention Act was used, some people would say: "We are going to stand for elections. It has been used against us". I may tell you I am sorry and I ask for forgiveness that the Government of Rajasthan really did not use this Act beforehand. I am reminded of a famous saying of Mark Antony—I am saying this because there is an hon. Member here, a respected Member, who has once or twice called the name of Mark Antony. So I quote Mark Antony:

"Pardon me, O bleeding piece of earth that I am meek and gentle with these butchers."

It was not my intention to make a long speech, it was my intention only to point out certain things which are happening in Rajasthan. But there are one or two other extraordinary things to which I would like to draw the attention of the House. Hon. Members, Shri Gopalan and Shri Sundarayya in their Minute of Dissent have said an extraordinary thing. I would like to read it out to the House before I comment upon it:

"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 people's genuine interests."

It is a travesty of truth to say that the Government has been using this measure to support the landlord and to suppress the common people. In Rajasthan it is just the opposite. I need not comment any further on this. Another hon. Member, Shri Nambiar said that M.P.s and M.L.A.s should not be detained under this Act and in the Minute of Dissent also they have mentioned this. In Saurashtra and Rajasthan it was the Jagirdar M.L.A.s that were detained. Four or five of them were detained in Rajasthan and two or three in Saurashtra. I have heard that after their detention things have improved a lot. And recently I have come to know that against two of them charges of murder and dacoity have been preferred and they are waiting trial on that score.

I do not want to take much of the time of the House because it is not

my habit to repeat things. So many things have been said that it is not really necessary for me to repeat them. Nor is it my intention to tell you all about the contents of the Bill. I would only ask this: supposing the suggestions of our friends Mr. Gopalan and Mr. Sundarayya were incorporated, that is to say the provisions regarding essential supplies were deleted, and similarly the suggestion of Mr. Chatterjee and Sardar Hukam Singh regarding the deletion of reference to foreign relations and maintenance of public order, were accepted, what would be the position? The position would be that the Bill would be mutilated beyond recognition and the result would be that it would have to go for circulation. The moment it goes for circulation—it would be impossible for us to be in the House waiting for it all along to come back to the House—the Bill would expire. The whole suggestion is a strategic manoeuvre so that the Bill may not be enacted in this House.

Kumari Annie Mascarene: Sir,.....

Mr. Deputy-Speaker: Have there been any female detenues during this period?

Shri R. K. Chaudhury (Gauhati): Sir, I am going to speak on preventive detention of women. It is better she speaks afterwards.

Kumari Annie Mascarene: Sir, you asked me whether there were any women detenues.

Mr. Deputy-Speaker: Have there been any?

Kumari Annie Mascarene: If I had known anything in life, if I am familiar with anything in life it is detention, detenues, detention camps, police and lock-up. That is why, Sir, I said that this Act and deliberations on this Act should not be the monopoly of men. I am a believer in the maintenance of law and order. I am a believer in the supremacy of Parliament and in the rule of law. I heard an hon. Member from the opposite side saying that we should not question the supremacy of Parliament and this Parliament has the right to pass laws. Nobody denies it. I also feel that this Parliament is the *sanctum sanctorum* of the rights and liberties of the nation and we are trustees of the nation. The supremacy of Parliament and the rule of law are the fundamental characteristics of the British Constitution. Speaking the other day, the hon. Prime Minister said that if this Constitution resembles any in the world it is not the American Constitution but the British Constitution. We are after the Westminster model, true. The supremacy of the

British Parliament was once questioned when the Septennial Act was passed, between 1794 and 1801, extending the term of Parliament from five to seven years. I think it was Dicey who said, "They have transgressed the limits of moral existence." Therefore, Sir, the supremacy of Parliament is limited by the moral law, by the common law of the land and by the Constitution. Are Detention Acts based on moral law or on the common law of the land? (An Hon. Member: There is no common law of the land). We have no common law but we have law based on equity, justice and good conscience and we want to have law that will command obedience to the fundamental canons of justice. I wish to say to the hon. friend on the other side that this Detention Act violates all these rules of equity, conscience, justice and obedience to law. Though we had supreme power to pass any Act it should not transgress the limits of moral law, the law of nature, and the fundamental rights and liberties of the nation.

Preventive Detention has a history of its own. It is not unique for the Party in Power. Detention Acts are as old as history and can be traced back, if you take a cursory glance at history, to 18th century. It existed in one form or another. Going to the very source of legislation, from the "Kamuribi" of the Babylonians to the Roman codification, to the Napoleonic codification, to the German codification, to the Penal codification of Macaulay, and to our own Hindu law, we can trace back the history of this legislation to the administration of 18th century France. But what amazes me here is that the liberators of mankind in India now functioning actively, effectively and with great intelligence could not deliver the goods to the nation without arming themselves with this Detention Act. That is why I am amazed. In the administration of 18th century despots exercised that prerogative and used arbitrary powers in detaining people. Sir, in 1717 Voltaire was sent Bastille without trial and without conviction for a piece of poem which he did not write, whose author he did not know and whose sentiments he did not agree with. The other day, Sir, my esteemed friend Shri Deshpande was sent to the detention camp for the romance of other people in which he had absolutely no interest and was not a party to it.

So the history of the detention law can be traced from 1717 up to 1952 in India in Delhi. In the meanwhile we have got the reactions of the public against these prerogative powers. The Habeas Corpus Act is the first

reaction that demanded the production of the person detained either to be tried or to be released. Dicey says that Habeas Corpus Act did not announce in principle or declare any rights, but it is worth a hundred articles of the Constitutional guarantees to individual liberty. Since then this Act in one form or another existed. It is only a struggle between the executive and the legislature to maintain the balance of power on either hand. The public reacted, the Magna Carta, the petition of Rights, the Bill of Rights, the Declaration of Rights of Man, the Habeas Corpus and the remarks of the Opposition Members here and the dissenting minutes of the Opposition Members are the reactions of the public against the exercise of these arbitrary prerogatives, whether in the hand of the Crown or in the hand of an executive which is a part of the representatives of the people.

Now we have to question how the liberators of mankind in India, the sons of the soil, who tuned away the nation like the magic piper some time back, to follow them through thick and thin should turn back and seek sanction of this august House to pass a detention law, to detain people without trial, without conviction and, I can tell you some time later with the tortures that excel the caprice of oriental despotism some time past. It is no wonder, Sir, that Voltaire said: "I am willing to be ruled by the harshest of laws than the caprice of despots." And it is no wonder that my esteemed friend Deshpande said I am willing to be arrested and convicted on trial rather than depend upon the caprice of the District Magistrate or a Police Officer.

The law as it stands is a law of expediency. The sons of the soil proclaimed the rights and liberties of the people. I ask them now to turn back and look from the pedestal of power to see where these rights are under their administration. It is only history repeating itself and the public at large will react against these arbitrary measures from time to time and will maintain the balance of power with the people rather than with the executive.

Law if it should be called law, should conform to the will of the nation. That is what Dicey said. Legislation should conform to the will of the nation. Has this law conformed to the will of the nation, I ask? The other day during the elections my hon. friend Shri Punnose, Shri Gopalan and Chri Srikantan Nair and so many others were not allowed to go out of their detention camps, or from underground to fight the elections. How did they fare in the elections. I think Shri Srikantan

[Kumari Annie Mascarene]

Nair who contested two seats, one for the Parliamentary seat and the other for the local Legislature seat got both with a thumping majority of 75 per cent. And all of them have been returned to Parliament. Why did the people elect them? If this law had conformed to the will of the nation, if they had consented to this law, if they had agreed to this law if they had sanctioned this law, would they get such thumping majority and be returned to Parliament? I must say that this law does not conform to the will of the nation. We are the trustees of the nation here to preserve in tact the rights and liberties that they are enjoying.

I do not want to quote judicial pronouncements. I wish to bring before the hon. Home Minister a few facts regarding the implementation of this law in Travancore-Cochin State. Hitherto nobody had the privilege of informing the hon. Minister how this law was implemented in that State. The reason why I am here rather than there is the Detention Act, not because I was detained.—I was not detained by the Congress Government. I was detained by the autocrat for accepting an invitation from Bombay to preside over a social function. I did not go, I had just said 'Yes'. For that I was detained. I had been detained many times, but I do not wish to go into that history.

Yes, Sir, it is for the Detention Act that I left the Congress,—how the detention order was implemented. In one police station in Cochin State after the integration in Irinjalakuda, suspected Communists were brought. One of them was a close relation of a very respectable Raja, Kerala Varma by name. A labour woman was also under detention. In Travancore-Cochin State the law as it is worked is like this. A few people are arrested for no reason. The leaders are sent to the detention camps. The others are detained in the lock-up. One of their representatives in the local Legislature one day made a complaint about insulting a woman in Irinjalakuda police station. I paid no attention to it. It was published in the papers that the chastity of the woman was violated. I thought the press reports could not be trusted. Therefore, I paid no attention to it. A month later I received letters from Kerala Varma and from that lady. I could not read more than two paragraphs, the matter contained in it was so much against my sense of decency and self-respect that I directed that letter to the Inspector-General of Police

immediately. The precious thing on earth which we value most is the virtue of a woman. The virtue of that poor peasant is as dear to me as mine own. If through this Detention Act violation of woman, and not in the natural manner, has been committed in police stations, not by the police but by that respectable man who was made to do so at the point of the bayonet, I am not going to be a party to that government which violates the virtues of women. It is a great pity that I should have had to come away from the Congress. But these hands which once cared for and caressed that babe in the cradle through many a dreary and weary night, through the travail of persecutions and imprisonments, should now turn all their energy in crushing it because the child grew up to be an undesirable ruffian violating the virtues of women.

Subsequently I came across another case in a police station at a place called Kutatukulam. Mary, a Communist was arrested. I have no objection to your arresting and keeping in detention Communists or others if you see that they are indulging in subversive activities. I have absolutely nothing to do with them. But I have no 'ism' so far as women's virtue is concerned. This lady was caught underground. There was a struggle with the police. Her clothes on the upper body were torn and she was taken in that half naked condition through the streets of Kutatukulam to the police station, and then in the police station she was insulted. I am not going to be a party to a government which is so degraded as to allow these things to happen.

Now I wish to point out to the hon. Minister another defect of the law.

Mr. Deputy-Speaker: Was this brought to the notice of the State Government?

Kumari Annie Mascarene: The Detention Act is passed by this Government and they only can look into it.

Mr. Deputy-Speaker: But was it brought to the notice of the State Government?

Kumari Annie Mascarene: Yes, I brought it to their notice, it was published and it was discussed in the local Legislature. They made a sham enquiry and declared the person 'not guilty'.

Sir, the other point is this. When you pass a law we are prepared to obey it, provided the law is impartial. The

other day the Home Minister said with great dignity and impartiality that this law will bring in black-marketers and so on to book. I was extremely happy. And I hope he will do it even if he finds black-marketers in his own ranks.

On the 28th June, 1952 there was a case of death in the General Hospital at Trivandrum when I was in the next building as an in-patient. I enquired why there was such a kind of commotion. A few people then rushed to me and they told me "Madam, your agent Soman Nair is gone. He died this morning". I asked "How?" And they said "He died of poison". I asked them "Where did he get the poison from?" They told me that he had taken to drink. That is a prohibited area, mind you. And he got the drink from a shop. It is called an essence. He took it perhaps in a strong dose and by ten o'clock in the morning he was no more. He took it at about two o'clock in the night after coming from a cinema. Two other friends also took it. I enquired about this drink. Sir, I have got a specimen of this drink.

Mr. Deputy-Speaker: The hon. Member need not show it. Of what avail is it?

Kumari Annie Mascarene: For them to take action, because it is an important matter in which a Congress leader is involved. Sir, this is sold not openly but in the markets of Trivandrum. I got this for Rs. 1-12-0 from a shop in Statue Road, Trivandrum, on 2nd July, 1952. I am prepared to place it on the Table for examination to see who sold it. This is called "Grape Fruit Essence" prepared in the Pharmaceutical Laboratory at Ernakulam. What I want to tell you is this. The biggest shareholder of this Company selling this narcotic spirit to kill people in a prohibited area under a false label is no other than the Minister for Law and Order. Sir, I am sorry for peace and tranquillity. I have also seen the balance sheet of the Company and he has invested Rs. 21,000 for the manufacture of this narcotic spirit. This will not be given to people.....

Pandit K. C. Sharma (Meerut Distt. —South): What is the relevancy of this, Sir?

Mr. Deputy-Speaker: Order, order. Very often we are referring to State Governments. Under the Constitution they are as responsible as the Central Government. A very serious charge is made of that Government. It is well worth making this representation in that State and not bringing in the names of any Ministers who are not here to defend themselves. That Ministry is not answerable to this House.

Kumari Annie Mascarene: I am not giving any names.

Mr. Deputy-Speaker: The actual name need not be given. She said the Minister for Law and Order. One can easily find out. It is not necessary to go into all those details. She might generally say that such persons have not been caught.

Kumari Annie Mascarene: Sir, I am leaving this bottle here to be examined what poison it contains, because this Company ought not to be encouraged hereafter. The Government there will not give any attention to this. It is my past experience. And I have been deputed by the voters of my constituency to show this to this Government. That is why I brought it. If you are not going to enquire into this, well, it is left to your pleasure.

All that I want to impress upon you is if you make a law, for Heaven's sake apply it without any partiality to everybody. Then I am prepared to accept your law. That is my request. With regard to the person mentioned about, this Government is not ignorant. Heaps of petitions have come. And I know that no State in India has sent so many petitions and complaints about the administration as Travancore-Cochin has done. I know it for a fact. If the hon. Minister is prepared to enquire, I can give more evidence of other acts of corruption and black-marketing.

This law is calculated towards peace and order, to maintain law, order and the stability of administration. I am asking you, Sir, a straight question. With these rapes, tortures and sufferings are they going to establish peace, perfect peace and tranquillity sublime? I wish the Home Minister all success. I am so sorry that the time for finishing has come so suddenly. Perhaps owing to the nature of my speech you are rather nervous. Sir, that I may come out with something more. No, nothing more.

Mr. Deputy-Speaker: Order, order. The hon. Member was a Minister in charge and is a responsible Member of this House. I have no colour. I am never nervous. Therefore the allegation against the Chair is wrong. I am calling her to finish after twenty-five minutes.

Kumari Annie Mascarene: I am sorry, Sir. I withdraw that remark.

Mr. Deputy-Speaker: The hon. Member could ask for a few more minutes.

Kumari Annie Mascarene: If I say anything without evidence my friends on the other side will immediately declare 'Oh, that is unfounded, she is telling lies'. (An Hon. Member:

[Kumari Annie Mascarene]

(Already). Thank you. I want to impress on the hon. Minister that this law has no moral foundation and the amendments that are brought to this law are still more amusing for it is like adding honey to poison and the poison cannot lose its sting. If they want to establish peace and order, I most humbly request you to look into the grievances of the people and then this Act will be not necessary. If your administration can give us justice between individual and individual if you can at least look into our grievances even if you do not remedy them immediately, and if you will at least extend your attention to those petitions we send you to tell you that we are unhappy under your administration, there will be no necessity for this Act. We will be satisfied with your attention at first and we will understand that at least there is an attempt to satisfy us and there will be no necessity for this law. By imposing this law on us you may succeed in keeping us down for some time, but history has shown otherwise. People who have been kept down by detention acts, have in course of time succeeded in getting rid of them either by legislation or revolution. Let us not have the latter. We are willing to live as law-abiding citizens, if the Congress Administration can give us justice and can remedy the evils that exist and not create disturbance in our minds. I have done, Sir.

Shri P. T. Chacko (Meenachil): Sir, I am also coming from that State which the hon. lady Member is representing. She has made certain wild and irresponsible allegations against some Ministers and the Administration in general in the State. As regards the contents of the bottle she produced, I do not know anything. As regards the allegations she has levelled against the Administration and against certain Ministers, I may also be able to place certain facts before this House. Kumari Mascarene was saying that she went out of the Congress because in a police lock-up somebody tried to violate the modesty of a girl.

Kumari Annie Mascarene: One of the reasons.

Shri P. T. Chacko: Yes. One of them. I do not here wish to go into the other reasons why she left the Congress. An allegation that the modesty of a girl named Mary who was arrested was violated in a lock-up was made in a statement by some of my friends in the State. That is true. The first thing I wish to bring before the notice

of this House regarding this is that after this statement was published my hon. friend, the lady Member was a Minister in the Cabinet in that State...

Kumari Annie Mascarene: I have resigned it out of my own freedom.

Shri P. T. Chacko: May be. After this statement was made. I wish to say.....

Shri Punnoose (Alleppey) rose—

Mr. Deputy-Speaker: Order, order. Whenever any point of order is made, there may be substance or there may be none. It is my duty to hear the point of order.

Shri Punnoose: What the hon. Member is saying has no connection with the Bill under discussion and the issues raised amount to a discussion on Kumari Annie Mascarene.

Mr. Deputy-Speaker: Points of order have only to be stated. The hon. Member was clearly hearing Kumari Annie Mascarene when she said that such things are likely to occur and there is no help in investigation if preventive detention is confirmed. This is one of the strong instances which will certainly make hon. Members vacillate as to whether this Bill is desirable and what is the balance of convenience. Now, the hon. Member who comes from the same State wants to refute that allegation. What she made was a very serious allegation. Hon. Member sought to raise a point of order out of this. There is no point of order here.

Shri P. T. Chacko: This particular girl was arrested while she was going about in the country during night times with a jubbah, in a boy's garb. (An Hon. Member: False) She was taken to the Police Station but she was not kept under custody under the provisions of the Preventive Detention Act. A charge-sheet was laid against the girl about whose reputation, I do not want to say anything here, and when she was produced before the magistrate for the first time, she made no allegation of the sort before the magistrate. I do not want to go into the details of the case. After she was released on bail such an allegation was made in a press statement. I regret very much that a responsible Member like Kumari Annie Mascarene who was in the Congress Cabinet in Travancore-Cochin even after this statement was published.....

Kumari Annie Mascarene: No. On a point of information, it was long

after my resignation that this happened.

Shri P. T. Chacko: No. She could have made enquiries about it. I am sorry that she has made such wild allegations without of course giving any evidence and I challenge her to prove that the Administration was responsible for anything of the sort which she has pictured here. I challenge her to prove that this particular girl's modesty was violated in a lock-up. I say this emphatically because I know definitely that the State Government made certain inquiries and found the allegations false. As regards the Law Minister in Travancore, I do not know whether he is a share-holder in any Company. He may be a share-holder or not. It is amazing that an agent of Kumari Annie Mascarene went to procure alcohol in a prohibition area. He got some stuff and got himself drunk and died the same night. I do not know the cause of his death. I do not know anything regarding the contents of this bottle or why Kumari Mascarene tried to follow the example of her agent.

Mr. Deputy-Speaker: The hon. Member need not know all these.

Shri P. T. Chacko: I am surprised that Kumari Annie Mascarene who has declared herself to be a law abiding citizen has deliberately procured this alcohol at Trivandrum and kept it in her possession in a prohibition area, knowing that it is an offence.

Kumari Annie Mascarene: rose—

Shri P. T. Chacko: I am not yielding.

Mr. Deputy-Speaker: Let her give a personal explanation.

Kumari Annie Mascarene: I mentioned that the date of buying this bottle was on the 2nd of July, 1952 on my way to the aerodrome to come to New Delhi. I arrived here on the 3rd of July.

Mr. Deputy-Speaker: Apparently this is not a prohibited area.

Shri P. T. Chacko: It is, Sir.

Kumari Annie Mascarene: A receipt was not given to me because they usually do not give any. I bought this for showing to Parliament. I was deputed by my voters to do so.

Mr. Deputy-Speaker: I understand her explanation. She brought it to a non-prohibited area.

Shri P. T. Chacko: If she is charge-sheeted for this offence, she may give this as her defence. But she pur-

chased alcohol if it is alcohol as alleged by her, and was in possession of it in a prohibition area. I want to correct another misrepresentation. My hon. friend, the lady Member was saying that Mr. Punnoose, Mr. Srikantan Nair and Mr. Gopalan were under detention at the time of the elections. I wish to point out,—Mr. Punnoose is here—that they were not under detention. Mr. Punnoose was probably underground; Mr. Srikantan Nair was surely above ground. None of them, I am sure, was under detention during the elections.

Shri Punnoose: Can you say that there were no detenus in Travancore-Cochin?

Shri P. T. Chacko: I did not say so. I say that Mr. Punnoose was not in detention. Mr. Srikantan was not in detention. Mr. Gopalan was not in detention. (*Interruption*).

Mr. Deputy-Speaker: Order, order. Why are hon. Members here so impatient? The hon. Lady Member said.....

Some Hon. Members: They were facts.

Mr. Deputy-Speaker: Order, order; this is very wrong. I did not notice Mr. Punnoose. I have been noticing this kind of interruption from this side. The hon. lady Member said that at the time of the elections, some hon. Members of this House, Mr. Gopalan, Mr. Srikantan Nair and others were under detention, and that in spite of that, one of the hon. Members was elected not only to this Parliament, but to the local Legislature also. She said that to show how these people find favour with the country, and how all the others here who have been elected did not represent the people. It is necessary for the other side to refute that. Let there be no impatience so far as this matter is concerned. They are facts and have to be refuted if they are wrong.

Shri P. T. Chacko: Such misrepresentation is very common from that side of the House. I may point out another instance. Mr. Velayudhan, while he was making an interpellation, asked the Home Minister some days back whether he was aware that there were two detenus in Travancore-Cochin in prison. I wanted then and there to point out that it was wrong.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): It was a mistake, Sir.

Shri P. T. Chacko: At that time, there were no detenus in Travancore-Cochin. Again, Mr. Velayudhan,

[Shri P. T. Chacko]

while he wanted to move his amendment to the motion for taking into consideration the report of the Joint Committee on this Bill, was saying,—I do not exactly remember the number—that about 200 or 230 persons were arrested in Travancore-Cochin after the Bill was referred to the Joint Committee. I want to know whether Mr. Velayudhan is aware of there being any detenu in Travancore-Cochin behind the bars.

Shri Velayudhan: I was not saying about detenues. It was on another occasion that this thing was mentioned.

Mr. Deputy-Speaker: Order, order.

Shri Velayudhan: I only wanted to say that so many people were arrested. It was not about detention at all.

Mr. Deputy-Speaker: I am seriously considering as to where to set a limit to this kind of statements on the floor of the House. Statements are made; statements are not fully made. I would appeal to all hon. Members. This ought to be a principle to be followed by every hon. Member. For instance, a case of a girl was mentioned. She was arrested, but was not detained. An enquiry was made. Ultimately, the hon. Member Kumari Annie Mascarene said that an enquiry was made and there was nothing. Unless I put the question, it appeared as if nothing had happened in that very Government. Therefore, if any hon. Member in either side of the House wants to make a statement of this kind, he or she must take the fullest responsibility for that statement and support it by any newspaper record or something of that kind, whatever it may be and disclose the full facts: not only that portion which may support their case, but the full facts must be placed before the House for coming to a reasonable and proper conclusion on that matter.

Shri P. T. Chacko: I do not want to dwell on this matter any longer. I may take this opportunity, Sir, to say a few words regarding the conditions which were prevailing in my State during the period mentioned by the hon. lady Member and some other Members of this House. They are now saying that in Travancore-Cochin, the Communists have defeated the Congressmen because of the use of the Preventive Detention Act. So, I am constrained to place, not the details, but one or two instances of what was occurring in my State during those days. Before going into that, I wish to point out one other matter. Mr. Gopalan while he was speaking said

that he was all along in detention, that he was in detention in 1941, that he was in detention in 1947 and afterwards. True; in 1941, Mr. Gopalan was in detention. But, after 1942 when the patriots of the country were fighting against British Imperialism, when light came overnight to the Communist party that it was not an imperialist war, but a people's war, Mr. Gopalan was sent out of detention. He was free till 1947.

Shri A. K. Gopalan: I may say on a point of information, Sir, that I was not sent out of detention.

Shri P. T. Chacko: After 1942, if I remember correct, Mr. Gopalan was not in prison till 1947. That is what I wanted to point out.

What were the conditions in 1947? My hon. friends Mr. Kelappan and Mr. Damodara Menon will be in a better position to say what were the conditions prevailing in Malabar, that part of Kerala which is in the Madras Presidency, in those days. I have to place at least one fact before this House that had it not been for the courageous steps taken by Mr. Kelappan and Mr. Damodara Menon, who were the President of the Provincial Congress Committee and the Secretary of the Provincial Congress Committee at that time, in going to the extent of arming the people with *lathis*, people could not have survived in that area, because some terrorists and followers of Mr. Gopalan were indulging in looting, arson, murder and such other atrocities. It was checked of course...*(Interruptions)*.

Shri H. N. Mukerjee: All this is irrelevant.

Mr. Deputy-Speaker: Order, order. A very serious allegation is made against an hon. Member of this House.

Shri P. T. Chacko: Not a Member; but his followers.

Mr. Deputy-Speaker: Followers of so and so: it is as good as the other. The hon. Member must have the particular record which he can place before the House to prove that. If he goes to the length of saying that he is a personal witness, then there is witness against witness. Such allegations ought not to be made. There would not be an end to such allegations here. Such allegations ought not to be made against persons here. Even with respect to persons who are not here and who cannot defend themselves, such allegations ought not to be made unless the hon. Member takes the responsibility and is able to support it. Because nowadays, we

are getting all sorts of reports against all sorts of persons. Great caution should be taken.

Shri P. T. Chacko: I never said that Mr. Gopalan was indulging or as a matter of fact any Member was indulging. It is a fact that the conditions prevailing in Malabar were such.....

Mr. Deputy-Speaker: The hon. Member wanted to say that the Communists were doing all that.....

Shri P. T. Chacko: I did not say Communists; somebody else must have said so. I said some terrorists were doing it. It may include Communists.

Mr. Deputy-Speaker: Terrorists? All right.

Shri P. T. Chacko: In my own State, some of my hon. friends are now pleading for democracy and freedom. As regards Telengana, some of my friends are making a defence that they were forced to take arms because the other side resorted to force.....

Shri S. S. More: On a point of order. Sir. (Some Hon. Members: No interruptions).

Mr. Deputy-Speaker: What is the point of order?

Shri S. S. More: The point of order is that when I started to criticise the Congress I was prevented from criticising it. Now.....

Some Hon. Members: Nobody prevented. (Interruption.)

Shri N. B. Chowdhury (Ghatal): Sir.....

Mr. Deputy-Speaker: Order, order. Will the hon. Member kindly resume his seat?

What is this shouting from behind?

Shri N. B. Chowdhury: My point is, we hear so many times from this side, this is Opposition and things like that. But, what is that on that side?

6 P.M.

Mr. Deputy-Speaker: Why should this hon. Member cry out like this. I am exceedingly sorry. We are not school children here to be unruly like this. The hon. Member must observe some decorum particularly when I have asked the hon. Member who was speaking to resume his seat to see what the point of order was. There is no point of order.

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Shri S. S. More: I want to know the limitations of criticism.

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Mr. Deputy-Speaker: If a particular point is not relevant, I shall ask him not to continue. This is relevant. In his own State these things have happened for which proofs can be given. These are the ways in which a particular party or group who have been opposing the conduct of others acted; this is the conduct of individual persons who are sought to be brought within the ambit of this Bill. The hon. Member Mr. More went on quoting from the beginning of the world to the present day. I never interrupted him.

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Shri S. S. More: I was referring to the impatient attitude of the Members of the Government party. They want to take all sorts of liberties with us. The Chair has been very indulgent to me, and I am not prepared to make any suggestion or insinuation against the Chair. My grievance is against the party in power.

Mr. Deputy-Speaker: I would like to make it clear to all hon. Members that whenever on any side they feel that any hon. Member, whichever party he may belong to, is repeating a particular thing, or more than that, making irrelevant statements, if that is brought to my notice, I will certainly consider it. I shall always like to be guided in such matters by hon. Members. Irrespective of the person speaking, it is my duty to see that if he is irrelevant, he is pulled up.

Shri Gadgil: What about the insinuations that have been made.

Mr. Deputy-Speaker: He has withdrawn all those insinuations.

Shri P. T. Chacko: I do not want to give a detailed account of the terrorist activities in my State. I want only to place before this House the Himalayan task which the Government is facing on the one side and the sort of elements they have to face on the other side. We are having the terrorists, the communalists; we are having the reactionaries and the fifth-columnists in this country.

As regards the terrorist activities, I may be permitted to point out one or two specific occurrences so that I may

*Expunged as ordered by the Deputy-Speaker.

[Shri P. T. Chacko]

explain to this House why in Travancore-Cochin the Government resorted to the provisions under the Preventive Detention Act, and to point out how it was effective in my State.

It was said that in Telengana people had to resort to violence, to the use of arms because there was the use of force from the other side. May I ask my friends who have come from Travancore-Cochin, what was the case of that aged old man who was butchered in his bed at the dead of night at Memuri? Did he ever use force against anybody? Terrorists went and surrounded his house, and trespassed into his house breaking it open. Somehow his sons ran away for their life from the House. The old man who was in bed probably enjoying his well-earned leisure and with one leg in his grave, was butchered there. I do not want to go into what else happened there.

May I point out another instance? What happened to that poor Police Constable who, probably for the only crime that he joined the Police force in an endeavour to earn his livelihood by honest labour, was butchered? For what fault? He was unarmed.

Mr. Deputy-Speaker: When was this?

Shri P. T. Chacko: It was at Koothattukulam, near the place of that Mary.

Shri V. P. Nayar (Chirayinkil): Can he address the House in the form of a question?

Mr. Deputy-Speaker: It is not in the form of a question.

Shri V. P. Nayar: He said: "I am asking my friends". Is this not a question?

Mr. Deputy-Speaker: When the friends have an opportunity, they will reply.

Shri P. T. Chacko: I am sure it is after the attainment of independence for India. That is why I wanted particularly to point out this incident. There were some such occurrences even before. They may say we were doing such things for the attainment of responsible Government in the State. But these things happened after the attainment of independence for the country.

Then, may I ask, Sir, relating to another particular matter?

Shri V. P. Nayar: Whom are you asking? The Chair?

Shri P. T. Chacko: I can ask you through the Chair. One Sub-Inspector of Police had to go to a country place which he could not reach by any vehicle in connection with the investigation of a crime. He went there in connection with the investigation of a pure crime which had nothing to do with any political parties. At night he had to return. He was having only three Constables along with him. A large number of persons who are known to be terrorists surrounded him. These three constables, getting minor injuries, ran away. And what happened to that Sub-Inspector? He was not only butchered there, but the murderers partitioned his flesh, dipped their hands into the blood which was profusely flowing from that dead body.....

Mr. Deputy-Speaker: Where was this?

Shri P. T. Chacko: At Sooranap. And they went into the village in a procession showing their reddened hands and terrorising the villagers in that locality.

Shri V. P. Nayar: How many accused in that case were murdered in the lock-up within a fortnight from the arrests?

Mr. Deputy-Speaker: Is that a justification for that? I am exceedingly sorry. No such kind of shouting or other interruption can interrupt the proceedings in this House. I will not allow this procedure to go on in this House, this kind of getting up and interrupting. Instances after instances have been given. Personal instances are allowed. The Speaker has allowed it. Let this be given. This was an instance to draw the pointed attention of Members of this House on all sides as to the need for this Bill. They are arguing on the other side. I must be fair to both sides.

Dr. S. P. Mookerjee: I thought the hon. Member said that a number of persons were killed after they were put in the lock-up.

Mr. Deputy-Speaker: Is it a matter of justification? Dr. Mookerjee must understand what exactly I said, and not be hasty to interrupt. The question is that such a kind of thing happened even to the Police. He says the Police are terrorised and a Sub-Inspector who was going with three others was butchered in cold blood; the terrorists dipped their hands in his blood and a procession was taken round.....

Shri V. P. Nayar: Who?

Mr. Deputy-Speaker: Who is not the question. This is a fact the hon. Member is saying here. I have been asking him questions from time to time to pin him down so that other Members may have opportunity not to meet vague allegations, but definite allegations so that they may say it is wrong. One of the main provisions on which this side of the House supporting the Bill relies upon is that this is the fate of a person if a man comes forward to give evidence, and that is why the proceedings have to be held in camera. It may be that some people were killed. That also may be wrong, but is it an answer to this? I have been surprised to see how one crime can justify another crime. But the fact that there has been a crime like that will be an argument for showing that greater care should be exercised, but the police under the cover of this law, ought not also to abuse it. (Interruption.) All hon. Members must know that one wrong will not justify another wrong. If this detention Bill is wrong in any particular aspect, it is wrong to that extent; if it is useful, it is so in the other aspects. Therefore, I shall allow all shades of opinion to be expressed on this point, all facts to be brought up before the House, so that the hon. Members may exercise in a dispassionate mood their judgment in recording their votes.

Shri P. T. Chacko: I am thankful to my hon. friend Mr. V. P. Nayar for supporting my case. His case is that the police could not charge-sheet all the accused. Of course they could not. I plead guilty. Sir, on behalf of the State. The Police should get evidence to prefer a charge against a person. It was not possible. But I say that is the very reason why the Preventive Detention Act should be there. If people at the dead of night form unlawful assemblies and go and surround in an up-country place, a sub-inspector and butcher him and then go about in a procession with the partitioned flesh to be placed in several wards in the village, it is impossible to find out all the accused. Probably many of them went underground immediately. It may be fact as Mr. Nayar says that all the accused were not charge-sheeted. But I know definitely that some who were tried were convicted, while a few of them escaped as the Police could not get evidence.

Shri V. P. Nayar: I never said that. Do not distort. I asked how many accused were butchered in the lock-up.

Mr. Deputy-Speaker: One hon. Member need not put into the mouth of

another hon. Member what he might or might not have said. Let there be some precision in the talk, because these are all serious matters.

Shri V. P. Nayar: With your permission, Sir, I only said that some of the accused were killed by the police inside the lock-up. I said nothing more than that. Let the hon. Mr. Chacko say about this.

Shri P. T. Chacko: I do not want to go into the story of how the Edapally police station was attacked by a group of alleged Communists. I do not want to go into the details of that, because I fear that a case is now pending before a court of law. Though not all at least some of them were charge-sheeted, and are now standing a trial. Now that is what happens in all such cases?

The provisions in the Preventive Detention Act were resorted to in my State, and what was the effect? All these occurrences which I have now referred to took place after the attainment of responsible government in 1947 in my State. Those responsible for the administration of the State had to resort to the provisions of the Preventive Detention Act—actually at that time, a similar Act was in force in the State and what was the effect? May I ask my hon. friends on the other side, was it not by resorting to this preventive detention that such atrocities were put an end to in my State?

I wish to refer to another matter which happened sometime in 1949, when there was acute scarcity for cloth. There was scarcity of food materials also in the market. One could get these things only in the black-market. Government could not control the merchants and the persons who were dealing in these things. Several cases against black-marketing were registered. Many persons were charge-sheeted before the magistrates. The experience was that because every one of them was very rich and influential, evidence could not be procured and the cases were thrown out by the court for want of evidence. If it is a crime, I plead guilty on behalf of the State Government, they had to resort to preventive detention, and had to keep in detention about half a dozen very influential and rich merchants in the State. My hon. friends could easily see what the effect was. The next day after their arrest, cloth was available in the market at the ordinary price, and food materials came flowing into the market. That was the effect the detention produced.

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I do not want to go into the details of the many occurrences which took place there. My hon. friends are saying much about liberty. I remember one definition about liberty. 'Liberty is that quietness of mind which proceeds from the opinion which everyone entertains about his security'. If this is liberty, what about the liberty of that old man who was butchered in his bed at Memuri, of that constable who was murdered for no fault of his, except that he was wearing a khaki uniform? What about the liberty of that sub-inspector who went on duty to investigate a particular crime? People now say that for the sake of liberty and freedom, the Preventive Detention Act should be withdrawn. That is the demand which is made by my hon. friends on the opposite. But from what I have submitted before the House, I think I have been able to show that freedom and liberty of six million people of my State was secured only by resorting to the provisions of the Preventive Detention Act. My hon. friends on the other side have become very anxious about the success of Congress candidates in my State, and now they have given some reasons why the Congress candidates have failed. I do not want to go into those reasons why the Congress candidates failed in the elections. But I want to ask this one question. Can the Communist party or any other party in this State claim the support of the people in that State? Is it too much to expect that in the places where the occurrences which I have mentioned have taken place, the people were terrorised to some extent by what was done by the Communists? Many such happenings did occur, but this is not the time for me to go in detail into those occurrences. But one aspect of the democracy is the freedom of the individual.....

Mr. Deputy-Speaker: Is it necessary to go into the general principles now?

Shri P. T. Chacko: Sir, I only wanted to say that to ensure the freedom and liberty, the freedom of other people also should be recognised. It is the responsibility of the Government of a State to ensure the freedom of its citizens against these terrorist activities. If there is no other way even by resorting to the preventive detention they have to ensure the freedom of the citizens. When such terrorist activities are prevalent in a State, I submit that it is not too much to expect the citizens who actually have any love for their motherland, to make a little sacrifice; the restraint on the liberty of the subject for ob-

taining freedom and for achieving the orderly progress we want.

Shri Achuthan (Crangannur): Sir, the hon. lady Member who spoke made an allegation that Mr. A. K. Gopalan was in detention at the time of the elections. But that is not right, actually he was released.....

Shri A. K. Gopalan: It was said by another Member, Sir.

Kumari Annie Mascarene: It may be mistake, Sir.

Mr. Deputy-Speaker: The hon. Member himself is present, he could have stood up and said that.

Shri Raghobachari (Penukonda): Sir, I thank you for this opportunity. I have very carefully listened to the debate on this Bill not only these two days but also the other few days before. To my mind it looks that the whole matter is being discussed not with the realistic point of view of the necessity for it today and what danger there would be in the application of the provisions and what remedies or safeguards should be inserted into it. I am afraid that the whole atmosphere of discussion of this House is not only, not mainly concerned with the reasons for the law and its continuance but mostly guided by the sentiments and the past experiences and impressions of the acts of one party produced on the other party. It is most unfortunate that an obnoxious measure of this kind should not be considered purely on the grounds why this law is to be enacted by legislators sitting here as responsible people. I have always found that when some friends of the Communist group or other group on the opposite side get up, quote some instances, obstructions are thrown and confusion is created and the whole time of this House is almost taken up by questions and counter-questions. In fact, in a matter of this kind, to my mind it looks the whole matter is beyond dispute. The question of the principle involved in the Act is not much in dispute now at any rate. I have listened to the arguments and the speeches not only by the hon. Minister who introduced this Bill but also his supporters on the other side. Very few people gave facts and figures on the existing situation today but they are simply lost over past experiences, that some violence prevailed in the country or in some part of the country at some time or other. There would be really no objection, if the situation demanded an enactment of this kind: before the Parliament consisting of responsible people who are here, are asked to

vote for it, facts must be given and the reasons must, in support of it be given. It is said that the country, the whole country, requires it. I would ask this, Sir. There are so many States. Have you got Resolutions of the Legislatures of each or any of those States? Have they said there is need for a legislation of this kind? Were there opportunities given to elicit public opinion or take the sense of the country? It is said that it is necessary. You know, Sir, that in this country a most grave and emergent condition prevailed when this Bill was first introduced, the legislators thought that its life only for a short period was necessary. There was the gravest of circumstances. Even the Prime Minister when he spoke this morning referred to the old state of affairs that existed. But the point is, is there now a need or necessity for a legislation of this kind to be made available throughout the country and also for a period of two years and three months? What struck me as most strange, and I must say, most disappointing, was this statement: "Instead of coming to this Parliament frequently and wasting your time and frequently troubling, in hot weather, the Members of this House, I want to have it for two years and three months". To my mind it looks to be a very very unsatisfactory argument from any Government. What is this Parliament for? Is it to waste our time? Somebody suggested as a solution that it was open to the opposition to put up a Resolution at the end of every six months or a year and ask the Government, and the Government would naturally afford opportunities for such discussion, and then say whether it was necessary or it was not necessary. The burden is to be thrown upon the Legislature to bring constantly to the notice of the Government that the need for the continuance of the Act is there or not there. Is that the aspect or the point of view from which a legislation of this kind is to be looked at? I expected any Government to enact or continue a legislation for the necessary period and then make out a case again for its continuance. In fact, what is it that we find? The Government in its own statement has been saying the position in the country is very good. The country's heart is good and there is peace in the country and all that. And then you want this enactment for two years and three months. To my mind, it looks, Sir, it is the most irregular way of putting a thing and asking Parliament to give you power for two years and three months. It may be that an enactment is required. The Constitution provides for it. The Consti-

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tution provides for many things and for all time. And even if the Constitution provides, it provides subject to the necessity and the exigencies and other restrictions therefor. I wish to place before this House that the legislation that you have placed before us, the clauses of that section, Defence of India, foreign relations, etc.—the four clauses there, Sir,—cover such comprehensive matters that almost anything, any activity in the country can easily be brought under one or other of those clauses. It has always been, unfortunately; my impression that when a legislation is introduced and when it is stated what that language means and how that language would be interpreted, you go on saying its meaning is this way and it is not going to be used that way. The four clauses are so comprehensive that, as I said, almost any activity can be brought under them. I may tell you, Sir, I do not wish simply to refer to my own experience, as a public prosecutor for six years. I have been a lawyer for 32 years. I have some experience of courts, the way in which the investigators and the prosecutors and the police make up their cases and bring up evidence and start prosecutions and all that. I also was in office under those conditions when the Congress was in office and went out of office and political agitation started and so on. I may tell you it has been my experience that when the law is handed to be administered by these people, you always find there are more cases of abuse than real use. You may consult your own experiences. Even in cases where evidence is brought and the whole thing is placed before the courts, more than 60 to 70 per cent. of the cases are thrown away. You also know when a security case is to be started against a person or a group of people you have to gather instances and evidence separately and there will be twenty or more instances against a group or a particular individual gathered in a short time. Therefore, do you want to give such powers to be exercised by individuals who are always not known to have used them properly? I am glad that many Members of this House are conscious of the abuses to which these powers have been put. Even the Prime Minister said 'May be they have been misused or abused'. But the whole thing is when you have such powers and want to place them in the hands of people who are not known to have used them properly, why don't you put some restrictions, some safeguards? It appears generally Members are willing to enact this law, if some safeguards are put in. But when safeguards are suggested, not one is accepted that is

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really effective. Merely saying: "Let us have safeguards, let us look into the safeguards" will not satisfy anybody. My purpose is to submit to this House that when you want us to give you such powers we want that they must be used only in extraordinary circumstances and that too properly. They are powers which are likely to be misused. Therefore they must be used only by people who are responsible and who can be trusted

to use them properly and in extraordinary circumstances only.

Mr. Deputy-Speaker: Is the hon. Member likely to take long?

Shri Raghobachari: I will take another ten minutes, Sir.

Mr. Deputy-Speaker: Then he may continue on Monday.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 14th August, 1952.
